

GAHC010156532024



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

Case No. : CRP(IO)/319/2024

ROMIT JAIN
S/O- SRI MOTILAL JAIN, R/O- 1ST FLOOR, JALAN KATLA, NEW MARKET,
P.O., P.S. AND DIST. DIBRUGARH, ASSAM

VERSUS

BANI KANTA GOGOI
S/O- LATE JAMUNA GOGOI, R/O- K.C. GOGOI PATH, OPPOSITE NCC
OFFICE, P.O., P.S. AND DIST. DIBRUGARH, ASSAM, PIN- 786001.

Advocate for the Petitioner : MR G RAHUL, MR. D M NATH

Advocate for the Respondent : ,

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

02.09.2024

Heard Mr. G. Rahul, learned counsel for the petitioner.

2. In this petition, under Article 227 of the Constitution of India, the petitioner has challenged the correctness or otherwise of the order, dated 06.05.2024, passed by the

learned Civil Judge (Junior Division) No.2, Dibrugarh, in Title Suit No.22/2021. It is to be noted here that vide impugned order dated 06.05.2024, the learned Civil Judge (Junior Division) No.2, Dibrugarh, has dismissed the petition filed by the petitioner under Order 7 Rule 14, read with Section 151 of the Code of Civil Procedure.

3. The learned counsel for the petitioner submits that the petitioner as a plaintiff has instituted one Title Suit No. 22/2021 against the respondent/defendant. In the said suit, due to inadvertence the petitioner could not file the sale deed along with his plaint, as the said sale deed was enclosed with another Title Suit, being Title Suit No.73/2017 pending before the same court and the said deed is a vital document in the suit and at present the suit is pending at the stage of evidence and that the original copy of the said sale deed is filed and being exhibited in the Title Suit No.73/2017, and though the petitioner had filed another petition under Order 13 Rule 10 of the CPC, the learned Trial Court has arbitrarily dismissed the same. The learned counsel for the petitioner submits that the petitioner will be seriously prejudiced, if he is not allowed to file the said sale deed in the Title Suit No.22/2021 and therefore, it is contended to allow the petition.

4. Having heard the submission of learned counsel for the petitioner, I have carefully gone through the petition and the documents placed on record and also perused the impugned order dated 06.05.2024 and also the relevant provision of law.

5. It is to be noted here that Rule 14 of Order 7 of the Code of Civil Procedure read as under:-

"14. Production of document on which plaintiff sues or relies.—(1) Where a plaintiff sues upon a document or relies upon document in his possession or power in support of his claim, he shall enter such documents in a list, and shall produce it in Court when the plaint is presented by him and shall, at the same time deliver the document and a copy thereof, to be filed with the plaint.

(2) Where any such document is not in the possession or power of the plaintiff, he shall, wherever possible, state in whose possession or power it is.

(3) A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.

(4) Nothing in this rule shall apply to document produced for the cross-examination of the plaintiffs witnesses, or handed over to a witness merely to refresh his memory.”

6. Here in this case, it appears from the documents placed on record that the respondent has instituted another Title Suit, being Title Suit No.73/2017, which is pending before the learned Trial Court and in the said Title Suit, the sale deed in question was enclosed and therefore, the same could not be filed along with the plaint of the Title Suit No.22/2021. This fact has specifically been mentioned at paragraph 5 of the petition under Order 7 Rule 14 read with Section 151 of the CPC, dated 29.01.2024.

7. Thus, it appears that an explanation is forthcoming for not filing the sale deed along with the plaint. Having considered above and also considering the submission of learned counsel for the petitioner as well as the facts and circumstances on the record, this Court is of the view that there is merit in the petition.

8. It is to be noted here that fair trial is now recognized as a fundamental right guaranteed under Article 21 of the Constitution of India. Fair trial is a right of both the parties to the proceeding. Fair trial includes the grant of fair and proper opportunity to both the parties.

9. In the case in hand the petitioner is denied the opportunity to produce the sale deed which appears to be a vital document, vide the impugned order. Thus, having examined the impugned order, dated 06.05.2024, so passed by the learned Civil Judge (Junior Division) No.2, Dibrugarh, in Title Suit No.22/2021, on the touchstone of the aforesaid principle, this court is of the view that the same failed to withstand the legal scrutiny. The same appears to be illegal and arbitrary. Therefore, the same stands set aside and quashed. Consequently, the petition filed under Order 7 Rule 14 read with Section 151 of the CPC stands allowed. This civil revision petition is accordingly disposed

of at the motion stage itself.

10. The parties have to bear their own cost.

Sd/- Robin Phukan
JUDGE

Comparing Assistant