

GAHC010104022024



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

Linked Case : **CRP(IO)/36/2023**

JULIMONI KALITA DEKA AND ANR.
W/O- LATE SANJAY DEKA

R/O- HOUSE NO. 17
BYE LANE NO. 4-A

GANDHIBASTI
GUWAHATI-3

KAMRUP(M)
ASSAM.

2: NIKITA DEKA
D/O- LATE SANJAY DEKA

R/O- HOUSE NO. 17
BYE LANE NO. 4-A

GANDHIBASTI
GUWAHATI-3

KAMRUP(M)
ASSAM.
VERSUS

CHANDRA DHAR DAS AND 21 ORS.
S/O SACHIN DAS

R/O- DADARA
P.O.- DADARA

P.S.- HAJO (OUT POST- DADARA)

KAMRUP

ASSAM
PIN- 781104.

2:GIRISH DEKA
S/O UNKNOWN

R/O- DADARA
P.O.- DADARA

P.S.- HAJO (OUT POST- DADARA)

KAMRUP
ASSAM
PIN- 781104.
3:KAILASH DAS
S/O UNKNOWN

R/O- DADARA
P.O.- DADARA

P.S.- HAJO (OUT POST- DADARA)

KAMRUP
ASSAM
PIN- 781104.
4:BHASKAR JYOTI DEKA
S/O UNKNOWN

R/O- DADARA
P.O.- DADARA

P.S.- HAJO (OUT POST- DADARA)

KAMRUP
ASSAM
PIN- 781104.
5:JADAV DAS
S/O UNKNOWN

R/O- DADARA
P.O.- DADARA

P.S.- HAJO (OUT POST- DADARA)

KAMRUP
ASSAM
PIN- 781104.
6:BALEN DAS

S/O UNKNOWN

R/O- DADARA
P.O.- DADARA

P.S.- HAJO (OUT POST- DADARA)

KAMRUP
ASSAM
PIN- 781104.
7:LAKHYADHAR DEKA
S/O UNKNOWN

R/O- DADARA
P.O.- DADARA

P.S.- HAJO (OUT POST- DADARA)

KAMRUP
ASSAM
PIN- 781104.
8:KUMUD CHANDRA DEKA
S/O UNKNOWN

R/O- DADARA
P.O.- DADARA

P.S.- HAJO (OUT POST- DADARA)

KAMRUP
ASSAM
PIN- 781104.
9:GIRISH DEKA
S/O UNKNOWN

R/O- DADARA
P.O.- DADARA

P.S.- HAJO (OUT POST- DADARA)

KAMRUP
ASSAM
PIN- 781104.
10:KABITA DAS
W/O UNKNOWN

R/O- DADARA
P.O.- DADARA

P.S.- HAJO (OUT POST- DADARA)

KAMRUP
ASSAM
PIN- 781104.
11:NEELAMOTI DAS
W/O UNKNOWN

R/O- DADARA
P.O.- DADARA

P.S.- HAJO (OUT POST- DADARA)

KAMRUP
ASSAM
PIN- 781104.
12:SARASWATI DAS
W/O UNKNOWN

R/O- DADARA
P.O.- DADARA

P.S.- HAJO (OUT POST- DADARA)

KAMRUP
ASSAM
PIN- 781104.
13:DIPANJALI DAS
W/O UNKNOWN

R/O- DADARA
P.O.- DADARA

P.S.- HAJO (OUT POST- DADARA)

KAMRUP
ASSAM
PIN- 781104.
14:PADUMI DAS
W/O UNKNOWN

R/O- DADARA
P.O.- DADARA

P.S.- HAJO (OUT POST- DADARA)

KAMRUP

ASSAM
PIN- 781104.
15:MINOTI DAS
W/O UNKNOWN

R/O- DADARA
P.O.- DADARA
P.S.- HAJO (OUT POST- DADARA)
KAMRUP
ASSAM
PIN- 781104.

16:BHANU PRIYA DAS
W/O UNKNOWN
R/O- DADARA
P.O.- DADARA
P.S.- HAJO (OUT POST- DADARA)
KAMRUP
ASSAM
PIN- 781104.

17:GIRISH DEKA
S/O- LATE BAPURAM DEKA
R/O- DADARA
P.O.- DADARA
P.S.- HAJO (OUT POST- DADARA)
KAMRUP
ASSAM
PIN- 781104.

