

GAHC010103582025



2026:GAU-AS:2958

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CRP(IO)/331/2025

MD CHAND MIYAN AND ANR
SON OF LATE MAINUDDIN, RESIDENT OF VILLAGE- KATAHGURI, MOUZA
- BATADRAVA, P.S. DHING, DISTRICT - NAGAON, ASSAM, PIN - 782123

2: MD. JAINAL ABEDIN
SON OF LATE MAINUDDIN
RESIDENT OF VILLAGE- KATAHGURI
MOUZA - BATADRAVA
P.S. DHING
DISTRICT - NAGAON
ASSAM
PIN - 78212

VERSUS

ABDUL MOTIN AND ANR
SON OF LATE HATEM ALI, RESIDENT OF VILLAGE- KATAHGURI, MOUZA -
BATADRAVA, P.S, DHING, DISTRICT- NAGAON, ASSAM, PIN - 782123

2:SURHAB ALI
SON OF LATE HATEM ALI
RESIDENT OF VILLAGE- KATAHGURI
MOUZA - BATADRAVA
P.S
DHING
DISTRICT- NAGAON
ASSAM
PIN - 78212

Advocate for the Petitioner : MR A SHARMA, MR I AHMED

Advocate for the Respondent : MR. A SATTAR (R-1,2), S CHOUDHURY(R-1,2),MR. WASIM
HOQUE(R-1,2)

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN
ORDER

24.02.2026

Heard Mr. A. Sharma, learned counsel for the petitioners and also heard Mr. A. Sattar, learned counsel for the respondents.

2. In this petition, under Article 227 of the Constitution of India read with Section 151 of the Code of Civil Procedure, the petitioners have challenged the order dated 03.03.2025, passed by the learned Civil Judge (Jr. Division) No.1, Nagaon (Trial Court, for short), in Title Suit No.335/2022. It is to be noted here that vide impugned order dated 03.03.2025, the learned Trial Court has accepted the written statement filed by the defendant Nos.8 and 9/respondents herein, beyond 90 days.

3. Mr. Sharma, learned counsel for the petitioners submits that the petitioners have instituted one title suit, being Title Suit No.335/2022, in the Court of learned Civil Judge (Jr. Division) No.1, Nagaon, claiming right, title, interest and cancellation of registered gift deed No.3131/1989, dated 18.09.1989 and also for issuance of precept and cancellation of mutation and for permanent injunction against the defendants/respondents herein. In the said Title Suit No.335/2022, the respondents herein were arrayed as defendant Nos.8 and 9, respectively. In the said proceeding, notices were served upon the defendant Nos.8 and 9/respondents herein to appear before the Court and to file their written statement and accordingly, the defendant Nos.8 and 9 appeared before the learned Trial Court on 03.04.2023 and took time to file their written statement. Thereafter, the suit was fixed on 02.05.2023, on which the defendant Nos.8 and 9 again took time for filing written statement and then, the suit was fixed on 26.06.2023, and on 26.06.2023, the respondents/defendant Nos.8 and 9 have submitted their written statement after expiry of the period of 90 days without any sufficient explanation for the delay and on 26.06.2023, no effective order was passed and the suit was fixed on 22.08.2023, for

necessary order. Thereafter, vide order dated 30.01.2024, the learned Trial Court has rejected the written statement of the respondents/defendant Nos.8 and 9, citing the reason that the defendant Nos.8 and 9 had submitted their written statement after expiry of the statutory period of 90 days and thereafter, on 28.08.2024, the respondents/defendant Nos.8 and 9 had filed a petition under Section 151 of the Code of Civil Procedure, 1908 for accepting their written statement after 7 months of filing of the written statement and thereafter, vide order dated 03.03.2025, the learned Trial Court has accepted the written statement submitted by the respondents/defendant Nos.8 and 9 and being aggrieved, the petitioners herein preferred this revision petition challenging the order dated 03.03.2025.

3.1 Mr. Sharma also submits that it is well settled that written statement beyond the period of 90 days can be accepted only on exceptional circumstances and in the instant case, the respondents herein had failed to demonstrate any exceptional circumstances in the petition under Section 151 of the CPC filed on 28.08.2024 and as such, the impugned order dated 03.03.2025, suffers from illegality and the same requires interference of this Court and accordingly, he contended to allow this petition. In support of his submission, Mr. Sharma has referred the following decisions:-

- (i) Dipu Das v. Dr. Rubul Ch. Das & Anr. [CRP No.157/2014, dated 03.12.2021].**
- (ii) Aditya Hotels (P) Limited v. Bombay Swadeshi Stores Limited & Ors., reported in (2007) 14 SCC 431.**
- (iii) R.N. Jadi & Brothers & Ors. v. Subhashchandra, reported in (2007) 6 SCC 420.**

