

GAHC010240742022



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

Case No. : CRP(IO)/298/2022

MINOTI BORUAH AND 2 ORS
W/O- LATE BROJEN BARUAH

2: HARBAJYOTI BORUAH
S/O- LATE BROJEN BARUAH

3: SAPUN JYOTI BORUAH
S/O- LATE BROJEN BARUAH

ALL ARE RESIDENTS OF NAMTIAL PATHAR

P.O- NAMTIAL
P.S- SIVASAGAR
DIST- SIVASAGAR
ASSAM
PIN-78569

VERSUS

SIKHAMONI BORUAH @ SANTA SIKHA BORUAH
D/O- ANU BORUAH,
A RESIDENT OF NAMTI CHARIALI,
P.O- NAMTI CHARIALI, P.S-NAMTI ,
DIST- SIBSAGAR, ASSAM

Advocate for the Petitioner : MS B PAUL

Advocate for the Respondent : MD H R AHMED

:::BEFORE:::
HON'BLE MRS. JUSTICE MITALI THAKURIA

Date of hearing : 02.06.2023

Date of Judgment & Order : 02.06.2023

JUDGMENT & ORDER (ORAL)

Heard Mr. R. Sharma, learned counsel for the petitioner. Also heard Ms. R. Choudhury, learned counsel for the respondent.

2. This civil revision petition is directed against the order dated 26.09.2022, passed by the learned Civil Judge, Sivasagar, in Title Suit No. 03/2021, allowing the petition, dated 30.04.2022, filed by the plaintiffs under Order XIII Rule 2 *read with* Section 151 of the Code of Civil Procedure and thereby allowed the plaintiff to produce and exhibit 5 (five) numbers of documents after filing of evidence on affidavit which were not filed at the time of filing of the suit and prior to the filing of the written statement.

3. The respondent, as a plaintiff, filed a Title Suit No. 03/2021 before the Court of learned Civil Judge, Sivasagar, against the present petitioners/defendants praying for a decree for declaring the plaintiff as the illegitimate daughter of Late Brojen Baruah claiming $\frac{1}{4}$ share of the service benefit of her father- Late Brojen Baruah, who was a Senior HR Executive of ONGCL, and also prayed for permanent injunction restraining the defendants from taking the other service benefits due to the deceased- Late Brojen Baruah. The plaintiff claimed herself to be the illegitimate daughter of Late Brojen

Baruah and therefore, she claimed that she is entitled to $\frac{1}{4}$ share of the service benefits of Late Brojen Baruah. The plaintiff/respondent also filed a Misc (J) Case No. 05/2021 praying for ad-interim temporary injunction restraining the opposite party Nos. 1, 2 & 3 from releasing the terminal service benefit of the deceased Brojen Baruah to the present petitioners/defendants. However, the learned Court below was pleased to reject the petition of the respondent/plaintiff.

4. Accordingly, the petitioners/defendants contested the case by filing their written statement and denied the claim of the plaintiffs stating that there is no cause of action of the suit and the defendants accordingly prayed for dismissal of the same. The case proceeded accordingly and at the stage of evidence of P.W.-2, one petition was filed praying for allowing to produce or exhibit 5 (five) numbers of documents which were already exhibited on the evidence of affidavit of P.W.-1. In the said petition, it was claimed by the present respondent/plaintiff that she was minor at the time of filing the suit and she was duly represented by her natural guardian mother. But, as the respondent/plaintiff became major and after attaining 18 years of age, she obtained some certificates and accordingly prayed to exhibit those certificates at the time of evidence. Against the said petition, the present petitioners/defendants had filed their written objection on 04.06.2022. But, after hearing both the parties, the learned Court below, vide order dated 26.09.2022, allowed the petition of the plaintiff to produce and exhibit 5 (five) numbers of documents at the stage of evidence.

5. On being aggrieved by the order dated 26.09.2022, passed by the learned Civil Judge, Sivasagar, in Title Suit No. 03/2021, the petitioner preferred this

revision petition.

