

GAHC010106212023



2026:GAU-AS:128

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

Case No. : CRP(IO)/145/2023

SMTI. PREMODA BARMAN AND 3 ORS
W/O LATE PRAMOD BARMAN, R/O VILL-SADILAPUR, P.O.-JALUKBARI,
DIST- KAMRUP (M), ASSAM, PIN-781012

2: NIKHIL BARMAN
S/O LATE PRAMOD BARMAN
R/O VILL-SADILAPUR
P.O.-JALUKBARI
DIST- KAMRUP (M)
ASSAM
PIN-781012

3: TAPAN BARMAN
S/O LATE PRAMOD BARMAN
R/O VILL-SADILAPUR
P.O.-JALUKBARI
DIST- KAMRUP (M)
ASSAM
PIN-781012

5: DIGANTA BARMAN
S/O LATE DHARMESWAR BARMAN
R/O VILL-SADILAPUR
P.O.-JALUKBARI
DIST- KAMRUP (M)
ASSAM
PIN-78101

VERSUS

JINTU DUTTA AND 3 ORS
S/O PHULESWAR DUTTA, R/O VILL-MADHUPUR DEMOW, BYELANE-4, P.O.
AND P.S.-SIVASAGAR, DIST-SIVASAGAR (ASSAM), PIN-785662

2:SMTI AMILA SINGHA
W/O SRI AJIT KUMAR SINGHA
R/O BHANGAGARH
SRIMANTAPUR
DIST-KAMRUP (M)
ASSAM
PIN-781006
GUWAHATI
P/R/A VIJAYA APARTMENT
HOUSE NO. 89 (BLOCK-C)
FLAT NO. 501
BARTHAKUR MILL ROAD
ULUBARI
DIST-KAMRUP (M)
ASSAM
PIN-781007
GUWAHATI

3:TILAK KALITA
S/O SRI PADMA RAM KALITA
R/O ADABARI
PANDAV NAGAR
DIST-KAMRUP (M)
ASSAM
PIN-781012
GUWAHATI

4:JADU RAM MALAKAR
S/O LATE BAKSHI RAM MALAKAR
R/O DHOLBOMA
GARCHUK
KALI MANDIR PATH
DIST-KAMRUP (M)
ASSAM
PIN-781035
GUWAHAT

Advocate for the Petitioner : PETITIONER IN PERSON, MR. R SHARMA,MR. S K GOSWAMI,MR. S K DAS(P-1,2,3),MR A I TALUKDAR (P-1,2,3)

Advocate for the Respondent : MR. R K BHUYAN (r-2), MR P UPADHYAY (R-3),MR. B P KUMAR,MR A UPADHYAY,MR P UPADHYAY,MR. K LAHKAR (R-4),MR. I AHMED (R-4),R BISWAS (R-4),MR. M KASHYAP (r-2)

Linked Case : I.A.(Civil)/1285/2025

SMTI PREMODA BARMAN AND 4 OTHERS
W/O LATE PRAMOD BARMAN
R/O VILL-SADILAPUR
P.O.-JALUKBARI
DIST- KAMRUP (M)
ASSAM
PIN-781012

2: NIKHIL BARMAN
S/O LATE PRAMOD BARMAN
R/O VILL-SADILAPUR
P.O.-JALUKBARI
DIST- KAMRUP (M)
ASSAM
PIN-781012

3: TAPAN BARMAN
S/O LATE PRAMOD BARMAN
R/O VILL-SADILAPUR
P.O.-JALUKBARI
DIST- KAMRUP (M)
ASSAM
PIN-781012

4: SMTI BHARATI BARMAN
W/O LATE DHARMESWAR BARMAN
R/O VILL-SADILAPUR
P.O.-JALUKBARI
DIST- KAMRUP (M)
ASSAM
PIN-781012

5: DIGANTA BARMAN
S/O LATE DHARMESWAR BARMAN
R/O VILL-SADILAPUR
P.O.-JALUKBARI
DIST- KAMRUP (M)
ASSAM
PIN-781012
VERSUS

JINTU DUTTA AND 3 OTHERS
S/O PHULESWAR DUTTA
R/O VILL-MADHUPUR DEMOW
BYELANE-4

P.O. AND P.S.-SIVASAGAR
DIST-SIVASAGAR (ASSAM)
PIN-785662

2:SMTI AMILA SINGHA
W/O SRI AJIT KUMAR SINGHA
R/O BHANGAGARH
SRIMANTAPUR
DIST-KAMRUP (M)
ASSAM
PIN-781006
GUWAHATI
P/R/A VIJAYA APARTMENT
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S/O SRI PADMA RAM KALITA
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GUWAHATI

4:JADU RAM MALAKAR
S/O LATE BAKSHI RAM MALAKAR
R/O DHOLBOMA
GARCHUK
KALI MANDIR PATH
DIST-KAMRUP (M)
ASSAM
PIN-781035
GUWAHATI

Advocate for :

Advocate for : MR. R K BHUYAN appearing for JINTU DUTTA AND 3 OTHERS

:: BEFORE ::

(HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA)

Advocate(s) for the Petitioners : Mr. S.K. Goswami,
Advocate.

