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

Case No. : CRP(IO)/304/2024

SUPARNA KAR
W/O- SRI SUNIL KAR, R/O- TANGLA TOWN, WARD NO. 3, MOUZA- DAKUA,
P.O. AND P.S. TANGLA, DIST. UDALGURI, BTC, ASSAM, PIN- 784521.

VERSUS

SUSANTA GHOSE
S/O- LATE SURESH CH. GHOSE, R/O- VILL.- PANERI HAT, P.O. AND P.S.
PANERI, MOUZA- HARISINGA, DIST. UDALGURI, BTR, ASSAM, PIN- 781123.

Advocate for the Petitioner : MR. S CHAUHAN, MR. P MAZUMDER, MR N ALAM, M.
BORUAH, R DEB

Advocate for the Respondent : ,

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 22.08.2024

Heard Mr. A.R. Shome, learned counsel for the petitioner.

2. In this petition, under Article 227 of the Constitution of India, the petitioner, namely, Suparna Kar has put to challenge the correctness or otherwise of the order dated 30.07.2024, passed by the learned Civil Judge (Junior Division), Udalguri, in Misc.(J) Case No. 31/2023, arising out of Title Suit

No. 09/2017.

3. It is to be noted here that vide impugned order dated 30.07.2024, the learned Civil Judge (Junior Division), Udalguri ('trial Court', for short) has dismissed the petition filed by the petitioner under Order 26 Rule 9, read with Section 151 of the Code of Civil Procedure ('CPC', for short), for appointment of commission for local investigation.

4. Mr. Shome, learned counsel for the petitioner submits that the petitioner is the defendant in Title Suit No. 09/2017, filed by the respondent/opposite party before the learned trial Court. The said title suit was instituted by the respondent/opposite party for ejectment of the present petitioner, her men, agents, servants etc. from the suit rooms as shown in the Schedule 'B' of the said title suit and also for recovery of arrear rents amounting to Rs. 17,500/-, since April, 2017. Mr. Shome also submits that the petitioner is in occupation of two rooms, one RCC and one asbestos roofed room, since the year 1987 and she has been regularly paying her rent to the respondent/opposite party. Thereafter, in the year 2015, the respondent/opposite party has sold a portion of the land for which the route/corridor leading to the asbestos roofed room, situated behind the RCC room, was almost closed and the petitioner has not been provided with any alternative route and that the said incident had happened in the year 2015 and as such, the room rent was reduced from Rs. 2600/- to Rs. 2500/- . The respondent has assured to provide an alternative route, but instead of providing route to the petitioner, the respondent/opposite party has already instituted the title suit for ejectment of the present petitioner, claiming that he had rented two RCC room and that the petitioner has not been paying rent of the said rooms. Mr. Shome further submits that that Title Suit No. 09/2017, is pending at the stage of argument and thereafter, the petitioner has

filed a petition under Order 26 Rule 9, read with Section 151 of the CPC for appointment of commission for local investigation, but, the same was rejected by the impugned order dated 30.07.2024, on the ground that the evidence of defendant witnesses have already been closed. Mr. Shome also submits that the impugned order suffers from illegality and at any point of time, the Court can appoint a commission under Order 26 Rule 9, read with Section 151 of the CPC, and therefore, it is contended to direct the learned trial court to issue commission for local investigation to ascertain the real facts and thereafter to submit a report to the court.

5. 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 30.07.2024.

6. It is to be noted here that while dealing with the issue of commission, Hon'ble Supreme Court in the case of **Haryana Waqf Board vs. Shanti Sarup and Ors.**, reported in (2008) 8 SCC 671, has observed as under:

"3. The dispute that was raised by the parties before the court was whether the respondent had encroached upon any land belonging to the appellant Board. Therefore, it cannot be in dispute that the dispute was in respect of the encroachment of the suit land.

4. Admittedly, in this case an application was filed under Order 26 Rule 9 of the Code of Civil Procedure which was rejected by the trial court but in view of the fact that it was a case of demarcation of the disputed land, it was appropriate for the court to direct the investigation by appointing a Local Commissioner under Order 26 Rule 9 CPC.

5. The appellate court found that the trial court did not take into consideration the pleadings of the

parties when there was no specific denial on the part of the respondents regarding the allegations of unauthorized possession in respect of the suit land by them as per paragraph 3 of the plaint. But the only controversy between the parties was regarding demarcation of the suit land because land of the respondents was adjacent to the suit land and the application for demarcation filed before the trial court was wrongly rejected.

6. It is also not in dispute that even before the appellate court, the appellant Board had filed an application for appointment of a Local Commissioner for demarcation of the suit land. In our view, this aspect of the matter was not at all gone into by the High Court while dismissing the second appeal summarily. The High Court ought to have considered whether in view of the nature of dispute and in the facts of the present case, whether the Local Commissioner should be appointed for the purpose of demarcation in respect of the suit land."

7. In the instant case, though the suit was for ejectment, yet there is dispute between the petitioner and the respondent in respect of the route in between the RCC room and the room with asbestos situated behind the RCC room and also in respect of the rent. Given the nature of dispute between the parties, this Court is of the view that appointment of a commission for local investigation would help the in adjudication of the dispute between the petitioner and the respondent in a more effective manner. Though, the learned trial Court has dismissed the petition on the ground that the case is pending at the stage of argument and the petition has been filed at a belated stage, yet there is no bar in appointing a commission at that stage also.

8. Having considered the ground for rejection of the petition on the

touchstone of the aforesaid principle, as elucidated in the case of **Haryana Waqf Board** (supra), this Court is of the view that the same has failed to withstand the legal scrutiny and accordingly, the impugned order dated 30.07.2024, is set aside and quashed.

9. It is provided that the learned trial Court shall appoint a commission, under Order 26 Rule 9, read with Section 151 of the CPC for local investigation to ascertain the followings:-

- (i) Whether rooms rented to defendants both are RCC rooms of the same building or one room is RCC and the other with asbestos roofing situated little away?
- (ii) Whether connecting corridor verandas of the rooms demolished by the new purchaser or not?
- (iii) Whether the new purchaser put wall on boundary of his land, leaving a temporary small gap for passage of the defendant's from his RCC room to asbestos roofing room and vice versa?

And thereafter, the learned trial court shall proceed to hear and dispose of the suit, in accordance with law.

10. In terms of above, this revision petition stands disposed of at the motion stage itself.

JUDGE

Comparing Assistant