6. It is submitted by the learned counsel for the petitioners/defendants that the learned Court below failed to appreciate that the application for production of documents at the stage of evidence cannot be allowed in a routine manner and bringing the documents at the stage of hearing will cause prejudice to the petitioners/defendants as they have lost the opportunity to raise objection or to take plea against those documents at the time of filing their written objection. Further it is submitted that the suit, being proceeded under representation, and hence the petitioner has no *locus standi* to file the petition on her personal capacity until and unless she obtain leave from the Court to proceed with the suit by herself on the ground of her becoming major under appropriate provision of law and therefore, the said petition for production of documents is liable to be dismissed. Further, the respondent/plaintiff herself admitted that some of the documents were in her possession at the time of filing the suit, but only took the plea that the same could not be produced as it was not asked by her engaged counsel. But the plea of negligence taken by the plaintiff/respondent is not acceptable and there is no sufficient cause in the petition to introduce new documents at the belated stage and that too without the proper leave of the Court. If a party seeks to introduce any documents at the belated stage, she must satisfy the Court that introduction of those documents if not allowed will cause prejudice and it was for the reasons beyond his control or power that the document could not be produced at an earlier stage. But, there is no any proper explanation as to how there will be prejudice to the respondent/plaintiff if those documents were not allowed to exhibit at the stage of evidence.

7. The learned counsel for the petitioners further submitted that the plaintiff did not file any petition seeking leave of the Court to introduce those documents before filing their evidence and only after the objection raised by the defendants, the separate petition seeking leave for introduction of the documents was filed by the plaintiff/respondent. More so, the documents which were produced at the belated stage were obtained by adopting unfair means only to substantiate their false claim and if those documents were allowed to be exhibited at the stage of evidence, prejudice will be caused to the petitioners/defendants. Accordingly, it is submitted by the learned counsel for the petitioners/defendants that the impugned order dated 26.09.2022, passed by the learned Civil Judge, Sivasagar, in Title Suit No. 03/2021, allowing the petition filed by the respondent/plaintiff under Order XIII Rule 2 *read with* Section 151 of the Code of Civil Procedure is bad in law and hence interference of this Court is necessary and the said impugned order is liable to be set aside and quashed.

8. The learned counsel, Ms. R. Choudhury, appearing on behalf of the respondent/plaintiff, has submitted that at the time of institution of the suit, the present respondent/plaintiff was a minor and she was duly represented by her natural guardian mother- Smti Anu Baruah and she is the illegitimate daughter of Late Brojen Baruah and hence, she entitles equal service benefits of her father, i.e. $\frac{1}{4}$ share, like the other defendant Nos. 4 to 6 in the suit. The petitioners/defendants also did not make any comment on the statement in paragraph No. 2 (wrongly mentioned as paragraph No. 1 of the plaint), wherein, it is stated that "the plaintiff is the minor and as such she is represented by her

natural mother Smti Anu Baruah of Namti-Chariali under Namti P.S., Dist. Sivasagar, Assam.” Accordingly, it is submitted that as the suit was filed by the natural guardian mother of the plaintiff/respondent, she can contest the case after attaining her majority though separate leave was required.

9. In this context, the learned counsel for the petitioners/defendants, Mr. R. Sharma, has submitted that under Order 32 Rule 12 of the Code of Civil Procedure the minor plaintiff ought to have taken the leave of the Court and proceed with the case in her own name discharging her next friend. But, here in the instant case, it is seen that without any leave application, the petition for introduction of documents was filed by the plaintiff/respondent on her personal strength, which cannot be allowed without discharging the next friend by whom the suit was instituted on her behalf.

