

GAHC010216312019



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

I.A.(Civil) 9/2020

1:SIRAJUL ISLAM MAZARBHUIYAN
S/O LATE MOSKANDAR ALI MAZARBHUIYAN
HAILAKANDI TOWN
WARD NO AND P.O. RATANPUR ROAD
HAILAKANDI

VERSUS

1:LUTFUR RAHMAN MAZARBHUIYAN AND 16 ORS
S/O LATE HABIBUR RAHMAN MAZARBHUIYAN
HAILAKANDI TOWN
WARD NO 3

2:ABDUL MATIN MAZARBHUIYAN
S/O LATE ABDUL SATTAR MAZARBHUIYAN
HAILAKANDI TOWN
WARD NO XI

3:MUJIBUR RAHMAN MAZARBHUIYAN
S/O LATE ASAB ALI MAZARBHUIYAN
HAILAKANDI TOWN
WARD NO 3

4:ABDUL ODUD MAZARBHUIYAN
S/O LATE ABDUL WAHID MAZARBHUIYAN
HAILAKANDI TOWN
WARD NO 3

5:ANWAR HUSSAIN MAZARBHUIYAN
S/O LATE AZIZUR RAHMAN MAZARBHUIYAN
HAILAKANDI TOWN

WARD NO 3

6:AINUL HAQUE BARBHUIYAN
S/O LATE MOSUR ALI MAZARBHUIYAN
HAILAKANDI TOWN
WARD NO.2
P.O. RATANPUR ROAD
P.S. AND DIST. HAILAKANDI

7:SHAMS UDDIN MAZARBHUIYAN
S/O LATE HABIBUR RAHMAN MAZARBHUIYAN
HAILAKANDI TOWN
WARD NO 3

8:JOSHIM UDDIN MAZARBHUIYAN
S/O LATE HABIBUR RAHMAN MAZARBHUIYAN
HAILAKANDI TOWN
WARD NO 3

9:TOIBUR RAHMAN MAZARBHUIYAN
S/O LATE ASAB ALI MAZARBHUIYAN
HAILAKANDI TOWN
WARD NO. 3

10:MS. ASANOR BIBI
W/O LATE ASAB ALI MAZARBHUIYAN
HAILAKANDI TOWN
WARD NO. 3

11:MS. KIRON NESSA MAZARBHUIYAN
D/O LATE ASAB ALI MAZARBHUIYAN
HAILAKANDI TOWN
WARD NO. 3

12:MUSTT. RAHENA BEGUM MAZARBHUIYAN
W/O LATE ABDUL WAHID MAZARBHUIYAN
HAILAKANDI TOWN
WARD NO. 3

13:ASRAFUL ALOM MAZARBHUIYAN
S/O LATE ABDUL WAHID MAZARBHUIYAN
HAILAKANDI TOWN
WARD NO. 3

14:MS. SULTANA BEGUM MAZARBHUIYAN
D/O LATE ABDUL WAHID MAZARBHUIYAN
HAILAKANDI TOWN
WARD NO. 3

15:MS. MUNNI BEGUM
D/O LATE ABDUL WAHID MAZARBHUIYAN
HAILAKANDI TOWN
WARD NO. 3

16:MS. RITA BEGUM MAZARBHUIYAN
D/O LATE ABDUL WAHID MAZARBHUIYAN
HAILAKANDI TOWN
WARD NO. 3

17:MS. RUSTANA BEGUM MAZARBHUIYAN
D/O LATE AZIZUR RAHMAN MAZARBHUIYAN
HAILAKANDI TOWN
WARD NO. 3

Advocate for the Petitioner : MR. N H MAZARBHUIYAN
Advocate for the Respondent :

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

ORDER

Date : 17-02-2020

Heard Mr. NH Mazabhuiyan, learned counsel for the applicant.

Issue notice returnable in four weeks.

Applicant to take steps for service of notice upon the opposite party by registered post and speed post within seven days. Applicant is also allowed to take Dasti service on the opposite party within seven days through the Registry of this Court and thereafter an affidavit to that effect be filed.

The respondent plaintiff instituted Title Suit No.58 of 2014 in the court of learned Civil Judge, Hailakandi for declaration of their right, title and interest in respect of 4 Kathas of land in 2nd RS Patta No.121, Dag No.488 of Hailakandi Town, Ward No.3 and also for declaring an

unspecified sale deed to be void, frivolous and illegal.

We have taken note of that the prayer for declaration in respect of 4 kathas of land in 2nd RS Patta No.121, Dag No.488 of Mouza Hailakandi is stated in the prayer of the plaint. In the schedule of the suit land mentioned in the plaint, there is no indication of the identity of the land other than the boundary of the land. Prima facie, the same itself appears to be defective plaint. Be that as it may, the defendant on the other hand in paragraph 21 of the written statement takes a stand that the plot of land which appertains to the suit land as well as west and south of the suit land exclusively belongs to the defendants and their other co-sharers and that have been enjoying the same from the days of their forefathers without any disturbance.

In course of the cross-examination of PW-1 Abdul Motim Mazarbhuiyan, the defendant confronted him with registered sale deeds and in such course of action, the two registered sale deeds were marked Exhibit-A and B. Subsequently, defendant No.1 while deposing as DW-1 had also exhibited certain documents which were also marked as Exhibit-A and B. In the resultant situation both the courts allowing the suit of the plaintiff had not taken into consideration the Exhibit A and B which were marked while the defendant had confronted PW-1. In view of such categorical statements being made, considering the balance of convenience and the irreparable loss that the applicant may suffer, the judgments dated 30.05.2017 in Title Appeal 15 of 2017 from the Court of learned District Judge , Hailakandi and the judgment dated 18.09.2017 in Title Suit No.58 of 2014 from the court of learned Civil Judge, Hailakandi shall remain stayed. Further continuance of the order shall be considered after appearance of the opposite parties.

List on **08.04.2020**.

JUDGE

Comparing Assistant