

GAHC010213502023



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

Case No. : CRP(IO)/313/2023

ZIAUR RAHMAN BARBHUIYA AND 3 ORS.
S/O LATE ABDUR REJAK BARBHUIYA, VILL- ALGAPUR PART-IV, P.O.-
KALIBARI BAZAR, P.S.-ALGAPUR, DIST- HAILAKANDI (ASSAM)

2: ZIAUL HOQUE BARBHUIYA
S/O LATE ABDUR REJAK BARBHUIYA
VILL- ALGAPUR PART-IV
P.O.-KALIBARI BAZAR
P.S.-ALGAPUR
DIST- HAILAKANDI (ASSAM)

3: ZIA UDDIN BARBHUIYA
S/O LATE ABDUR REJAK BARBHUIYA
VILL- ALGAPUR PART-IV
P.O.-KALIBARI BAZAR
P.S.-ALGAPUR
DIST- HAILAKANDI (ASSAM)

4: JAHIRUL ISLAM BARBHUIYA
S/O LATE ABDUR REJAK BARBHUIYA
VILL- ALGAPUR PART-IV
P.O.-KALIBARI BAZAR
P.S.-ALGAPUR
DIST- HAILAKANDI (ASSAM)

VERSUS

JOYNUL UDDIN BARBHUIYA AND 5 ORS.
S/O LATE MOYNA MIA BARBHUIYA, VILL- BARNAGAD, P.O.-KALIBARI
BAZAR, P.S.-ALGAPUR, DIST- HAILAKANDI (ASSAM), PIN-788150

2:SALIM UDDIN BARBHUIYA
S/O LATE MOYNA MIA BARBHUIYA
VILL- BARNAGAD

P.O.-KALIBARI BAZAR
P.S.-ALGAPUR
DIST- HAILAKANDI (ASSAM)
PIN-788150

3:ANAM UDDIN BARBHUIYA
S/O LATE MOYNA MIA BARBHUIYA
VILL- BARNAGAD
P.O.-KALIBARI BAZAR
P.S.-ALGAPUR
DIST- HAILAKANDI (ASSAM)
PIN-788150

4:RINA BEGUM BARBHUIYA
W/O LT SIDDEQUE AHMED BARBHUIYA
D/O LATE MOYNA MIA BARBHUIYA
VILL- BARNAGAD
P.O.-KALIBARI BAZAR
P.S.-ALGAPUR
DIST- HAILAKANDI (ASSAM)
PIN-788150

5:TAZMA KHANAM BARBHUIYA
W/O JOYNAL ABEDIN BARBHUIYA
D/O LATE MOYNA MIA BARBHUIYA
VILL- BARNAGAD
P.O.-KALIBARI BAZAR
P.S.-ALGAPUR
DIST- HAILAKANDI (ASSAM)
PIN-788150

6:MUSSTT NEKBUL NESSA BARBHUIYA
D/O LATE MAYUB ALI BARBHUIYA
VILL- ALGAPUR PART-IV
P.O.-KALIBARI BAZAR
DIST- HAILAKANDI (ASSAM)
PIN-78815

Advocate for the Petitioner : MS. R CHOUDHURY

Advocate for the Respondent :

**BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI**

ORDER

22-09-2023

Heard Ms. R. Choudhury, learned counsel for the petitioners, who have filed this application under Article 227 of the Constitution of India against an order dated 05.08.2023 passed by the learned Civil Judge (Senior Division), Hailakandi in Misc. Case No. 134/2023 arising out of TS No. 26/2023 whereby the petition of the petitioners to reject TS No. 26/2023 under Order 7 Rule 11 (d) of the CPC has been dismissed.

The petitioners were the plaintiffs in the original Title Suit in which a decree was passed in favour of the plaintiff. The suit was for specific performance of contract against the proforma respondent no. 6. At the time of execution of the decree, the present respondents who were not parties to the suit had filed their objections under Order 21 Rules 97 and 101 of the CPC. Simultaneously, they have also filed a fresh suit challenging the decree being TS No. 26/2023 and it is in respect of this suit where a petition under Order 7 Rule 11 (d) of the CPC was filed which was rejected.

Ms. Choudhury, the learned counsel has submitted that once a party takes recourse to Order 21 Rules 97 and 101 CPC, he is debarred from instituting a fresh suit in relation to the decree in question.

Let **notice** be issued, returnable on **11.10.2023**.

Let steps be taken for service of notice upon the respondents including the proforma respondent by registered post with A/D by Monday i.e. 25.09.2023.

The petitioners are also required to take steps by *dasti* which would however is required to be routed through the Registry of this Court and in the notice accompanying the *dasti* should clearly reflect the next date fixed i.e. 11.10.2023. The petitioners are also required to file an affidavit prior to the next date fixed in proof of such *dasti* service.

Ms. Choudhury, the learned counsel prays for an interim order.

After considering the facts and circumstances and the provisions of law more particularly Order 21 Rules 97 and 101 CPC, it is directed that till the returnable date, further proceedings in TS No. 26/2023 before the learned Civil Judge (Senior Division), Hailakandi shall remain suspended.

Since the interim order has been passed *ex-parte*, the respondents would be at liberty to come up for modification/alteration/vacation of the same, if so advised.

JUDGE

Comparing Assistant