

GAHC010271312017



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

Case No. : CRP(IO)/42/2017

ON DEATH OF SOID ALI MONDAL HIS LEGAL HEIRS JALEKHA KHATUN
and 32 ORS.

W/O. SOID ALI MONDAL,

2: JALAL MONDAL

3: FIROZ MONDAL

4: MINAL MONDAL

5: SALEMA KHATUN

6: ALEMA KHATUN

7: FAZILA KHATUN

8: MONIZA KHATUN

NO. 2 TO 8 ARE ALL SONS AND DAUGHTERS OF LT. SOID ALI MONDAL

9: ON DEATH OF ABDUL MONDAL HIS LEGAL HEIRS

SURZO BEWA
W/O. LT. ABDUL MONDAL

10: INSAN ALI MONDAL

11: USUF ALI KHAN @ USUF ALI MONDAL

12: KALACHAN MONDAL MINOR

13: AMIRAN KHATUN

NO. 12 IS A MINOR BEING REPRESENTED BY HIS MOTHER
SURZO BEWA
NOS. 10 TO 13 ARE ALL SONS AND DAUGHTERS OF LT. ABDUL MONDAL
NOS. 1 TO 13 ARE ALL R/O. VILL. HATIPOTA PART-II
P.O. and P.S. BILASIPARA
DIST. DHUBRI
ASSAM
PIN-783348

14: AYMOL BIBI

W/O. SABOR UDDIN
R/O. VILL. PASHOWARKHAL
P.O. and P.S. BILASIPARA
DIST. DHUBRI
ASSAM
PIN-783348.

15: TARA BANU

W/O. GAZI SHEIKH
R/O. VILL. KOIMARI
P.O. and P.S. BILASIPARA
DIST. DHUBRI
ASSAM
PIN-783348.

16: ASER UDDIN MONDAL @ ASHIRUDDIN MONDAL

17: NASER MONDAL

18: KASHEM MONDAL

19: KALAM MONDAL

20: NURUDDIN MONDAL

NOS. 16 TO 20 ARE SONS OF LT. BHOSHA MONDAL

21: AZIOR MONDAL

22: MOZIBAR MONDAL

23: ANOWAR MONDAL

24: MONOWAR MONDAL

NOS. 21 TO 24 ARE THE SONS OF LT. SALIM UDDIN MONDAL

25: MUSA MONDAL

26: MOKBUL MONDAL

NOS. 25 and 26 ARE SONS OF LT. HASHEM ALI MONDAL

27: SABAT ALI MONDAL

28: SURUT ZAMAL MONDAL

29: SABIOR MONDAL

30: NAWSHAD MONDAL

31: AZIT MONDAL

32: TAZEL MONDAL

NO. 27 TO 32 ARE ALL SONS OF LT. HASEN ALI MONDAL

33: ABBAS ALI MONDAL

SON OF LT. WAHED ALI MONDAL
NOS. 18 TO 35 ARE ALL R/O. VILL. HATIPOTA PART-II
P.O. and P.S. BILASIPARA
DIST. DHUBRI
ASSAM
PIN-783348

VERSUS

PURNIMA DEVI and 16 ORS.
W/O. LT. BENU CHOUDHURY,

2:SHRI BIPLAB CHOUDHURY

S/O. LT. BENU CHOUDHURY
BOTH ARE RESIDETS OF WARD NO. 14
BILASIPARA TOWN
P.O. and P.S. BILASIPARA
DIST. DHUBRI
ASSAM
PIN.- 783348.

3:THE ASSTT. SETTLEMENT OFFICER

BILASIPARA
P.O. and P.S. BILASIPARA
DIST. DHUBRI
ASSAM
PIN-783348.

4:THE SETTLEMENT OFFICER

DHUBRI

5:THE STATE OF ASSAM
TO BE REP. BY THE COLLECTOR
DHUBRI.

6:OMELA KHATUN

W/O. MANSER SHEIKH
R/O. VILL. KATHALDI PART-I
P.O. and P.S. BILASIPARA
DIST. DHUBRI
ASSAM
PIN-783348.

7:NILARANI KHATUN

D/O. LT. SALIM UDDIN
W/O. MOKSED ALI AKAND

8:MONOWARA KHATUN

W/O. LT. BOSA MONDAL

9:PINZIRA KHATUN

W/O. BAKKAR ALI

10:MOMTAZ BEGUM

W/O. FAZAR SHEIKH
NOS. 7 TO 10 ARE ALL R/O. VILL. HATIPOTA PART-II
P.O. and P.S. BILASIPARA
DIST. DHUBRI
ASSAM
PIN.-783348.

11:ABEDIA BIBI

D/O. LT. AHED ALI

12:OFIDA BIBI

W/O. SABAN ALI

NOS. 11 and 12 ARE R/O. VILL. HATIPOTA PART-I

P.O. and P.S. BILASIPARA

DIST. DHUBRI

ASSAM

PIN-783348.

13:ALEMA BIBI

W/O. MANNAN SHEIKH

R/O. VILL. ALOMGANJ PART IX

P.O. ALOMGANJ

P.S. GAURIPUR

DIST. DHUBRI

ASSAM

PIN.- 783339.

