

**HIGH COURT OF TRIPURA
AGARTALA**

CRP No.06 of 2024

Sri Manik Kahar Petitioner(s)
Versus
Smt. Malabika Singha Respondent(s).

For Petitioner(s)	: Mrs. S. Deb (Gupta), Advocate.
For Respondent(s)	: None.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

24/01/2024

Heard Mrs. S. Deb (Gupta), learned counsel for the petitioner.

[2] At the stage when the judgment in Title Suit No.9 of 2021 has been reserved, the plaintiff-petitioner sought to adduce witness, namely Sri Pranay Ranjan Dey, scribe of the sale deed vide No.1-4406 dated 30.08.2018 through an application made under Order XVI Rule 1(2) read with Section 151 of the CPC on the plea that the plaintiff after the death of her husband on 29.05.2020 could not find out the said scribe, namely Sri Pranay Ranjan Dey though his testimony is very much required, otherwise the plaintiff will be highly prejudiced. The Title Suit No.9 of 2021 was preferred for declaration of Title and recovery of possession and means profit by the plaintiff-petitioner against the sole defendant/respondent herein. The cause of action

was raised upon the execution of the sale deed dated 30.08.2018 by the defendant in favour of the plaintiff and again after the plaintiff sent the legal notice to the defendant. The defendant was resisting the possession of the suit land even after payment of consideration and execution of the sale deed.

[3] Mrs. S. Deb (Gupta), learned counsel for the petitioner submits that conclusion of arguments does not prevent the Court to exercise its inherent powers under Section 151 of the CPC if the ends of justice so warrant in an appropriate case. In this regard, she placed reliance upon a decision of the Apex Court in case of **K.K. Velusamy Vs N. Palanisamy** reported in **(2011) 11 SCC 275**. It is further submitted that the suit has proceeded *ex parte* and no written statement was filed by the defendant, neither has she cross-examined the plaintiff-witnesses. The sale deed has already been exhibited by the plaintiff and has been admitted without any objection from the defendant. The pleadings of the plaintiff's case have not been denied and, as such, remained non-traversed. The learned Court upon hearing both the sides has observed that the evidence of the plaintiff was closed on 09.06.2022 and thereafter on 27.06.2022 it was fixed for argument. Thereafter, the petition under Section 151 of CPC, filed by the defendant, was dismissed on 27.02.2023. Again the suit was fixed for hearing argument and after hearing both sides at length on 09.10.2023 the suit was fixed for delivery of judgment. On that day, the judgment could not be delivered and, thereafter, on 18.10.2023 this petition was filed under Order XVI Rule 1(2) read with Section 151 of CPC after conclusion of final arguments. The learned Court was of the opinion that it is an attempt to fill up a lacunae in the case and it should not be permissible and thus the petition was rejected.

[4] Mrs. S. Deb (Gupta), learned counsel for the petitioner, submits that the plaintiff bears an apprehension that non examination of the scribe would lead to miscarriage of justice as the claim of delivery of possession would be denied to the plaintiff in the absence of the evidence of the scribe who transcribed the sale deed after it was read over to the plaintiff-petitioner and defendant-OP both by the sale deed writer, Sri Pranay Ranjan Dey. As such, the production of the plaintiff's witness, Sri Pranay Ranjan Dey, would only assist the learned Trial Court to come to a just decision as to the Title and issue of delivery of possession in favour of the plaintiff based on the registered sale deed dated 30.08.2018.

[5] Mrs. S. Deb (Gupta), learned counsel for the petitioner, has also placed reliance upon a recent decision of the learned Apex Court in the case of *Damodhar Narayan Sawale (D) Vs Tejrao Bajirao Mhaske* rendered in *Civil Appeal No.930 of 2023* dated **04.05.2023** and submitted that if the execution of the document is accepted, requirement of extrinsic evidence relating to the sale transaction covered by the sale deed under the Evidence Act, 1872 may not be required.