4. Per contra, Mr. Sattar, learned counsel for the respondents/defendant Nos.8 and 9 has opposed this petition. Taking this Court through the order dated 03.04.2023, Mr. Sattar submits that the said order indicates that the summons were served upon the defendant Nos.3—9 on 28.03.2023 and thereafter, the defendants prayed for adjournment for filing written statement and the case was fixed on 02.05.2023 and on

02.05.2023, the defendant Nos.8 and 9/respondents herein again filed another petition praying for adjournment for filing written statement and the same was allowed and it was fixed on 26.06.2023. Thereafter, on 26.06.2023, the respondents herein had filed their written statement and in the order dated 26.06.2023, the learned Trial Court has recorded that the defendant Nos.8 and 9 have submitted their written statement. Thereafter, on 30.01.2024, the learned Trial Court has observed that the defendant Nos.8 and 9 had submitted their written statement after expiry of the period of 90 days. Hence, written statement filed by the respondents/defendant Nos.8 and 9 is rejected and thereafter, the respondents herein had filed another petition under Section 151 CPC and upon hearing the learned Advocates of both the parties, the learned Trial Court has accepted the same relying upon a decision of a Coordinate Bench of this Court in **Usman Goni & Ors. v. Abdul Khalique & Ors.**, reported in **2008 (3) GLT 179**.

4.1 Referring to a decision of Hon'ble Supreme Court in the case of **State of Orissa & Anr. v. Mamata Mohanty**, reported in **(2011) 3 SCC 436**, Mr. Sattar submits that once the Court comes to the conclusion that a wrong order has been passed, it becomes the solemn duty of the Court to rectify the mistake rather than perpetuate the same and on such count accepting the written statement vide impugned order, the learned Trial Court had not committed any illegality and therefore, contended to dismiss the petition.

5. Having heard the submission of learned counsel for both the parties, this Court has carefully gone through the petition and the documents placed on record and also perused the impugned order dated 03.03.2025, passed by the learned Trial Court.

6. It appears that vide order dated 03.03.2025, the learned Trial Court had allowed the petition filed by the respondents/defendant Nos.8 and 9 under Section 151 CPC and accepted the written statement filed by them and it also appears from the order dated 03.04.2023, which is annexed as Annexure-B at page No.30 of the petition that the notices upon the defendant Nos.3—9 have been served on 28.03.2023, and the defendant Nos.8 and 9 have submitted their written statement on 26.06.2023, which is

reflected in the order dated 26.06.2023 at page No.33 of the petition and that being so, before the completion of 90 days, the respondents/defendant Nos.8 and 9 had filed their written statement. However, the learned Trial Court has fixed the case on 22.08.2023, for acceptance of written statement filed by the defendant Nos.8 and 9. Thereafter, on 30.01.2024, the learned Trial Court has observed that the defendant Nos.8 and 9 have submitted their written statement after expiry of the statutory period of 90 days and consequently, rejected the written statement filed by the defendant Nos.8 and 9/respondents herein and proceeded to the next stage. However, on filing of the petition under Section 151 of the CPC on 28.08.2024, the learned Trial Court vide order dated 03.03.2025, relying upon the decision of this Court in **Usman Goni (supra)**, has accepted the written statement filed by the defendant Nos.8 and 9.

7. It is not in dispute that the defendant Nos.8 and 9/respondents herein had received the summon on 28.03.2023 and they had filed their written statement on 26.06.2023, i.e. prior to two days of expiry of the period of 90 days and that being so, the order dated 30.01.2024 of the learned Trial Court rejecting the written statement is illegal and arbitrary and therefore, on the petition, filed under Section 151 of the Code of Civil Procedure, by the respondents herein on 28.08.2024, the learned Trial Court has accepted the written statement filed by the respondents/defendant Nos.8 and 9, and thereby rectified the defect which is also mandated in the case of **Mamata Mohanty (supra)**. And in that view of the matter, the impugned order dated 03.03.2025, suffers from no illegality or infirmity or perversity requiring any interference of this Court.

8. This Court has carefully considered the submission advanced by Mr. Sharma, learned counsel for the petitioners and also gone through the decisions referred by him and this Court is of the view that there is no substance in his submission and the decisions referred by him would not advance his argument in as much as, indisputably the respondents/defendant Nos.8 and 9 have filed their written statement within the period of 90 days and as such, rectifying the defect vide impugned order dated 03.03.2025, which was committed vide order dated 30.01.2024, cannot be said to be illegal and arbitrary.

9. In the result, this Court finds no merit in this petition and accordingly, the same stands dismissed, leaving the parties to bear their own cost.

Sd/- *Robin Phukan*
JUDGE

Comparing Assistant