14:SAKINA KHATUN

W/O. OSMAN ALI

R/O. VILL. BANIAPARA

P.O. and P.S. BILASIPARA

DIST. DHUBRI

ASSAM

PIN- 783348.

15:FARIDA BIBI

D/O. HASHEM ALI MONDAL

16:HALIMA BIBI

W/O. MANNAF ALI

NOS. 16 and 17 ARE R/O. VILL. BOCHIRCHAR

P.O. and P.S. BILASIPARA

DIST. DHUBRI

ASSAM

PIN-783348.

17:OMELA BIBI

W/O. MUHURI SHEIKH
R/O. VILL. KATHALDHICHAR
P.O. and P.S. BILASIPARA
DIST. DHUBRI
ASSAM
PIN.-783348

Advocate for the Petitioner : MS.F AHMED

Advocate for the Respondent : MR.A C SARMA Sr. Adv., R- 1and2

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

Date : 25.01.2023

Heard Ms. M. Sahu, learned counsel for the petitioner. Also heard Mr.A. C. Sarma, learned Senior Counsel assisted by Mr. N. Brahma learned counsel for the respondent Nos.1 and 6 and Ms. U. Das, learned counsel for respondent Nos.3,4 and 5.

2. The present revision petition is filed assailing the order dated 21.10.2017 passed by the learned trial court below whereby on the failure of plaintiff to issue summons to official witnesses, the evidence of plaintiff was closed.

3. By the said order, the prayer of plaintiff to allow to exhibit certain documents, which was left to be exhibited was also rejected.

4. The said petition was dismissed on the ground that the petitioner had failed to disclose, why such documents filed on that day could not be filed earlier inasmuch as the plaintiff side had already filed the examination-in-chief of his witnesses and they were already cross examined and discharged and date

was fixed for official witness.

5. Learned counsel for the petitioner submits that to arrive at a just decision by learned trial court below, the petitioner ought to have been granted an opportunity to issue summon to the official witness inasmuch as to bring on record the exhibit which are necessary for proper adjudication of the case. However, learned court below by ignoring settled proposition of law that technicalities should not obstruct substantive justice, passed the impugned order. Accordingly, the learned counsel for the petitioner submits that the learned Court below had failed to exercise its jurisdiction properly resulting in failure of justice. Therefore, the learned counsel for the petitioner prays that plaintiff may be granted a last opportunity to issue summon and to bring document on record by way of an additional witness.

6. Per contra Mr. A. C. Sarma, learned Senior Counsel submits that the petitioner as plaintiff has been very negligent all throughout inasmuch as it is the bounden duty of the plaintiff to take proper steps for bringing the official witnesses to the witness box. However on failure of the plaintiff to perform his duty, the learned court below has rightly rejected his prayer.

7. Coming to the issue of bringing documents on record, Mr. Sarma, learned Senior Counsel submits that a document cannot be allowed to be brought on record on mere asking inasmuch as there are provisions of law, which enables the parties to pray before the court to bring on documents on record, which are necessary for the proper determination of the issue before the trial court. However, the petitioner has casually filed an application stating that some documents are required to be filed. However no explanation whatsoever has been given in the said petition why such documents are necessary and why even after leading more than three witnesses, the petitioner had not

brought such document on record and therefore, the learned court below had rightly rejected such application, submits Mr. Sarma, learned Senior Counsel.

8. This court has given anxious consideration to the arguments advanced by the learned counsel for the parties. So far relating to the issue of the issuance of summons to the official witnesses, this court is of the considered opinion that the petitioner was negligent in not taking steps to bring such official witnesses to the witness box. However, at the same time, for proper and just determination of the issue before the learned trial court the examination of the official witnesses are necessary, and the same would help both the parties and the learned court to come into a just decision and therefore in the considered opinion of this court and for ends of justice and to avoid miscarriage of justice, an opportunity should be granted to the petitioner to take necessary steps for issuance of summons to bring official witnesses to the witness box. Accordingly, it is directed that the present petitioner be given a chance to bring official witnesses and to take steps for doing the needful. Accordingly the learned trial court below shall fix a date for appearance of the witnesses by giving a chance to the petitioner to take necessary steps. In the event, the petitioner fails to take such steps, the suit shall proceed from the stage, as on the date of passing of the impugned order dated 1.12.2016. The plaintiff shall be allowed to take such steps subject to payment of cost of Rs.2,000/- to be paid to the defendants

9. Coming to the next issue of bringing new documents on record, this court finds force in argument of Mr. Sarma, learned Senior Counsel that the plaintiff has not given any explanation whatsoever in seeking to bring the documents on record through additional evidence after closure of their witnesses. Therefore, this court is not inclined to interfere with the said order. However it is provided

that if the petitioner files any appropriate application permitted under the law, before the learned court below for the aforesaid purpose, the court may still consider such application and pass necessary order without being influenced by any of the observation made in this order and after giving an opportunity to the defendants to object such petition. However, it is made further clear that the petitioner shall be at liberty to file such application within a period of five weeks from today and if such application is not filed within a period of five weeks from today, the same may not be entertained by the learned Court below.

10. With the aforesaid terms, this revision petition stands disposed of.

11. The parties shall appear before the learned trial Court on 20.2.2023, on which date the learned court below shall pass necessary order in terms of the present order.

JUDGE

Comparing Assistant