

GAHC010267952025



2026:GAU-AS:3969

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

Case No. : CRP(IO)/521/2025

SMTI SUDHA BARUAH
W/O LATE NAKUL CHANDRA BARUAH, R/O HOUSE NO - 618, OPPOSITE
RAJIB BHAWAN, NBS COMMERCIAL BUILDING, P.O -CHRISTIAN BASTI,
DIST- KAMRUP (METRO), ASSAM

VERSUS

RANJIT BARUAH
S/O SRI LOHIT CHANDRA BARUAH, R/O H.NO -20, CHENIKUTHI, HILL
SIDE, KUCHAL KONWAR PATH, P.O - CHENIKUTHI, DIST- KAMRUP
(METRO), ASSAM, PIN- 781003

Advocate for the Petitioner : MR. P P DAS, MR. SURAJIT DAS

Advocate for the Respondent : MR B K SARMA, MS P SARMA

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 17.03.2026

Heard Mr. S. Das, learned counsel for the petitioner and Mr. B.K. Sarma, learned counsel for the respondent.

2. In this petition, under Article 227 of the Constitution of India, the

petitioner has challenged the order dated 27.05.2025, passed by the learned Additional District Judge No. 2, Kamrup (M) at Guwahati (trial court hereinafter), in Misc. (J) Case No. 84/2024, arising out of Probate Title Suit No. 03/2021.

3. It is to be noted here that vide impugned order dated 27.05.2025, the learned trial court had allowed the petition filed by the respondent herein, under Order VI Rule 17 of the CPC, to amend his plaint in Probate Title Suit No. 03/2021, which was registered as Misc. (J) Case No. 84/2024.

4. Mr. Das, learned counsel for the petitioner submits that the respondent herein, as plaintiff, had instituted one probate title suit, being Probate Title Suit No. 03/2021, for granting probate certificate in respect of a WILL, allegedly executed on 07.11.2017, by Late Nakul Chandra Baruah. In the said suit, the petitioner herein, as defendant, had entered appearance and filed objection. But, during the course of hearing, the respondent herein had filed one petition for amendment of the plaint, upon which Misc. (J) Case No. 84/2024 was registered and thereafter, hearing both the parties, the learned trial court had allowed the amendment petition, subject, however, to payment of cost of Rs. 10,000/- to the petitioner herein.

4.1. Mr. Das further submits that the impugned order, so passed by the learned trial court suffers from manifest illegality, as at that stage the period of amendment of the plaint was already over and the case was pending for cross-examination of the witnesses of the plaintiff.

4.2. Mr. Das also submits that the respondent herein had filed the petition belatedly, only to fill up the lacuna in adducing the evidence on the pretext of amendment, which is illegal and arbitrary and not sustainable in law and the same is liable to be interfered with. Under such circumstances, Mr. Das has

contended to allow this petition, by setting aside the impugned order, dated 27.05.2025.

5. Per-contra, Mr. Sarma, learned counsel for the respondent has supported the impugned order and submits that even during the pendency of the case, at the stage of cross-examination of the witnesses, the amendment may be allowed, if in order to determine the real question of dispute between the parties such amendment is required in the interest of justice.

5.1. Mr. Sarma further submits that the respondent herein is an ordinary man and he has no knowledge what facts are required to be pleaded in his pleading to prove his case and that he depends only upon his engaged counsel and he proceeded with the case as per suggestion of his Lawyer.

5.2. Mr. Sarma also submits that the new set of Lawyers, who have recently been engaged, have found that some facts have been omitted in the plaint. It has not been stated in the plaint, as to how the Testator had executed the WILL, whether by writing his signature or somebody at his instance signed or executed the WILL by putting his thumb impression and that the Testator is a highly qualified person, but some months prior to the execution of the WILL, he suffered some neurological disorders and for which, he became completely unable to write his signature and therefore, he executed the WILL by putting his thumb impression and this process of execution of the WILL was left to be pleaded in the plaint, due to the ignorance of the plaintiff's earlier engaged counsel, who had prepared and filed the plaint.

5.3. Mr. Sarma further submits that in order to prove the case, two things, i.e. that the WILL was executed by the Testator by giving his thumb impression instead of his signatures and that the writer of the WILL at the instance of the

Testator took his thumb impression, are required to be added in the plaint as a sub-paragraph of paragraph No. 3.

5.4. Further contention of Mr. Sarma is that the WILL was registered by the Senior Sub-Registrar, Guwahati, on 22.11.2017, at the residence of the Testator, which is located at Gandhibasti, Guwahati, on commission, and that the Testator had admitted the execution of the WILL by putting his thumb impression of his left hand, in presence of the witnesses and that the Testator was identified by Shri Mukul Chandra Deka (Advocate) before the Senior Sub-Registrar at the time of registration of the WILL.

5.5. Under such circumstances, Mr. Sarma submits that the amendment of the plaint is required to adjudicate the case, especially to enable the respondent herein to prove his case and on such count, there is no illegality or arbitrariness in the impugned order dated 27.05.2025 and therefore, no interference of this Court is warranted.

5. Having heard the submissions of learned counsel for both the parties, I have carefully gone through the petition as well as the documents placed on record and also perused the impugned order dated 27.05.2025, passed by the learned trial court.

6. It is not in dispute that at the relevant time, the case was pending at the stage of cross-examination of the witnesses of the plaintiff.