10. Per contra, Ms. R. Choudhury, learned counsel for the respondent/plaintiff, has submitted that that there may be procedural irregularity, but since after attaining her majority, the plaintiff approached the Court to adduce evidence to prove herself to be the illegitimate daughter of the Late Brojen Baruah claiming her share in the service benefits and for such procedural lapses, the case of the plaintiff cannot be affected. However, direction may be given for filing an appropriate petition before the learned Court below for discharging her natural guardian mother by whom the suit was instituted. Further it is submitted that the documents, which were sought to be exhibited by the plaintiff are very vital and same will be required to prove herself to be the illegitimate child of Late Brojen Baruah. But, for the want of proper guidance from the engaged counsel, some of the documents could not be introduced at the time of filing the suit,

though they were in the possession of the plaintiff and the same are very much essential in support of her case to prove herself to be the illegitimate daughter of Late Brojen Baruah and hence, the learned Court below committed no error or mistake while allowing the petition to introduce the documents at the stage of evidence and therefore, the interference of this Court is not at all necessary and the order passed by the learned Court below is not liable to be dismissed, as prayed for by the petitioners.

11. In this context, Ms. R. Choudhury, learned counsel for the respondent/plaintiff has relied on a decision of this Court reported in **2009 (1) GLT 151 (Hindustan Paper Corporation Ltd. & Ors. Vs. Saikia & Associates)**, wherein, it has been held that "Section 151 – Inherent powers - Acceptance of document at a later stage of proceeding – Held: Court can accept such document if making of such an order is necessary for ends of justice or to prevent abuse of the process of the Court ..." The learned counsel further emphasized on paragraph No. 12 of the said judgment, which reads as under:

"12. Reading the provisions of Order 7, rule 14, Rule 17 and Order 13, rule 1, after amendment, it, therefore, transpires that the court can accept the documents filed by the plaintiff and receive the same in evidence on his behalf at the hearing of the suit, even if such document though ought to be produced in Court by the plaintiff when the plaint was presented, or ought to be entered in the list to be added or annexed to the plaint, but has not been produced or entered accordingly, provided of course with the leave of the Court. Such discretion, of granting or refusing leave, to be exercised by the Court, as noticed above, must be based on some foundation and cannot be arbitrarily exercised. Such discretion has to be exercised judiciously and keeping in view the facts and circumstances of each case and also to do justice between the parties. Therefore, it is not that no document, after settlement of the issues, can be accepted by the Court at all, copy of which was not filed along with the plaint though required to be filed. The plaintiff, however, in order to make out a case for exercising the discretion in his favour has to demonstrate the factual foundation to the satisfaction of the Court relating to the good and sufficient reason. Furthermore, the

Court, in a given case, can in exercise of the power under Section 151 of the Civil Procedure Code, 1908 accept such document at a later stage of the proceeding, if making of such an order is necessary for the ends of justice or to prevent abuse of the process of the Court."

12. Further it is submitted that the Court has the power under Section 30 of the Code of Civil Procedure to pass any orders by its own motion in regards to admission of any documents and facts and the discovery and inspection of documents etc. if it is necessary for just disposal of the case. The learned counsel, accordingly, relied on the judgment of Hon'ble Supreme Court reported in **(2012) 5 SCC 370 (Maria Margarida Sequeira Fernandes & Ors. Vs. Erasmo Jack De Sequeira (Dead) through Lrs.)**, wherein, in paragraph Nos. 41 & 42 thereof, Section 30 CPC has been discussed, which reads as under:

"41. In civil cases, adherence to Section 30 Civil Procedure Code, 1908 would also help in ascertaining the truth. It seems that this provision which ought to be frequently used is rarely pressed in service by our judicial officers and Judges.

42. Section 30 Civil Procedure Code, 1908 reads as under:

30. Power to order discovery and the like.- Subject to such conditions and limitations as may be prescribed, the Court may, at any time, either of its own motion or on the application of any party,—

(a) make such orders as may be necessary or reasonable in all matters relating to the delivery and answering of interrogatories, the admission of documents and facts, and the discovery, inspection, production, impounding and return of documents or other material objects producible as evidence;

(b) issue summonses to persons whose attendance is required either to give evidence or to produce documents or such other objects as aforesaid;

(c) order any fact to be proved by affidavit."

