

GAHC010191672024



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

Case No. : CRP(IO)/361/2024

MD. MOZAMIL HOQUE MIR AND 3 ORS
S/O LATE ABDUL SOBHAN MIR,
RESIDENT OF VILLAGE DHUPAGURI, MOUZA BATADRABA, PS DHING, PO
DHUPAGURI, DIST NAGAON, ASSAM 782123

2: MD. NAZRUL ISLAM MIR
S/O LATE ABDUL SOBHAN MIR

RESIDENT OF VILLAGE DHUPAGURI
MOUZA BATADRABA
PS DHING
PO DHUPAGURI
DIST NAGAON
ASSAM 782123

3: MD. IMRAN HUSSAIN MIR
S/O LATE ANOWAR HUSSAIN MIR

RESIDENT OF VILLAGE DHUPAGURI
MOUZA BATADRABA
PS DHING
PO DHUPAGURI
DIST NAGAON
ASSAM 782123

4: MUSST. MINA BEGUM
D/O LATE ANOWAR HUSSAIN MIR

RESIDENT OF VILLAGE DHUPAGURI
MOUZA BATADRABA
PS DHING
PO DHUPAGURI
DIST NAGAON
ASSAM 78212

VERSUS

MD. ISHAD HUSSAIN MIR AND 4 ORS
S/O LATE ABUL HUSSAIN MIR
RESIDENT OF ITACHALI NATUN BAZAR, INFRONT OF LIC OFFICE,
NAGAON TOWN, MOUZA TOWN, PS NAGAON SADAR, PO AND DIST
NAGAON, ASSAM 782003

2:MD. IFTEKAR ALI
S/O LATE ABUL HUSSAIN MIR
RESIDENT OF ITACHALI NATUN BAZAR
INFRONT OF LIC OFFICE
NAGAON TOWN
MOUZA TOWN
PS NAGAON SADAR
PO AND DIST NAGAON
ASSAM 782003

3:MD. AHTESHAN MIR
S/O LATE ABUL HUSSAIN MIR
RESIDENT OF ITACHALI NATUN BAZAR
INFRONT OF LIC OFFICE
NAGAON TOWN
MOUZA TOWN
PS NAGAON SADAR
PO AND DIST NAGAON
ASSAM 782003

4:MUSST. JAHANARA MIR

W/O LATE ABUL HUSSAIN MIR
RESIDENT OF ITACHALI NATUN BAZAR
INFRONT OF LIC OFFICE
NAGAON TOWN
MOUZA TOWN
PS NAGAON SADAR
PO AND DIST NAGAON
ASSAM 782003

5:MD. ZAKIR HUSSAIN MIR
S/O LATE ABUL HUSSAIN MIR
RESIDENT OF ITACHALI NATUN BAZAR
INFRONT OF LIC OFFICE
NAGAON TOWN
MOUZA TOWN
PS NAGAON SADAR
PO AND DIST NAGAON

ASSAM 78200

Advocate for the Petitioner : R SARMAH, MS M KAKOTY,MR K J HAZARIKA

Advocate for the Respondent : ,

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 20.09.2024

- 1.** Heard Mr. R. Sarmah, learned counsel for the petitioners.
- 2.** This is an application filed under Article 227 of the Constitution of India read with Section 151 of the Code of Civil Procedure, 1908 has been filed by the petitioners, namely, *1. Md. Mozamil Hoque Mir, 2. Md. Nazrul Islam Mir, 3. Md. Imran Hussain Mir and 4. Musstt. Mina Begum* impugning the order dated 30.04.2024 whereby the application filed by the petitioners who are the defendant Nos. 1, 2, 3 and 4 in the Title Suit No. 414/2021 pending before the Court of learned Munsiff No. 2, Nagaon whereby an application filed by the present petitioners under Order- 6 Rule- 17 of the Code of Civil Procedure for amendment of the written statement was rejected by the Trial Court.
- 3.** The learned counsel for the petitioners has submitted that the suit was filed by the respondents for declaration for right, title and interest and recovery of possession of suit land. The suit land is a plot of land measuring 1 Katha out of 1Bigha 1 Katha and 10 Lechas of land covered by Dag No. 15 of periodic patta No. 134 situated at Dhupaguri Village Kissam under Batadraba Mouza in the district of Nagaon.
- 4.** The learned counsel for the petitioners has submitted that during the pendency of the suit the plaintiff No. 3 has sold his share of the suit land to the

defendant No. 1 and the plaintiff No. 2 has executed a power of attorney and given up his possession of his share in the suit in favour of the defendant No. 1 and the petitioner by filing amended written statement only tried to bring this fact on record.

5. The learned counsel for the petitioners has also submitted that this fact is relevant for consideration for deciding the controversy in the suit and the Trial Court was wrong in holding that the facts intended to be brought on record by the proposed amendment are not necessary for determining the real question of controversy.

6. The learned counsel for the petitioners has also submitted that it is a settled law that in case of amendment of written statement, the Courts are more liberal in allowing an amendment than that of a plaint as the question of prejudice would be far less in the former than in the latter case. In support of his submissions, learned counsel for the petitioners has cited a ruling of the Apex Court of India "*Usha Balashahed Swami and Ors. Vs. Kiran Appaso Swami and Ors.*" reported in "(2007) 5 SCC 602".

7. Issue notice to the respondents.

8. The petitioners shall take steps for issuance of notice to the respondents by registered post with A/D as well as by usual mode within four days from the date of this order, returnable on 28th October, 2024.

9. The learned counsel for the petitioners has submitted that the suit is fixed for cross-examination of PWs and in the event of allowing this present revision petition in favour of the petitioners and if in the meanwhile the suit proceeds there would be again repetitions of the stages of the suit which would bring complicity in proceeding the suit which may be avoided by granting

interim stay during the pendency of the revision petition.

10. Considering the submissions made by the learned counsel for the petitioners as discussed in forgoing paragraphs, the further proceedings of Title Suit No. 414/2021 shall remain stayed till the next returnable date.

11. List accordingly.

JUDGE

Comparing Assistant