

GAHC010302012019



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

Case No. : CRP(IO)/1/2020

ON DEATH OF SHIVNATH PRASAD SINGH HIS LEGAL HEIRS - NALIN
BILOCHAN SINGH AND ANR.
LEGAL HEIRS

1.1: NALIN BILOCHAN SINGH
S/O. LT. SHIVNATH PRASAD SINGH
R/O. CHHATTRIBARI
P.O. CHHATTRIBARI
GUWAHATI-781009
DIST. KAMRUP
ASSAM.

1.2: AMIT VIKRAM SINGH
S/O. LT. SHIVNATH PRASAD SINGH
R/O. CHHATTRIBARI
P.O. CHHATTRIBARI
GUWAHATI-781009
DIST. KAMRUP
ASSAM.

1.3: SANGEETA ROY
D/O. LT. SHIVNATH PRASAD SINGH
R/O. CHHATTRIBARI
P.O. CHHATTRIBARI
GUWAHATI-781009
DIST. KAMRUP
ASSAM.

1.4: PURNIMA ROY
D/O. LT. SHIVNATH PRASAD SINGH
R/O. CHHATTRIBARI
P.O. CHHATTRIBARI
GUWAHATI-781009
DIST. KAMRUP

ASSAM.

1.5: ANJU YADAV
D/O. LT. SHIVNATH PRASAD SINGH
R/O. CHHATTRIBARI
P.O. CHHATTRIBARI
GUWAHATI-781009
DIST. KAMRUP
ASSAM.

1.6: HEMA SINGH
D/O. LT. SHIVNATH PRASAD SINGH
R/O. CHHATTRIBARI
P.O. CHHATTRIBARI
GUWAHATI-781009
DIST. KAMRUP
ASSAM.

1.7: SHANNO DEVI
W/O. LT. SHIVNATH PRASAD SINGH
R/O. CHHATTRIBARI
P.O. CHHATTRIBARI
GUWAHATI-781009
DIST. KAMRUP
ASSAM.

2: AMIT VIKRAM SINGH
S/O. LT. SHIV NATH PRASAD SINGH @ GOALA
R/O. CHHATTRIBARI
P.O. CHHATTRIBARI GUWAHATI-781009
DIST. KAMRUP
ASSAM

VERSUS

RESHMI DEVI AND ANR.
D/O. LT. KAMALA PRASAD GOALA AND W/O. NARESH PRASAD YADAV @
GOALA, R/O. HOUSE NO.88, VILL. UDALBAKHRA, MAIN ROAD, P.O. AND
P.S. DISPUR (LAL GANESH OUTPOST) GUWAHATI-34, DIST. KAMRUP,
ASSAM.

2:NARESH YADAV @ GOALA
S/O. LT. MAHENDRA PRASAD GOALA
R/O. HOUSE NO.88
VILL. UDALBAKHRA
MAIN ROAD
P.O. AND P.S. DISPUR (LAL GANESH OUTPOST) GUWAHATI-34
DIST. KAMRUP

ASSAM

Advocate for the Petitioner : MR R YADAV

Advocate for the Respondent : MR Z MUKIT

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 18.07.2023.

Heard Mr. R.L. Yadav, learned counsel for the petitioners and also heard Mr. A. Sattar, learned counsel for the respondents.

2. In this Civil Revision Petition, under Article 227 of the Constitution of India read with section 151 of the Civil Procedure Code, the legal heirs of Late Shivrath Prasad Singh and Dr. Vikram Singh has put to challenge the order dated 19.10.2019, passed by the learned Munsiff, Guwahati in petition No. 1748/2019 and 1749/2019, filed in T.S. No. 466/2012, pending in the court of learned Munsiff No. 1, Guwahati.

3. It is to be noted here that vide impugned order dated 19.10.2019, the learned court below has dismissed the petition No. 1748/2019, filed by the petitioner/plaintiff No. 2, Dr. Amit Vikram Singh for allowing him to give evidence of one Chandra Singh as prosecution witness on account of death of PW-4, Surja Narayan Singh. It is also to be noted here that vide same impugned order dated 19.10.2019, the learned court below also dismissed the petition No. 1749/2019, filed by the petitioner/plaintiff No. 2, Dr. Amit Vikram Singh, praying for allowing him adduce additional evidence to exhibit

documents exhibited by the deceased plaintiff No. 1.

4. The background facts leading to filing of this petition is briefly stated as under:-

“The petitioner, being the legal heirs of Late Shivnath Prasad Singh has instituted a Title Suit, being T.S. No. 466/2012, for declaration of right, title and interest over a plot of land, so described in the Schedule A, B, C and D of the Title Suit. In the said Title Suit the petitioner has submitted evidence on affidavit of 5 witnesses. But, before cross-examination of PW-1 and PW-4, they suffered demise and as such, the plaintiff had filed a petition No. 1749/2019, for allowing the plaintiff to file additional evidence of PW-3 for exhibiting the documents which have been filed with the evidence of affidavit of PW-1. The plaintiff No.2 had also filed another petition being petition No. 1748/2019, under Order 16 Rule 3 of C.P.C. to allow them to give evidence of one witness, namely Chandra Singh, who is the family member of the plaintiff and defendant, though his name was not given in the list of witnesses, on the death of P.W.4. Then after hearing the learned counsel for both the parties, the learned court below had dismissed both the petitions on the ground that Order 16 Rule 3 of the C.P.C. is not attracted at that stage and further holding that PW-3 who is the plaintiff No. 2 in his evidence on affidavit has already exhibited the documents as Exhibit 1 - 8 and the same set of documents sought to be exhibited by the deceased plaintiff No. 1 Shivnath Prasad Singh. Be it noted here that the respondents, though entered appearance have not filed any objection in this petition.”

