



2026:GAU-AS:4243

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

CIVIL REVISION PETITION NO.188 OF 2018

- 1.** Dibrugarh Hanumanbux
Surajmal Kanoi Commerce
College,
Dibrugarh, Established and
constituted under Dibrugarh
University Act, 1965 represented
by its Principal and Secretary,
Dr. Khanindra Misra Bhagawati,
Dibrugarh Hanumanbux
Surajmal Kanoi Commerce
College, Dibrugarh, District-
Dibrugarh, Assam
PIN: 786001.

- 2.** Dr. Khanindra Misra Bhagawati,
The Principal and Secretary,
Dibrugarh Hanumanbux Surajmal
Kanoi Commerce College,
Dibrugarh, District- Dibrugarh,
Assam, PIN- 786001

.....Petitioners

-Versus-

- 1.** Sri Kamal Chandra Gogoi
Son of Late Uma Kanta Gogoi
R/O- Banipur, Bye lane No. 2,
P.O. Banipur, P.S. and Dist:
Dibrugarh, Assam, PIN- 786002.
- 2.** Mrs. Arun Chandra Gogoi
Wife of Late Arun Chandra
Gogoi
- 3.** Sri Madhyrjya Gogoi
Son of Late Arun Chandra Gogoi
- 4.** Smti Nilima Gogoi
Wife of Sri Arun Chandra Gogoi
- 5.** Sri Susil Saikia
Son of Meghnath Saikia
- 6.** Sri Pranab Gogoi
Son of Late Bhagyeswar Gogoi
- 7.** Sri Tarun Gogoi
Son of Mukti Gogoi
- 8.** Sri Arun Gogoi
Son of Late Dhajen Gogoi
- 9.** Sri Barun Chandra Gogoi
Son of Mukut Chandra Gogoi
- 10.** Sri Bipul Challeng
Son of Not Known
- 11.** Sri Girindra Nath Konwar
Son of Sri Pabitra Konwar
- 12.** Sri Harinarayan Keot
Son of Sri Mahabir Keot
- 13.** Sri Narayan Keot
Son of Sri Mahabir Keot
- 14.** Sri Susil Saikia
Son of Sri Megnath Saikia
- 15.** Smti Omen Menthom Deori
Wife of Late Tankeswar Deori

All are residence of Banipur, P.S
and Dist: Dibrugarh, Assam, PIN
786002.

.....Respondents

- B E F O R E -

HON'BLE MR. JUSTICE KAUSHIK GOSWAMI

For the Petitioner(s) : Mr. N. N. Upadhyaya, Advocate.

For the Respondent(s) : Mr. P. J. Saikia, learned Senior Counsel assisted by Mr. A. K. Gupta, learned counsel for the respondent Nos. 1, 4, 5, 6, 7 and 9.

Date of Hearing : 24.03.2026.

Date of Judgment : **24.03.2026.**

JUDGMENT & ORDER (ORAL)

Heard Mr. N. N. Upadhyaya, learned counsel appearing for the petitioners. Also heard Mr. P. J. Saikia, learned Senior Counsel assisted by Mr. A. K. Gupta, learned counsel appearing for the respondent Nos. 1, 4, 5, 6, 7 and 9.

2. None appears for the remaining respondents on call despite service being effected by way of paper publication as observed by this Court earlier on 24.03.2025.

3. By way of this Civil Revision Petition under Section 115 of the Code of Civil Procedure, 1908 (hereinafter referred to as the "CPC"), the petitioners have assailed the impugned Judgment and Order dated 06.09.2018 passed by the learned Additional District Judge, Dibrugarh in Misc. Appeal No. 5/2017, whereby the order dated 30.09.2014 passed by the learned Munsiff No. 2,

Dibrugarh in Misc. (J) Case No. 24/2013 under Order IX Rule 13 of the CPC was set aside and quashed.

4. The brief facts of the case are that the petitioners, as plaintiffs, instituted Title Suit No. 37/2006 before the Court of the learned Munsiff No. 1, Dibrugarh against the defendants/respondents seeking a decree for eviction of the defendants/respondents from a portion of the suit land and for perpetual injunction restraining them from interfering with the peaceful possession of the plaintiffs or committing any act detrimental to their rights over the suit land.

