

GAHC010184442014



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

Case No. : CRP/55/2014

KAMAL KISHORE DAS
S/O- LT. KRIPA RAM DAS, R/O VILL.- PIRADHARA WARD NO. II,
ABHAYAPURI, P.O. and P.S.- ABHAYAPURI, DIST.- BONGAIGAON, ASSAM.

VERSUS

SMTI NILIMA ADHIKARY and 11 ORS
W/O- LT. DASARATH ADHIKARY, R/O- ABHAYAPURI TOWN, WARD NO. 1,
P.O. and P.S.- ABHAYAPURI, DIST.- BONGAIGAON, ASSAM.

2:ASSTT. SETTLEMENT OFFICER
SRIJANGRAM REVENUE CIRCLE
P.O. and P.S.- ABHAYAPURI
DIST.- BONGAIGAON
ASSAM.

3:SWARUPANANDA BHATTACHARJEE
S/O- LT. PARAMANANDA BHATTACHARJEE
R/O- ABHAYAPURI TOWN
NEAR CINEMA HALL
P.O. and P.S.- ABHAYAPURI
DIST.- BONGAIGAON
ASSAM.

4:JASA KANTA BHATTACHARJEE

5:PRADIP BHATTACHARJEE

6:APURBA BHATTACHARJEE

8:TRIDIP BHATTACHARJEE

9:NIRMAL BHATTACHARJEE

BOTH ARE S/O- LT. KRISHNA NANDA BHATTACHARJEE

R/O- DUDHNOI TOWN

DAMRA ROAD

DIST.- GOALPARA

ASSAM.

10:MINATI BHATTACHARJEE

W/O- LT. HARIDAS BHATTACHARJEE

11:SUJATA BHATTACHARJE

Advocate for the Petitioner : MS.D DEVI

Advocate for the Respondent :

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 03.05. 2023

Heard Mr. R. Dey, learned counsel for the petitioner. None appears for the respondents.

2. This is an application under Article 227 of the Constitution of India filed by the petitioner against the impugned order dated 10.09.2013, passed by the learned Civil Judge, Bongaigaon in Title Suit No. 48/2008 whereby the petition filed by the petitioner as plaintiff under Order XXVI Rule 1 CPC praying for allowing an old aged ailing witness to be examined on commission, which was rejected.

3. The petitioner as the plaintiff has filed the title suit being T.S. No. 48/2008 in the Court of the learned Civil Judge, Bongaigaon stating that he sought for leave of the Court for examination of one witness i.e. Smti Minati Bhattacharjee

(proforma defendant No. 8) as witness in the case which was allowed by the learned trial Court. However, on receipt of the summons, it came to light that the said witness was unable to appear before the Court due to her illness and was bed ridden and not in a position to move. She was about 80 years of age at the relevant time and prayed for appointment of Commissioner to examine the said witness in order to arrive at the real question of controversy as well as for fair trial. Alongwith the petition, medical certificate of the respondent No. 8 was also enclosed. However, learned Civil Judge, Bongaigaon observed that the case was about 5/6 years old and the plaintiff has got sufficient time for bringing the witnesses for examination and the plaintiff had subsequently filed a petition praying for examination of the said witness on commission.

4. The learned trial Court held that medical certificate was not acceptable as it did not contain actual account of the ailment of the witness. Accordingly, vide order dated 10.09.2013, the petition was rejected and the next date was fixed for defence witness.

5. Being highly aggrieved with the order, the petitioner has preferred this revision petition before this Court.

6. It is submitted by the learned counsel for the petitioner that at the time of filing of the petition, the witness i.e. Smti Minati Bhattacharjee was around 80 years of age and by that time 9 (nine) years have elapsed and she is now around 90 years of age and she is not in a position to move.

7. The learned counsel for the petitioner, however, submits that at the time of filing of the petition, the concept of advocate commissioner has not been introduced and the petitioner has no objection if the petitioner is given liberty to approach before the Court of the learned Civil Judge to appoint advocate

commissioner for recording the evidence of the witness i.e. the respondent No. 8, Smti Minati Bhattacharjee.

8. Considering the submissions of the learned counsel for the petitioner, this revision petition is disposed of with a direction to the petitioner that he may approach before the Court of the learned Civil Judge, Bongaigaon to appoint an advocate Commissioner for recording the evidence of defendant No. 8 i.e. Smti Minati Bhattacharjee in connection with Title Suit No. 48/2008.

9. It is noticed that the case is pending in the Court since 2008. Learned Civil Judge is directed to take initiative to dispose of the matter within 6 (six) months from the date of receipt of the record.

JUDGE

Comparing Assistant