13. The learned counsel for the respondent further submitted that as per the plaint or the written statement, i.e. the pleadings, it is only necessary to state the material facts, but those facts can be proved through evidence adduced by the parties. In the instant case, it is important for the respondent/plaintiff to exhibit the documents which were subsequently introduced and the documents are very much essential for the plaintiff to prove and to substantiate her plea that she is the illegitimate daughter of Late Brojen Baruah. Only for the procedural lapses or for the fault of the engaged counsel if the documents were not allowed to be exhibited, prejudice will be caused to the respondent/ plaintiff as those are the vital documents for her case to prove herself to be the illegitimate daughter of Late Brojen Baruah.

14. After hearing the submissions made by the learned counsels for both sides and also after perusing the case record, it is seen that the suit was instituted by the natural guardian mother of the plaintiff representing her as she was minor at the relevant time of institution of the suit. But, subsequently, after attaining her majority, she adduced her evidence and also at the time of evidence stage, some documents were sought to be exhibited or introduced in support of her case. It is a fact that there are some procedure under Order 32 Rule 12 of the Code of Civil Procedure to elect herself to proceed with the suit by discharging the next friend.

15. For ready reference, the Order 32 Rule 12 (1) (2) (3) of the Code of Civil Procedure is quoted herein below:

12. Course to be followed by minor plaintiff or applicant on attaining majority.- (1) A minor plaintiff or a minor not a party to a suit on whose behalf an application is

pending shall, on attaining majority, elect whether he will proceed with the suit or application.

(2) Where he elects to proceed with the suit or application, he shall apply for an order discharging the next friend and for leave to proceed in his own name.

(3) The title of the suit or application shall in such case be corrected so as to read henceforth thus:—

“A,B., late a minor, by C.D., his next friend, but now having attained majority”.

16. But, here in the instant case, it is seen that the plaintiff, who stated to be the minor at the time of institution of the suit, appeared in the suit after attaining her majority and also filed her evidence on affidavit along with some documents. But, only for that procedural irregularity, the plaintiff cannot be barred from appearing in her own case and the matter can be regularized by filing appropriate application before the learned Court below.

17. It is also a fact that some of the documents were in possession of the plaintiff at the time of filing the suit, but it is the plea taken by the plaintiff that due to non-receipt of proper guidance from the engaged counsel, those documents could not be annexed along with the plaint and had to introduce those documents at the time of evidence only. In the same time, it is also stated in the petition filed by the plaintiff/respondent, seeking leave to introduce the documents, that some other documents were only collected or obtained by the plaintiff herself after attaining majority and those documents are very much essential for the plaintiff to prove her case or to substantiate the plea taken by her. It is also the admitted fact that at the time of filing the suit, the documents were not relied by the plaintiff and those were subsequently furnished at the stage of the evidence and accordingly sought leave of the Court to exhibit those documents which were not introduced at the time of filing of the suit. But,

considering the nature of documents, it is seen that those documents may be necessary or essential documents for the plaintiff to prove her case and the Court can allow the petition for introduction of the documents in exercise of power under Section 151 Cr.P.C. and can exhibit the document at the later stage of proceeding if it is found necessary for the ends of justice or arriving at a just decision of the case.

18. It also cannot be denied that the petitioners/defendants could not take any plea or raise their defence at the time of filing their written statement for those documents which were filed subsequently at the stage of evidence. But, the petitioners/ defendants will get the opportunity to cross-examine the plaintiff's witness on the said documents as well as can also prefer appropriate application for filing additional written statement if it is required to take proper defence in their case.

19. In view of the discussions made above, I find that the learned Court below had committed no illegality or irregularity while allowing the petition filed by the respondent/plaintiff praying to introduce exhibit 5 (five) numbers of documents at the time of stage of evidence and hence, I do not find any reason to make interference in the order dated 26.09.2022, passed by the learned Civil Judge, Sivasagar, in Title Suit NO. 03/2021.

20. In the result, I find no merit in this petition and accordingly, the same stands dismissed. However, there shall be no order as to cost.

JUDGE

Comparing Assistant