5. Despite service of summons, the defendants did not appear to contest the suit. Consequently, the suit proceeded *ex-parte* and was decreed by judgment and decree dated 02.07.2009, declaring the plaintiffs as the rightful owners having valid right, title and interest over the suit land. The defendants were declared trespassers and directed to vacate the encroached portion by removing their structures, and were permanently restrained from interfering with the plaintiffs' possession.

6. Aggrieved by the *ex-parte* decree, respondent No. 1 filed an application under Order IX Rule 13 read with Section 151 of the CPC, registered as Misc. (J) Case No. 24/2013, seeking setting aside of the decree. The learned trial Court, by order dated 30.09.2014, rejected the application holding that summons had been duly served and refused by the defendant. Thereafter, respondent

No. 1 preferred Misc. Appeal No. 5/2017 before the Civil Judge, Dibrugarh, and the appellate Court, by the impugned order dated 06.09.2018, allowed the appeal and set aside both the *ex-parte* decree and the order rejecting the application under Order IX Rule 13 of the CPC.

7. Mr. N. N. Upadhyaya, learned counsel for the petitioners, contends that the appellate Court erred in law in disregarding substituted service effected through newspaper publication in *Asomiya Pratidin* dated 19.02.2008. It is submitted that the provisions of Order V of the CPC are procedural and directory in nature, and any deviation therefrom constitutes, at best, an irregularity insufficient to warrant setting aside an *ex-parte* decree. Reliance is placed on ***Basant Singh & Anr. Vs. Roman Catholic Mission***, reported in ***2002 All SCR 547***.

8. Per contra, Mr. P. J. Saikia, learned Senior Counsel for the respondents, submits that the appellate Court, having recorded a categorical finding that summons was not duly served, rightly set aside the *ex-parte* decree, and such finding does not warrant interference in revisional jurisdiction. It is further contended that compliance with Order V Rules 17 and 20 of the CPC is mandatory. Reliance is placed on ***Shri K. Raja Vs. V. Prabhakar***, reported in ***2025 STPL 1616 (Karnataka)***.

9. I have considered the submissions advanced by the learned counsel for the parties and perused the materials on record, including the authorities cited.

10. A conjoint reading of Order V Rules 17 and 20 of the CPC makes it evident that where a defendant refuses service or cannot be found despite due diligence, the serving officer must affix a copy of the summons at a conspicuous place of the defendant's residence and record the circumstances thereof. Substituted service, including by newspaper publication, can be resorted to only upon satisfaction of the Court that ordinary service is not feasible, and such publication must be in a newspaper having circulation in the locality of the defendant.

11. Order IX Rule 13 of the CPC provides that an *ex-parte* decree may be set aside if the defendant establishes either that summons was not duly served or that he was prevented by sufficient cause from appearing. However, the proviso makes it clear that mere irregularity in service is insufficient, provided the defendant had notice of the proceedings and adequate opportunity to contest.

12. In the present case, the respondent specifically pleaded lack of knowledge of the proceedings until initiation of execution. The records reveal multiple attempts at service, with inconsistent reports at times

indicating refusal and at others inability to locate the defendant or his residence.

13. The appellate Court, upon evaluation of the service reports, recorded a finding that the conclusion of the trial Court regarding due service was perverse. It was further found that even assuming refusal, the mandatory procedure under Order V Rule 17 of the CPC, particularly affixation, had not been followed.

14. Apt at this stage to refer to the decision of the co-ordinate bench of the Karnataka High court in the case of **Shri K. Raja (supra)**, wherein the co-ordinate bench held that the procedure laid down under Order V Rule 17 of the CPC pertaining to affixation is not merely directory but mandatory provisions. The relevant paragraphs of the aforesaid judgment are reproduced hereunder for ready reference:

“17. Having read the proviso to Order V Rule 17 as well as Order V Rule 20, the Court has to read both the provisions of Order V Rule 17 and Order V Rule 20 conjointly. The learned counsel also relied upon Division Bench Judgment in Nova Granites (India) Ltd Vs. Coach Kraft (Bangalore) Pvt. Lid, ILR 1994 KAR 52. This judgment is relied on before the trial Court while addressing the arguments in Miscellaneous Proceedings and this Court in the above judgment has extracted Order V Rule 17 of C.P.C and held that on a careful perusal of the aforesaid provision would go to show that if the serving officer finds that the person who is required to be served refuses the summons and notice or not found, he shall affix a copy of the same on the outer door or some other conspicuous part of the house in which such defendant ordinarily resides or carries on business or personally works for gain and shall then return the original to the Court from which it was issued, with a report endorsed thereon or annexed thereto stating that he has so affixed the copy, the circumstances under

