

GAHC010009032023



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

Case No. : CRP(IO)/31/2023

HAREN KALITA
S/O- LATE KANTHI RAM KALITA, R/O-VILLAGE- NAHIRA, UNDER P.O.
NAHIRA, P.S. PALASHBARI, DIST. KAMRUP, PIN- 781132.

VERSUS

SUNIL KALITA
S/O- LATE NAREN KALITA, R/O- VILL.- NAHIRA, UNDER P.O. NAHIRA, P.S.
PALASHBARI, DIST. KAMRUP, PIN- 781132.

Advocate for the Petitioner : MR. L TALUKDAR

Advocate for the Respondent :

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

01.02.2023

Heard Mr. L. Talukdar, learned counsel for the petitioner.

2. The present petition is filed assailing the order dated 22.09.2022, passed by the learned Munsiff, Kamrup at Amingaon in a petition filed by the present

petitioner under Order XIII Rule 10 of the CPC., in T.S. No. 72/2021.

3. The respondent herein preferred a Title Suit being T.S. No. 211/2001 against the present petitioner as defendant for declaration and recovery of possession. The said suit was decreed by the learned Trial Court. Subsequently, the appeals preferred against such decree by the present petitioner i.e. first appeal as well as the second appeal were also dismissed by the competent Courts. Subsequent to this, the present petitioner preferred the connected suit being Title Suit No. 72/2021 seeking declaration that the judgment and decree passed in Title Suit No. 211/2001 has been fraudulently obtained and therefore, same is not binding upon the present petitioner.

4. While the said suit was pending, the present petitioner preferred an application, as discussed hereinabove, under Order XIII Rule 10 of CPC calling for the records of Title Suit No. 211/2001 and all the contents thereof. The ground for seeking such record as reflected in the petition No. 841/2022 is that paragraph 5 to 16 as well as the prayer portion of the plaint of the Title Suit No. 211/2001 will transpire that the case record and contents thereof are very much relevant and material for proper adjudication and just disposal of the pending suit.

5. The learned Trial Court while adjudicating the aforesaid petition No. 841/2022, came into a conclusion that the petitioner are totally silent as to how the record of Title Suit No. 211/2001 is material to the suit and why the authenticated copies of the same could not be produced before the Court. Accordingly, the said petition was rejected.

6. Mr. Talukdar, learned counsel for the petitioner assailing the impugned

order submits that whole decree passed against him is vitiated by fraud and when it is fraud, it hits at the root of the cause and accordingly to prove his case, the documents are necessary to be called and the learned Court below has failed to exercise its discretion under Order XIII Rule 10 of the CPC.

7. This Court has given anxious consideration to the submissions made by the learned counsel for the petitioner.

8. Order XIII Rule 10 of the CPC confers discretion upon a Court, in its own motion, to call from any other Court, record of any other suit or proceeding where it is necessary. The Court can also exercise such power on application of any of the parties to the suit. The said provision also mandates that if any application is filed by any party to the suit, such application need to be supported by an affidavit showing how the record is material to the, suit in which the application is made and that the applicant cannot without unreasonable delay or expense obtain a duly authenticated copy of the record.

9. In the present case in hand, the applicant has miserably failed to show how the record is material to the suit except making a statement in the application that "paragraph 5 to 16 as well as the prayer portion of the plaint of the instant suit will transpire that the case record of the aforesaid T.S. No. 211/2001 and all the contents thereof are very much necessary".

10. Further there is no whisper in pleading in the application that the applicant cannot without unreasonable delay or expense obtain a duly authenticated copy of the record sought for.

11. Therefore, in view of above proposition of law, this Court cannot find fault with the impugned order dated 22.09.2022 passed by the learned Munsiff,

Kamrup at Amingaon in Title Suit No. 72/2021, which has been rejected as the application lacks the aforesaid pleadings.

12. In that view of the matter, this court finds no merit in this civil revision petition and accordingly, same stands dismissed.

JUDGE

Comparing Assistant