

**In The Court of Smt. Priyanka Saikia, Munsiff No. 2,
Sonitpur, Tezpur**

**Case No: Misc(J) case No. 248/2022
(I/c- Title Suit No. 20/2009)**

**Md. Fazal Haque & Other
-versus-
Smti Suchitra Dutta and others**

29.11.2022

Petitioner is represented.

Opposite party is absent without steps.

Heard the learned counsels appearing on behalf of the Petitioner. Having so heard, by this order, I shall dispose of the case arising out of petition No.2233/22 filed by petitioner under Order VI Rule 17 & Order I Rule 10 read with Sec.151 of the CPC for amendment of the plaint in the main suit.

The Petitioner s' case:

There is a recent revelation which makes it necessary to bring an amendment petition. That some officials of the UCO Bank, Rangapara Branch, visited the disputed suit land on 05-09-2022 and disclosed to the astonishment of the plaintiffs that Sri Chandrika Thakur obtained a loan securing the same by creating mortgage against the land and shops standing therein. It is worth mentioning here that the two shop rooms under the occupation of Sri Chandrika Thakur, defendant no. 2, which is more fully described in the Schedule C of the plaint, are part of the

suit land. While Sri Chandrika Thakur has his own land too just by the eastern side of the disputed land described in Schedule C. Sri Chandrika Thakur is having around 7/8 lessa of his own land but he has encroached an area of more than 2 Lessa (around 2.2 Lessa) of land of the original deceased plaintiff whose legal heirs are the present plaintiffs. Sri Chandrika Thakur does not have any legal right to mortgage any part of the disputed land nor does the bank has any right to take the same in mortgage. That these plaintiffs do not have details of the loan taken by Sri Chandrika Thakur nor have the details of the mortgage created by him. Even Sri Chandrika Thakur never disclosed the same in the present proceeding despite the fact that he has been contesting the suit by filing a written statement and additional written statements. These plaintiffs verbally requested the bank officials to disclose the details of the loan and the documents through which the mortgage was created. They bank officials refused. These plaintiffs immediately wrote a letter on 05-09-22 itself (but dispatched through registered post on 07-09-22) to the bank requesting the bank not to go ahead with any auction sale of at least the Schedule C land and to provide the details of the mortgage. The bank did not respond to the letter. Therefore, it become necessary to add UCO Bank, Rangapara Branch as defendant No.4 and earlier State of Assam has added as Proforma-defendant No.4 be merely described as Proforma-defendant without any number.

As the defendant is absent without steps no objection raised by them.

DISCUSSION, DECISION AND REASONS THEREOF:

In the course of hearing, the learned counsel for the Petitioner submitted that defendant No.2 Sri Chandrika Thakur has obtained a loan by creating mortgage of the disputed land without having any right and authority. The petitioner verbally requested the bank officials to disclose the details of the loan and the documents through which the mortgage was created but they refused to do so. Therefore, UCO Bank, Rangapara Branch's presence is necessary in the suit for an effective adjudication of the dispute. Hence, the petitioners are prayed to impleaded UCO Bank, Rangapara Branch as defendant No.4.

I have accorded thoughtful considerations to the submissions advanced by the learned counsel for petitioner. I have also gone through the record of the case. Order I, Rule 10(2) of the CPC empowers the Court to implead or add a person as a party to the suit at any stage thereof, if such a person ought to have been joined or whose presence is necessary in order to enable the Court to effectively and completely adjudicate upon and settle all the questions involved in the suit. Order I Rule 10(2) of C.P.C. provides that the Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as Petitioner or defendant, be

struck out, and that the name, of any person who ought to have been joined, whether as Petitioner or defendant, or whose presence before the court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

Now Order VI Rule 17 of Civil Procedure Code provides that "The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties: - Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial". Thus, it transpires that the Court may at any stage allow all such amendments as may be necessary for the purpose of determining the real question in controversy between the parties.

Thus, the Court has power to amend and add a party Petitioner or party defendant at any stage of the suit if the same is required for effectual and complete adjudication of the suit.

In the instant case also it is stated that defendant No.3 created a mortgage upon the disputed land to UCO Bank, Rangapara Branch, hence, it has become necessary

to implead UCO Bank, Rangapara Branch as parties. Therefore, the Court is of the considered opinion that UCO Bank, Rangapara Branch is a necessary party to the suit and their impleadment will enable the Court to effectually and completely to adjudicate the matter and settle all the questions involved in the suit. It is of the considered opinion that allowing UCO Bank, Rangapara Branch to be impleaded as a party will not cause any prejudice to the other side rather will help the Court to dispose the matter effectively. Moreover, it is the Petitioner s being dominus litis have the right to choose the person against whom they wish to litigate. Therefore, I find no ground to believe that the opp. parties will suffer if the prayer of the Petitioner is allowed. For the reasons above stated, the instant petition is allowed as prayed.

The case is disposed of accordingly.