Advocate(s) for the Respondent No.2 : Mr. R.K. Bhuyan,
Advocate.

Advocate(s) for the Respondent No.3 : Mr. P. Upadhyay,
Advocate.

Advocate(s) for the Respondent No.4 : Mr. K. Lahkar,
Advocate.

Date on which judgment is reserved : 24.09.2025.

Date of pronouncement of judgment : 06.01.2026.

Whether the pronouncement is of the
operative part of the judgment? : YES.

Whether the full judgment has been
pronounced? : YES.

JUDGMENT AND ORDER (CAV)

Heard Mr. S.K. Goswami, learned counsel appearing for the petitioners. Also heard Mr. R.K. Bhuyan, Mr. P. Upadhyaya and Mr. K. Lahkar, learned counsel representing the respondent nos.2, 3 and 4 respectively.

2. This is an application under Article 227 of the Constitution of India challenging the order dated 20.01.2022 passed by the learned Civil Judge No.II, Kamrup (M), Guwahati in Title Suit No.247/2016.
3. The petitioners being the plaintiffs before the trial court filed an application under Order XXIII Rule 1(3) of the Code of Civil Procedure praying for allowing them to withdraw the suit with liberty to file a fresh suit.
4. When the plaintiffs' witness no.1 was partly cross-examined, at that stage, the plaintiffs wanted to

add some additional information regarding the subject-matter of the suit and to add some parties who have allegedly come to the picture because of bifurcation of original Dag and Patta.

5. The learned Trial Court has held that for alteration and amendment of pleadings, there are specific provisions in the Code of Civil Procedure. The learned Trial Court further held that the defects pointed out by the plaintiffs were not formal defects sufficient to allow withdrawal of the suit and to give liberty to file the suit afresh.

6. This Court must remind itself that it is not an appellate court. This is an application under Article 227 of the Constitution of India.

7. The main grounds on which the High Court interferes under Article 227 of the Constitution of India are –

1. When the inferior Courts act arbitrarily
2. When the inferior Courts act in excess of the Jurisdiction vested in them.
3. When the inferior Courts fail to exercise jurisdiction vested in them.

8. It is pertinent to note that the High Court does not interfere for correcting mere error of facts or, with a finding of the subordinate court which is within the jurisdiction of such court. However, if, such finding is perverse in such a sense that no prudent person having the knowledge of law could have arrived at such finding, or the finding is not based on any material evidence or, such finding results in manifest injustice or if there is a misdirection in law then the High Court can interfere under Article 227 of the Constitution of India.

9. In *V. Rajendran v. Annasamy Pandian*, (2017) 5 SCC 63, the Hon'ble Supreme Court has held as under:

“10. In *K.S. Bhoopathy v. Kokila* [*K.S. Bhoopathy v. Kokila*, (2000) 5 SCC 458], it has been held that it is the duty of the Court to be satisfied about the existence of “formal defect” or “sufficient grounds” before granting permission to withdraw the suit with liberty to file a fresh suit under the same cause of action. Though, liberty may lie with the plaintiff in a suit to withdraw the suit at any time after the institution of suit on establishing the “formal defect” or “sufficient grounds”, such right cannot be considered to be so absolute as to permit or encourage abuse of process of court. The fact that the plaintiff is entitled to abandon or withdraw the suit or part of the claim by itself, is no licence to the plaintiff to claim or to do so to the detriment of legitimate right of the defendant. When an application is filed under Order 23 Rule 1(3) CPC, the Court must be satisfied about the “formal defect” or “sufficient grounds”. “Formal defect” is a defect of form prescribed by the rules of procedure such as, want of notice under Section 80 CPC, improper valuation of the suit, insufficient court fee, confusion regarding identification of the suit property, misjoinder of parties, failure to disclose a cause of action, etc. “Formal defect” must be given a liberal meaning which connotes various kinds of defects not affecting the merits of the plea raised by either of the parties.”

10. I have found that the learned trial court has correctly oriented itself and passed the impugned

order. No interference of this Court is required.

11. For the aforesaid reasons, the revision petition is dismissed and disposed of accordingly. The connected Interlocutory Application is also disposed of.

JUDGE

Comparing Assistant