5. Mr. Jadav, learned counsel for the petitioners, submits that the impugned

order, by which the learned court below had dismissed the petition filed by the petitioner, is arbitrary as well as illegal and not tenable in law. Mr. Jadav further submits that in the interest of justice the documents which are sought to be exhibited by PW-3, who is the plaintiff No. 2 for filing additional affidavit and also the documents sought to be exhibited by examining one Chandra Singh in place of PW-4, Surja Narayan Singh who had already passed away and therefore, it is contended to allow the petition.

6. On the other hand, Mr. Sattar, learned counsel for the respondents submits that the petitioners have wrongly quoted the Order and Rule in the petition and the same is not attracted herein this case and the learned court below has rightly dismissed both the petitions and that the impugned order suffers from no infirmity and requires no interference of this court and therefore, it is contended to dismiss the petition.

7. Having heard the submission of learned counsel for both the parties, I have carefully gone through the petition and the documents placed on record.

8. It appears that the learned court below has dismissed the petition No. 1749/2019, on the ground that having gone through the record it found that the petitioner had sought to be exhibited some documents by filing additional affidavits on account of death of plaintiff No.1, but, the said documents have already been exhibited as Exhibit No.1 to 8, by the plaintiff No.2 as P.W.3. If the observation, so made by the learned court below, is factually correct, then there is no ground for allowing the petitioner to file additional affidavit to exhibit the said documents. And as such, no fault can be found with the impugned order of the learned court below, so far it relates to dismissal of the

petition No. 1749/2019, is concerned.

9. But, the ground assigned by the learned court below for dismissal of the petition No. 1748/2019, conceding to the submission of learned counsel for the respondent, left this court unimpressed. It is well settled by Hon'ble Supreme Court that misquoting or wrong quoting of section is not a just ground to dismiss a petition. Reference in this context can be made to a decision in **Pruthvirajsing Nodhubha Jadija (D) by LRS vs. Jayeskumar Chhakadass Shah & Ors**, reported in **(2019) 9 SCC 533**

10. It appears that the petitioner want to examine one witness, namely, Chandra Singh on account of demise of P.W.4. it also appears that vide aforementioned petition, he only prayed for granting leave only not for substitution of any witness, as held by the learned court below in the order impugned, while conceding to the submission of learned counsel for the respondent. The submission of the learned counsel for the respondent, to the considered opinion of this court, is misleading and it does not make any sense, in as much as no such prayer was there in the petition. The learned court below also, had missed the point and also failed to perceive the prayer of the petitioner in its proper perspective and as such misdirected itself.

11. It is to be noted here that right to fair trial is now recognized as a fundamental right. Reference in this context can be made to a decision of Hon'ble Supreme Court in **Babuvhi vs. State of Gujarat & Ors., reported in (2010) AIR 1461(SC)**, wherein the Court read "*the right to free and fair trial as well as investigation into Article 21 of the Constitution, which, in turn, guarantees 'personal liberty' and has been interpreted to include the fairness*

of procedure which is to be used by a court so as to ensure its compliance with the principle of natural justice.” The fair trial entails the interest of both the parties, and therefore, fair trial includes the grant of fair and proper opportunities to both the parties, and the same must be ensured as this is a constitutional as well as human right.

12. In the case in hand, the petitioner prays for granting leave of the learned court below to examine one Chandra Singh as P.W. 4 - Surya Narayan Singh, whose evidence in affidavit has already been filed and suffered demise before his cross-examination. It also appears that Chandra Singh is the brother of P.W.4 and he is acquainted with the facts of this case as he was one of the witnesses in the deed of agreement, which is one of the relevant documents to decide the case. Thus, Chandra Singh is an important witness to prove the case of the petitioner. And as such rejection of the prayer of the petitioner, to the considered opinion of this court, amounts to denial of fair opportunity to the petitioner, and consequently, it impairs his right to fair trial.

13. It is, however, true that Order 16 Rule 3 of the CPC never provides for granting leave of the court to the petitioner to examine such a witness. But, Rule 14 of the said Order gives such a power to summon and examine witnesses, even a stranger to the suit. A bare reading of the provision would indicate that either party to the suit proceedings can summon a person, including a party to the suit, who is not called as witness by a party to the suit, as a witness. However, the party has to convince the court about such a necessity to cause any person to be examined as a witness.

14. Under the facts and circumstances discussed above, this court is satisfied

to hold that the impugned order, so far it relates to dismissal of the petition No. 1748/2019, is concerned failed to withstand the test of legal scrutiny. That being so, by exercising the power given under Article 227 of the Constitution of India, this court is inclined to interfere with the same. Accordingly, the impugned order dated 19.10.2019, so far it relates to dismissal of the petition No. 1748/2019, is concerned stands set aside and quashed. It is provided that the learned court below shall allow the petitioner to examine Chandra Singh as one of his witness.

15. In terms of above this CRP stands disposed of leaving the parties to bear their own costs.

JUDGE

Comparing Assistant