[6] I have considered the submission of the learned counsel for the petitioner and taken note of the relevant pleadings placed from the record. I have also gone through the impugned order and perused the judgments relied upon by the learned counsel for the petitioner. The Apex Court in the case of *K.K. Velusamy Vs N. Palanisamy* (supra) has held that in appropriate cases the Court can exercise its discretion to permit reopening of evidence and/or recalling of witnesses for further examination/ cross-examination after the evidence lead by the parties is concluded and arguments are commenced or even when arguments have concluded in exercise of its inherent powers

under Section 151 of the CPC and in view of the deletion of Order XVIII Rule 17-A. Earlier the Code had a specific provision in Order XVIII Rule 17-A for production of evidence not previously known or the evidence which could not be produced despite due diligence. It enabled the Court to permit a party to produce any evidence even at a late stage, after the conclusion of his evidence if he satisfied the court that even after the exercise of due diligence, the evidence was not within his knowledge and could not be produced by him when he was leading the evidence. That provision was deleted with effect from 01.7.2002. The deletion of the said provision does not mean that no evidence can be received at all, after a party closes his evidence. The amended structure of the Code found no need for such a provision, as the amended Code contemplated little or no time gap between completion of evidence and commencement and conclusion of arguments. Another reason for its deletion was the misuse thereof by the parties to prolong the proceedings under the pretext of discovery of new evidence. However, the Apex Court observed that the inherent powers of the Court can be invoked in such circumstances when it is meant to achieve the ends of justice (subject to the need to comply with the law) and such power does not end when arguments are heard and judgment is reserved. The convention that no application should be entertained once the trial or hearing is concluded and the case is reserved for judgment is a sound rule, but not a straitjacket formula which can have exceptions in exceptional or extra-ordinary circumstances, to meet the ends of justice and to prevent the abuse of process of Court, subject to the limitation recognized with reference to exercise of power under Section 151 of the Code. However, the Apex Court also added a word of caution by observing that Section 151 or Order XVIII Rule 17 of the

Code is not intended to be used routinely, merely for the asking otherwise it would defeat the very purpose of various amendments to the Code to expedite trials. But where the application is found to be *bona fide* and where the additional evidence, oral or documentary, will assist the court to clarify the evidence on the issues and will assist in rendering justice, and the Court is satisfied that non-production earlier was for valid and sufficient reasons, the Court may exercise its discretion to recall the witnesses or permit the fresh evidence. But if it does so, it should ensure that the process does not become a protracting tactic. The Court should firstly award appropriate costs to the other party to compensate for the delay. Secondly the court should take up and complete the case within a fixed time schedule so that the delay is avoided. Thirdly if the application is found to be mischievous, or frivolous, or to cover up negligence or lacunae, it should be rejected with heavy costs. If the application is allowed and the evidence is permitted and ultimately the Court finds that evidence was not genuine or relevant and did not warrant the reopening of the case recalling the witnesses, it can be made a ground for awarding exemplary costs apart from ordering prosecution if it involves fabrication of evidence. If the party had an opportunity to produce such evidence earlier but did not do so or if the evidence already led is clear and unambiguous, or if it comes to the conclusion that the object of the application is merely to protract the proceedings, the court should reject the application. The amended Code expects the Courts to constantly endeavour to follow such a time schedule regarding recording of evidence in a continuous manner followed by arguments, without any gap. If that is done, applications for adjournments, re-opening, recalling, or interim measures could be avoided.

[7] Considered the issue at hand in the light of the provisions of the Code under Section 151 and Order XVI Rule 1(2) and in the light of the salutary principles laid down by the Apex Court in the case of **K.K. Velusamy Vs N. Palanisamy** (Supra) relied upon by the petitioner in the context of the present facts of the case. It appears that the Title Suit No.9/2021 was filed after the death of the husband of the plaintiff on 29.05.2020. The registered sale deed in question was executed on 30.08.2018 said to be in the handwriting of the writer, Sri Pranay Ranjan Dey. The suit proceeded *ex parte* and no written statement was filed by the defendant. The defendant has not even cross-examined the plaintiff neither objected to the admission of the registered sale deed. This evidence was closed on 09.06.2022 and thereafter since 27.06.2022 the case was fixed for argument and after hearing arguments at length it was fixed for delivery of judgment on 09.10.2023 and further deferred to 18.10.2023 where after this petition for adducing evidence was filed. As such, on grounds of relevancy of the said witness and on the explanation for her inability to produce the said witness, the petitioner has failed to satisfy this Court as to the necessity of production of this witness as a scribe of the registered sale deed at the stage of pronouncement of judgment. The learned Trial Court has upon consideration of all the relevant facts found it to be an attempt on the part of the plaintiff to fill up the lacunae in her case. The view of the learned Trial Court cannot be said to be a jurisdictional error which this Court in exercise of powers under Article 227 of the Constitution of India is required to interfere.

[8] As such, for the reasons recorded herein above this Court does not find any scope for interference in the matter. Accordingly, the instant petition is dismissed. Pending application(s), if any, shall stand disposed of.

(APARESH KUMAR SINGH), CJ