7. It is, however, a well settled proposition of law that amendment of the plaint may be allowed before commencement of the trial and trial comments with the framing of issues and examination of witnesses. It can be allowed even after commencement of trial, if, in order to decide the real question of dispute between the parties, the same is found to be necessary. However, the party

seeking amendment at that stage has to demonstrate its due diligence. Reference in this context can be made to a decision of Hon'ble Supreme Court in the case of **Pandit Malhari Mahale vs. Monika Pandit Mahale and Ors.**, reported in (2020) 11 SCC 549.

7.1. Notably, in the case of **Pandit Malhari Mahale (supra)** Hon'ble Supreme Court, referring to its earlier decision in the case of **Vidyabai and Ors. vs. Padmalatha and Anr.**, reported in (2009) 2 SCC 409, held that to allow amendment under Order 6 Rule 16 of the Code of Civil Procedure, 1908, after the evidence being lead, the Court must return a finding that in spite of due diligence, the party could not have raised the matter before the commencement of the trial.

7.2. Notably, in the case of **Vidyabai (supra)**, Hon'ble Supreme Court, while dealing with the issue, in paragraph 19, has held as under:

"19. It is primal duty of the Court to decide as to whether such an amendment is necessary to decide the real dispute between the parties. Only if such a condition is fulfilled, the amendment is to be allowed. However, proviso appended to Order VI Rule 17 of the Code restricts the power of the court. It puts an embargo on exercise of its jurisdiction. The court's jurisdiction in a case of this nature is limited. Thus, unless the jurisdictional fact, as envisaged therein, is found to be existing, the court will have no jurisdiction at all to allow the amendment of the plaint."

7.3. Thus, what can be crystalized from the aforesaid discussion is that even after commencement of the trial also the amendment of pleading is permissible, but the parties have to demonstrate their due diligence as per proviso to Order VI Rule 17 of the CPC, that in spite of due diligence, they could not raise the

matter before the commencement of trial.

8. But, in the instant case, having perused the petition filed by the respondent herein and the objection filed by the petitioner herein before the learned trial court and also from the submission of learned counsel for both the parties, this Court is unable to derive its satisfaction that the respondent herein had demonstrated due diligence in filing the petition for amendment of the plaint before the learned Trial Court. The learned trial court had not returned any finding not to speak of directing any discussion in this regard.

8.1. It appears from the contention being made in the petition that the issues were framed on 29.07.2022 and the case was fixed for evidence on affidavit of the plaintiff's witnesses on 24.02.2023, then on 09.06.2023, after elapse of more than four months, the evidence on affidavit of witnesses was filed. It also appears that after filing of the evidence of witnesses, the respondent herein took number of adjournments for cross-examination and ultimately, on 21.06.2024, the respondent herein filed the petition for amendment of the plaint. There is no explanation whatsoever, as to why the amendment petition could not be filed before the commencement of the trial. However, this aspect eschewed consideration of the learned trial court. Further, the petition for amendment of the plaint was filed at the stage of cross-examination of the witnesses of the respondent herein. Thus, there is every reason to accept the submission of Mr. Das, learned counsel for the respondent that on the pretext of amendment of the plaint, the respondent herein made an attempt to fill up the lacuna, which is not at all permissible in law.

9. It appears that the learned trial court had relied upon a decision of Hon'ble Supreme Court in the case of **Life Insurance Corporation of India**

Limited vs. Sanjeev Builders Private Limited and Others, in **Civil Appeal No. 5909/2022**, wherein it has been held that all the amendments are to be allowed, which are necessary for determining the real question in controversy, provided it does not cause injustice or prejudice to the other side.

10. In the instant case, the learned trial court failed to take into note of the fact that the respondent herein failed to satisfy the requirement of the proviso to Order VI Rule 17 of the CPC and lack of due diligence on the part of the respondent herein.

11. Further more, the learned trial court had allowed the application at the stage of cross-examination of the plaintiff's witnesses and the said application for amendment of the plaint was filed after filing of examination in chief, appears to be only to fill up some lacuna, which were left to be mentioned in the plaint.

12. In that view of the matter, it cause serious prejudice to the petitioner herein and in view of the decision of Hon'ble Supreme Court in the case of **Life Insurance Corporation of India Limited(supra)**, such amendment is not permissible. Notably, in the said case it is also held that in dealing with a prayer for amendment of pleadings, the court should avoid a hyper-technical approach and is ordinarily required to liberal, especially where the opposite party can be compensated by costs. It is further held that where the amendment sought is only with respect to the relief in the plaint and is predicated on facts, which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.

13. But, in the present case, the respondent herein failed to consider the aforesaid requirement of proviso to Order VI Rule 17 CPC, and allowed the

amendment. Even though the learned trial court had imposed a cost of Rs. 10,000/-, while allowing the amendment petition, this Court is of the view that the petitioner herein suffers serious prejudice.

14. Thus, this Court finds sufficient merit in this petition. The impugned order, dated 27.05.2025, is liable to be interfered with on the following two grounds:-

- (i) the learned trial court had overlooked the requirement of the proviso to Order VI Rule 17 of the CPC and
- (ii) the learned trial court had also overlooked that the amendment would cause serious prejudice to the petitioner herein as the respondent herein is allowed to fill up the lacuna after completion of the cross-examination of the plaintiff.

15. In the result, this civil revision petition stands allowed. The impugned order, dated 27.05.2025, stands set aside and quashed. The parties have to bear their own costs.

JUDGE

Comparing Assistant