

GAHC010175462022



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

Case No. : CRP(IO)/251/2022

HURMUG ALI
S/O LATE INTAZ ALI, R/O VILL- TAPAJULI PATHAR, MOUZA- JANIA, P.S.-
KALGACHIA, DIST- BARPETA, ASSAM

VERSUS

ON THE DEATH OF DANEZ ALI, HIS LEGAL HEIRS
BARPETA, ASSAM

1.1:MADHUMALA
W/O LATE DANEZ ALI
R/O VILLAGE-TAPAJULI PATHAR
MOUZA-JANIA
P.S. KALGACHIA
DIST. BARPETA
ASSAM.

1.2:ALI AKBAR
S/O LATE DANEZ ALI
R/O VILLAGE-TAPAJULI PATHAR
MOUZA-JANIA
P.S. KALGACHIA
DIST. BARPETA
ASSAM.

1.3:ALI HOSSAIN
S/O LATE DANEZ ALI
R/O VILLAGE-TAPAJULI PATHAR
MOUZA-JANIA
P.S. KALGACHIA
DIST. BARPETA
ASSAM.

1.4:MAZEDA BEGUM
D/O LATE DANEZ ALI
R/O VILLAGE-TAPAJULI PATHAR
MOUZA-JANIA
P.S. KALGACHIA
DIST. BARPETA
ASSAM

Advocate for the Petitioner : DR. B AHMED

Advocate for the Respondent : MS. R BEGOM

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

03.05.2023.

1. Heard Mr. N. Haque, learned counsel for the petitioner. Also heard Mr. A. A. R. Karim, learned counsel for the respondent.
2. The present Civil Revision Petition is filed by the petitioner/defendant against the impugned order dated 07.05.2022 passed by the learned Munsiff No. 1, Barpeta in Title Suit No. 95/2016 fixing the suit for argument on 04.07.2022 and subsequent order dated 04.07.2022 in Petition No. 3606/22 (arising out of T.S. No. 95/2016) whereby prayer for cancellation of aforesaid order dated 07.05.2022 has been rejected.
3. The record and order sheet of the learned trial Court below reveals that on 25.02.2022 the DWs were present for cross-examination, however, due to demise of one Senior Advocate of the Bar, the Court works were suspended and accordingly, matter was deferred and was fixed for cross-examination of DWs on 04.04.2022.

4. On 04.04.2022, both sides were duly represented, however, defendant sought for an adjournment for fixing another date for cross-examination. The same was allowed and the matter was fixed on 07.05.2022 for cross-examination of DWs. On 07.05.2022 as the defendants were absent without any steps, the defendant witness was closed and matter was fixed on 04.07.2022 for arguments.
5. Record reveals that on 04.07.2022, the defendant filed an application taking a stand that the defendant along with his witnesses appeared before the Court at 11:30 AM by filing hajira but they could learn that in the meantime, the order closing the DWs were passed and matter was fixed for argument.
6. It is also a stand taken by the defendant that it was immediately informed to the Court regarding presence of the witnesses, however, they were not cross-examined by the learned counsel for the plaintiffs. Accordingly, a prayer was made for fixing another date cross-examination of DWs for ends of justice.
7. Such application has also been dismissed by the learned trial Court below under its order dated 04.07.2022. However, from the order dated 04.07.2022, this Court is unable to find for what reason such prayer has been rejected.
8. From the order dated 04.07.2022, what is discernible is that after the perusal of the record, the learned trial Court came to a finding that the matter is fixed since 05.03.2018 for DWs and therefore, the application was rejected.

9. In the considered opinion of this Court, the learned trial Court could not have dismissed the aforesaid application on the said ground inasmuch as the adjournment sought for by the defendant has already been granted by the learned trial Court and such fact cannot be a ground for dismissal of the petition in the given facts of the present case. A specific stand was taken that the defendant was present at 11:30 AM and by that time, order was passed and it was also informed to the learned trial Court below. Along with the present petition a copy of hajira duly certified by the office of the learned trial Court is also annexed, such annexure reflects the presence of the DWs.
10. In that view of the matter, the learned trial Court ought to have decided the matter on the given facts and pleadings and ought to have considered the explanation by the defendant, instead the learned trial Court dismissed the petition on the ground that suit is long pending at the stage of DWs.
11. In that view of the matter, this Court is of the unhesitant view that the learned trial Court has failed to exercise its jurisdiction properly, which resulted in gross miscarriage of justice. Accordingly, the order dated 07.05.2022 passed by the learned Munsiff No. 1, Barpeta in Title Suit No. 95/2016 and order dated 04.07.2022 in Petition No. 3606/22 (arising out of T.S. No. 95/2016) are set aside and quashed.
12. Parties shall appear before the learned trial Court below on 25.05.2023 and the defendant shall produce his witnesses for cross-examination. In the event, such witnesses are present and if it is not inconvenient to the learned trial Court below, the cross-examination be done. And if it is not

convenient for the learned trial Court below to continue the cross-examination on that date, further orders will be passed for cross-examination of the defendant witnesses.

13. With the above observation, this Civil Revision Petition(IO) stands allowed.

JUDGE

Comparing Assistant