

GAHC010234742022



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

Case No. : CRP(IO)/149/2022

PRIYANATH SAHA AND 2 ORS.
S/O- LATE MOTILAL SAHA
R/O- SALBAGAN
WARD NO. 12
NORTH BONGAIGAON
P.O.
P.S. AND DIST. BONGAIGAON
ASSAM
PIN- 783380.

2: BIJIT KUMAR SAHA
S/O- LATE MOTILAL SAHA
R/O- SALBAGAN
WARD NO. 12
NORTH BONGAIGAON
P.O.
P.S. AND DIST. BONGAIGAON
ASSAM
PIN- 783380.

3: SANJIT KUMAR SAHA
S/O- LATE MOTILAL SAHA
R/O- SALBAGAN
WARD NO. 12
NORTH BONGAIGAON
P.O.
P.S. AND DIST. BONGAIGAON
ASSAM
PIN- 783380.

VERSUS

ON THE DEATH OF TUSHAR KANTI SAHA HIS LEGAL HEIRS

S/O- LATE MONINDRA KUMAR SAHA
R/O- PLOT NO. 05
BLOCK-B LAKE TOWN
P.O. AND P.S. LAKE TOWN
DISTRICT- NORTH 24 PARGANAS
KOLKATA-700089(W.B.).

1.1:KAUSHIK SAHA
S/O - LATE TUSHAR KANTI SAHA
R/O- PLOT NO. 05
BLOCK-B LAKE TOWN
P.O. AND P.S. LAKE TOWN
DISTRICT- NORTH 24 PARGANAS
KOLKATA-700089(W.B.).

1.2:ASHISH SAHA
S/O - LATE TUSHAR KANTI SAHA
BOTH ARE R/O- PLOT NO. 05
BLOCK-B LAKE TOWN
P.O. AND P.S. LAKE TOWN
DISTRICT- NORTH 24 PARGANAS
KOLKATA-700089(W.B.).

2:SAJJIT SAHA
S/O- LATE HIRALAL SAHA
R/O- WARD NO. 12
SALBAGAN
NORTH BONGAIGAON
P.O.
P.S. AND DIST. BONGAIGAON
ASSAM, PIN- 783380.

Advocate for : MR. S K GHOSH
Advocate for : MS R SAHA (r-1
2) appearing for ON THE DEATH OF TUSHAR KANTI SAHA HIS LEGAL HEIRS

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

16.08.2024

Heard Mr. S.K. Ghosh, learned counsel for the petitioners and also heard Ms. R.

Saha, learned counsel appearing for the respondent Nos.1 and 2.

2. In this petition under Article 227 of the Constitution of India, three petitioners, namely, Priyanath Saha, Bijit Kumar Saha and Sanjit Kumar Saha have put to challenge the correctness or otherwise of the order dated 29.04.2022, passed by the learned Civil Judge, Bongaigaon, in Title Suit No.26/2018. It is to be noted here that vide impugned order dated 29.04.2022, the learned Civil Judge, Bongaigaon, has closed the evidence of the PWs for not taking any step by the petitioners.

3. Mr. Ghosh, learned counsel for the petitioners, submits that the petitioners, as plaintiffs, have instituted a title suit, being Title Suit No.26/2018 before the learned Civil Judge, Bongaigaon and the same was pending at the stage of evidence. Then, vide order dated 29.04.2022, the learned Civil Judge, Bongaigaon has closed the evidence of the plaintiffs' side and fixed the case for evidence of the defendants' side. Thereafter, the petitioners have preferred a petition, being Petition No.1294/2022, for granting another date for filing evidence. However, the learned Civil Judge refused to recall the earlier order dated 29.04.2022, vide order dated 19.05.2022. Mr. Ghosh further submits that three witnesses are yet to be examined and their examination is very much necessary to decide the suit and therefore, it is contended to allow the petition.

4. Per contra, Ms. Saha, learned counsel for the respondent Nos.1 and 2 submits that the respondents have no objection in the event of allowing the petition.

5. Having heard the submission of learned counsel for both the parties, I have carefully gone through the petition and the documents placed on record and also perused the order dated 29.04.2022 and also the order dated 19.05.2022 passed in Title Suit No.26/2018.

6. It appears that on 29.04.2022 the learned Civil Judge, Bongaigaon, has closed the evidence of the plaintiffs' side as the plaintiffs have not taken any step and thereafter, the

petitioners have preferred one petition, being Petition No.1294/2022 before the learned Civil Judge, Bongaigaon and the learned Civil Judge has dismissed the same on 19.05.2022. It is well settled that right to fair trial is a right of both the parties to a proceeding be it civil or criminal. Fair trial includes affording a fair opportunity to both the parties to prove their respective cases.

7. Thus, having considered the submission of learned Advocates of both sides and also considering the facts and circumstances on the record, this Court is inclined to allow this petition. Accordingly, the impugned orders dated 29.04.2022 and 19.05.2022, passed by the learned Civil Judge, Bongaigaon, in Title Suit No.26/2018, stand set aside.

8. At this stage, Mr. Ghosh, learned counsel for the petitioners submits that in fact, there are 5(five) witnesses and the affidavit-in-evidence of 3 witnesses have already been filed before the learned Civil Judge, Bongaigaon and in view of above, it is provided that the learned Civil Judge, Bongaigaon, shall take the same on record and thereafter, proceed to hear the matter in accordance with law.

9. In terms of above, the petition stands disposed of.

Sd/- Robin Phukan
JUDGE

Comparing Assistant