

GAHC010236622019



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

Case No. : CRP(IO)/395/2019

M/S. GILLANDARS ARBUTHONT AND CO. LTD. AND ANR.
HAVING ITS REGD OFFICE AT C-4, GILLANDAR HOUSE, NETAJI SUBASH
ROAD, KOLKATA-1, WEST BENGAL

2: M/S DOORIA TEA ESTATE
HAVING ITS REGD OFFICE AT P.O- GOLAGHAT
DIST- GOLAGHAT
BOTH PETITIONERS ARE REP. BY THE POWER OF ATTORNEY HOLDER
MR DIGANTA RAJKHOWA
S/O- MR PRADIP RAJKHOWA
AGED 49 YEARS
PRESENTLY R/O- DOORIA TEA ESTATE
P.O- GOLAGHAT
DIST- GOLGHAT
ASSAM
PIN- 78562

VERSUS

REENA TANTI AND ANR
TINE LINE, DOORIA TEA ESTATE, GOLAGHAT, ASSAM

2:NOBIN TANTI
TINE LINE
DOORI TEA ESTATE
GOLAGHAT
ASSA

Advocate for the Petitioner : MR. B D DEKA

Advocate for the Respondent :

**BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI**

ORDER

09.08.2023

Heard Shri N. Choudhury, learned counsel for the petitioners, who has filed this petition under Article 227 of the Constitution of India whereby a challenge has been made to certain orders passed by the learned Civil Judge, Golaghat in Title Suit No. 03/2015.

2. At the outset, this Court vide orders dated 16.06.2023 and 04.08.2023 has recorded that the respondent nos. 1 and 2 were served and have chosen not to appear. This Court has also noted that the Suit is of the year 2015 and the instant petition is pending since the year 2019 and therefore, the case is taken up for disposal at the admission stage.

3. The petitioners are the plaintiffs in the Suit which was instituted for declaration right, title, interest and recovery of khas possession and was registered as Title Suit No. 03/2015. On 28.07.2017, an application was filed by the petitioners-plaintiffs for adjournment and grant of time to file the evidence of PWs on affidavit. The said application was however accompanied with an application filed under Section 5 of the Limitation Act on the assumption that there was a requirement to file such application. However, the instant petition was rejected and it appears that the rejection was pertaining to the application filed under Section 5 of the Limitation Act which was numbered as Petition No. 1661/2017. However, since the petition for allowing adducing of evidence of the PWs which was numbered as Petition No. 1658/2017 was yet to be disposed of, the same was taken up for consideration and the learned Civil Judge, Golaghat vide an order dated 02.07.2019 has passed an order rejecting the same. The only consideration for such rejection was that since the application under Section 5 of the Limitation Act was rejected earlier vide an order dated 16.03.2018, the present Petition No. 1658/2017 automatically stood rejected.

4. It is submitted that there is actually no requirement of filing of application under the Limitation Act as no period is prescribed under the Limitation Act to file such an application for allowing adducing of PWs which was done by invoking the provisions of Section 151 of the CPC. It is submitted that therefore it was incumbent upon the learned Court to consider the application seeking such indulgence on merits which apparently was not done vide the impugned order dated 02.07.2019.

5. The powers conferred on the Code by Section 151 of the CPC is an inherent power which is required to be exercised to meet the ends of justice or to prevent abuse of process of the Court. It is a power which requires exercise of discretion on the facts and circumstances of the case and such powers are not limited and the only limitation is a self imposed one depending on the facts and circumstances of each case.

6. This Court finds force in the contention made by Shri Choudhury, learned counsel for the petitioners that a petition filed for allowing adducing of evidence on affidavit by the PWs has to be considered on its merits by discussing the reasons cited in such application and rejection of an application filed under Section 5 of the Limitation Act along with the application under Section 151 of the CPC cannot be the sole reason for rejecting the application under Section 151 of the CPC inasmuch as, law does not prescribe or require filing of any application under section 5 of the Limitation Act. This Court is therefore of the opinion that the order dated 02.07.2019 is not sustainable in law as there is no discussion regarding rejection of Petition No. 1658/2017 except the fact of rejection of Petition No. 1661/2016 earlier which was filed under Section 5 of the Limitation act.

7. That being the position, this court is of the unhesitant opinion that the interest of justice would be served if the matter is remanded to the learned Court to decide afresh the Petition No. 1658/2017 which was filed by the petitioners allowing them to adduce evidence by the PWs.

8. In view of the above, the impugned order dated 02.07.2019 is set aside by directing the learned Civil Judge, Golaghat to decide afresh the Petition No. 1658/2017. It is clarified that such consideration has to be entirely on the merits and as per law and is not to be influenced by any observations made by this Court in this order.

9. Since there was interim order passed by this Court, the same stands vacated by directing the petitioners to approach the learned Court below within a period of 15(fifteen) days from today by filing appropriate application along with certified copy of this order.

10. Accordingly, the instant petition stands disposed of.

JUDGE

Comparing Assistant