18:KUMUD CHANDRA DAS
S/O- LATE BAPURAM DEKA
R/O- DADARA
P.O.- DADARA
P.S.- HAJO (OUT POST- DADARA)
KAMRUP
ASSAM
PIN- 781104.

19:LAKHYADHAR DEKA
S/O- LATE BAPURAM DEKA
R/O- DADARA
P.O.- DADARA
P.S.- HAJO (OUT POST- DADARA)
KAMRUP
ASSAM
PIN- 781104.

20:AJAY DEKA
S/O- LT. DR. GOVINDA CH. DEKA
R/O- BHASKARGIRI PATH
KHARGULI
GUWAHATI-04
KAMRUP(M)
21:SMTI. GITA KALITA
W/O- SRI. MADHUSUDAN DAS
R/O- KALITAPARA
AZARA
KAMRUP(M)
ASSAM.
22:DR. RITA DEKA
W/O- DR. DHIRENDRA KUMAR NATH
R/O- HOUSE NO. 2
BYE LANE NO. 4
GANDHIBASTI
GUWAHATI-03
KAMRUP(M)
ASSAM.

B E F O R E

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocate for the petitioners : Shri R. Ali, Advocate.
Advocate for the respondents : Shri P. Sarma, Advocate.
Date of hearing : **24.06.2024**
Date of Judgment : **24.06.2024**

JUDGMENT & ORDER

Heard Shri R. Ali, learned counsel for the petitioners. Also heard Shri P. Sarma, learned counsel for the respondent nos. 20 to 22.

- 2.** Though the names of the learned counsel for the respondent nos. 1, 2 & 4 is reflected in the cause list, there is no representation.
- 3.** The application has been presented under Article 227 of the Constitution of India challenging an order dated 30.11.2022 passed by the learned Civil Judge

No. 3, Kamrup (M) at Guwahati in Misc. (J) Case No. 198 of 2021 arising out of Title Suit No. 116 of 2014.

4. The suit was instituted by the respondent nos. 20 to 22 as plaintiffs for partition in which the present petitioners were defendant nos. 1 & 2. In the said suit, the defendant nos. 1 & 2, who are the present petitioners had filed the aforesaid Misc. (J) Case No. 198/2021 for impleadment of parties by invoking the provisions of Order I Rule 10(2) read with Section 151 of the Code of Civil Procedure, 1908. The learned Court however, vide the impugned order dated 30.11.2022 had dismissed the application and accordingly, the present application has been filed.

5. Shri Ali, the learned counsel has submitted that the suit being a partition suit, the position of the defendants would be at par with that of the plaintiffs. In this connection, the learned counsel has referred to a decision of the Hon'ble Supreme Court in the case of ***R. Ramamurthi Aiyar (Dead) by L. RS Vs Raja V. Rajeswararao*** reported in ***AIR 1973 SC 643***. In the said case, the Hon'ble Supreme Court has reiterated that in a partition suit, the plaintiff is not the sole *dominus litis* and a defendant who is a stakeholder in the property would have equal rights.

6. On the other hand, Shri Sarma, the learned counsel for the contesting respondent nos. 20 to 22 has submitted that the parties who are sought to be included are not the family members or having any interest in the partition suit but they claimed to have acquired the right, title and interest on the basis of certain gift deeds. He submits that in any case, any issue arising out of such forceful possession has to be raised separately and not in a suit for partition.

7. Though there is absolutely no dispute with the proposition advanced by Shri Ali, the learned counsel on the rights of a defendant in a partition suit, in the instant case, it appears that the reason for which the impleadment of new incumbents was filed was on the basis that those incumbents had encroached upon the land on the basis of some gift deeds. In the opinion of this Court, the issue which has been sought to be ultimately raised by impleadment of parties is of the cause of action of forceful possession by such incumbents which may be on the strength of certain Deeds. In a suit for partition, challenge to such Deeds may not be permissible or even proper.

8. Accordingly, this Court is of the opinion that the impugned order dated 30.11.2022 passed by the learned Civil Judge No. 3, Kamrup (M) at Guwahati in Misc. (J) Case No. 198 of 2021 does not call for any interference. However, the petitioner would be at liberty to institute a fresh suit to espouse the cause of action including challenge to the Gift Deeds which may be the basis of such inclusion in the suit property. This Court also expects that the Trial Court would proceed expeditiously as the suit is of the year 2014.

JUDGE

Comparing Assistant