which he did so and the name and address of the person (if any) by whom the house was identified and in whose presence the copy was affixed. The provisions of Order V Rule 17 of C.P.C will have to be strictly construed. The propositions cannot be stretched to the extent of holding that one should be hyper technical in considering Order V Rule 17 of C.P.C. If on a careful perusal of the return, verified by the process server sworn to before the authority competent to administer oath, on information one can say that all the contentions are complied with, but would be wrong to say that service is bad simply returning that it is not exactly in the form prescribed affixed in Code of Civil Procedure and same is discussed in paragraph Nos. 15 and 19 of the judgment.

18. Having read conjointly the provisions under Order V Rule 17 as well as Order V Rule 20 and sub-clause (1), it is very clear that substituted service by way of affixture as well as paper publication, in view of amendment to sub-clause (1A) of Order V Rule 20 of C.P.C and before proceeding to the same, Order V Rule 17 is also to be taken note of, but in the case on hand it is not the case of refusal, but he was not present at the time when the postman went to make service on the appellant/defendant. When he was not in station and no such information was also given and nothing is mentioned that an intimation was delivered and when such being the case and when no such intimation is given, question of it has come to the notice of appellant/defendant does not arise. Without any notice, he was placed ex-parte and invoked Order V Rule 20 of C.P.C. The respondent ought to have taken once again steps when the same was returned with an endorsement 'he was not in station' and there was no any intimation or information with regard to the initiation of the suit and did not comply with Order V Rule 17 of C.P.C or either affixed the same on the conspicuous place of the defendant where he resides or sought for any permission of the Court to take substituted service by way of affixture and no such affixture was also made and only an application was filed by respondent/plaintiff before the trial Court or notice was ordered for paper publication and when such being the case, the trial Court fails to take note of the very judgment which was relied upon by the appellant before the trial Court comes to the conclusion that postman went to the house on 24.12.2016, 26.12.2016 and 27.12.2016, he was absent on those days and there is no endorsement that he has intimated even any other adult member of the family, but only endorsement was made 'party out of station' and the same has been accepted by the trial Court while rejecting the petition filed under Order 9 Rule 13 and hence, the

trial Court committed an error and though mentioned the above cited judgment in paragraph No.17 which has been relied upon by the appellant before the trial Court, comes to the conclusion that it was only a directory procedure and not mandatory procedure and not accepted the contention of the appellant.

19. The proviso of Order V Rule 17 of C.P.C. is very clear that when the serving officer cannot found the defendant and there is no agent empowered to accept service of the summons on his behalf, nor any other person on whom service can be made, the serving officer shall affix a copy of the summons on the outer door or some other conspicuous part of the house in which the defendant ordinarily resides or carries on business or personally works for gain and shall then return the original to the Court from which it was issued, with a report endorsed thereon or annexed thereto stating that he has so affixed the copy, the circumstances under which he did so, and the name and address of the person (if any) by whom the house was identified and in whose presence the copy was affixed. But the wordings used 'shall' and when the word used is 'shall' the very reasoning given by the trial Court that it is directory not mandatory is a wrong notion of the trial Court and had lost sight of the very proviso of Order V Rule 17 and committed an error in coming to the conclusion that it was only a directory and hence, the very contention of the appellant that not complied with mandatory provisions of Order V Rule 17 of C.P.C, there is a true. The very contention of the respondent that the proviso of Order V Rule 20 is very clear with regard to amendment is concerned and to take the notice and purposefully he avoided service of notice and hence, Order V Rule 20 of C.P.C is pressed into service cannot be accepted and hence it requires interference by this Court and the trial Court committed an error in dismissing the petition filed under Order 9 Rule 13 r/w Section 151 of C.P.C and hence, I answer the above points in affirmative.”

15. The contention regarding sufficiency of substituted service through newspaper publication is equally untenable, as such publication was not preceded by due compliance with the foundational requirements of affixation or proper attempts at personal service.

16. The revisional jurisdiction of this Court under Section 115 of the CPC is confined to jurisdictional errors. The appellate Court, having exercised its jurisdiction upon proper appreciation of the material on record, cannot be said to have committed any jurisdictional error warranting interference.

17. In view of the above, I find no merit in the present Civil Revision Petition.

18. Accordingly, the Civil Revision Petition stands dismissed. No order as to costs.

JUDGE

Comparing Assistant