

GAHC010164852023



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

Case No. : CRP/129/2023

PANNA NEEDHAM @ PANA NIDHAM
S/O- LATE ROBERT NEEDHAM, R/O- VILL. NO. 1 MURKONG SELEK, P.O.
AND P.S. JONAI, PIN- 787060, DIST. DHEMAJI, ASSAM

VERSUS

MARTHYA NEEDHAM AND 5 ORS.
D/O- LATE HENRY NEEDHAM, R/O- NO. 1 MURKONG SELEK, P.O. AND P.S.
JONAI, DIST. DHEMAJI, ASSAM, PIN- 787060.

2:KUNJALATA NEEDHAM
W/O- LATE HENRY NEEDHAM
R/O- NO. 1 MURKONG SELEK
P.O. AND P.S. JONAI
DIST. DHEMAJI
ASSAM
PIN- 787060.

3:ALBERT NEEDHAM
S/O- LATE HENRY NEEDHAM
R/O- NO. 1 MURKONG SELEK
P.O. AND P.S. JONAI
DIST. DHEMAJI
ASSAM
PIN- 787060.

4:ASSAW NEEDHAM
S/O- LATE HENRY NEEDHAM
R/O- NO. 1 MURKONG SELEK
P.O. AND P.S. JONAI
DIST. DHEMAJI
ASSAM
PIN- 787060.

5:ABRAHAM NEEDHAM
S/O- LATE HENRY NEEDHAM
R/O- NO. 1 MURKONG SELEK
P.O. AND P.S. JONAI
DIST. DHEMAJI
ASSAM
PIN- 787060.

6:ALIYA NEEDHAM
S/O- LATE HENRY NEEDHAM
R/O- NO. 1 MURKONG SELEK
P.O. AND P.S. JONAI
DIST. DHEMAJI
ASSAM
PIN- 787060

Advocate for the Petitioner : MR. B K GOGOI, C. DEKA,MR. A D CHOUDHURY

Advocate for the Respondent : MR P DOLEY (R1-6), MR. A DHAR,MR. R KALITA,MR. K KALITA (R1-6)

**BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER**

13.09.2024

Heard Mr. B.K. Gogoi, learned counsel for the petitioner. And also heard Mr. A. Dhar learned counsel for the respondents.

2. In this petition, under Article 227 of the Constitution of India, the petitioner, namely, Sri Panna Needham @ Sri Pana Nidham, has challenged the correctness or otherwise of the order, dated 16.06.2023, passed by the learned Munsiff, Jonai, Dhemaji in Title Suit No.03/2022.

3. It is to be noted here that vide impugned order, dated 16.06.2023, passed by the learned Munsiff, Jonai, Dhemaji in Title Suit No. 03/2022, has dismissed the petition filed by the petitioner, being petition No. 17/2023, under Order 9 Rule 7 of the C.P.C. to set aside the ex-parte order dated 11.11.2022.

4. Mr. Gogoi, learned counsel for the petitioner submits that the respondents herein have instituted a Title Suit, No. 03/2022, before the learned Munsiff, Jonai, Dhemaji, seeking for a declaration of their right, title and interest over the Schedule – A, B, C & D plots of land as described in the plaint. Mr. Gogoi further submits that in the plaint it has been claimed that the projected father of the petitioner died unmarried and the petitioner is not the son of Robert Needham and the respondents, being the son, daughter, wife of the brother of late Robert Needham, are entitled to inherit the properties left by him. Mr. Gogoi further submits that the respondents herein as the plaintiff, in the title suit had arrayed the petitioner as defendant, but with a *mal-afide* intention they have shown his name as Panna Ghashi @ Panna Needham, instead of Panna Needham and they have also mentioned the father's name of the petitioner as late Narayan Ghashi, instead of late Robert Needham. Mr. Gogoi further submits that because of such anomalies in the surname of the petitioner and in his father's name, when the process server came to serve summon of the said Title Suit to the petitioner, he refused to accept the same and accordingly, the process server submitted his report before the learned trial court, on the basis of which, the learned trial court vide order dated 11.11.2022, decided to proceed the suit ex-parte against the present petitioner. Mr. Gogoi further submits that the petitioner, when enquired about the case, came to know that the case is directly related to him and he found that the respondents have been trying to disentitle him from his legitimate entitlement of inheriting the immovable property of his father he had preferred a petition under Order 9 Rule 7 of the C.P.C. before the learned trial court to set aside the ex-parte order, dated 11.11.2022, and allow the petitioner to contest the suit, but the learned trial court vide impugned order dated 16.06.2023, was pleased to dismiss the petition and allowed the petitioner to only cross-examine the witnesses of the plaintiffs and the prayer of the petitioner to file written statement was rejected. And as such the

petitioner is aggrieved by the said order, which according to him is illegal and arbitrary. Mr. Gogoi further submits that with *mala-fide* intention the respondents have claimed the property belonging to the father of the petitioner; else he will be seriously prejudiced. Therefore, Mr. Gogoi has contended to allow this petition.

5. Whereas, Mr. Dhar, learned counsel for the respondents vehemently opposed the petition and submits that the impugned order dated 16.06.2023, passed by the learned trial court suffers from no illegality or infirmity, requiring any interference of this court. Referring to the statement of the witnesses examined by the learned trial court, being C.W.1 and C.W.2, Mr. Dhar submits that the petitioner deliberately refused to accept the summon and later on, he falsely stated that he came to know that the suit filed before the learned trial court is directly related to him and therefore, he approached the learned trial court by filing the petition under Order 9 Rule 7 of the C.P.C., which the learned trial court has rightly rejected the same. Referring to the evidence of C.W.4, C.W.5, C.W.6, C.W.7 & C.W.8, Mr. Dhar submits that Robert Needham died unmarried and that the petitioner is not the son of Robert Needham. Mr. Dhar also submits that the petitioner had obtained two birth certificates and manipulated the record, showing that he is the son of Late Robert Needham and for which, one criminal case is also registered against him.

5.1. Mr. Dhar, learned counsel for the respondent, also submits that the petitioner has not approached this court with clean hand and on such count also his petition is liable to be dismissed. In support of his submission, Mr. Dhar has referred a decision of a coordinate bench of this High Court, in the case of **Dipak Sharma vs. Ashok Kumar Sancheti**, reported in **2018 (4) GLT 1150**. Under such circumstances, Mr. Dhar submits that this petition is not maintainable and therefore, contended to dismiss the same.

6. Having heard the submissions of learned counsel for both the parties, I have carefully gone through the petition as well as the documents placed on record and also perused the objection filed by the respondents and also gone through the case law referred by Mr. Dhar and also perused the impugned order dated 16.06.2023.

7. It appears from the order dated 16.06.2023, that in the petition No. 17/2023, filed by the petitioner under Order 9 Rule 7 of the C.P.C. he stated that he had not received any notice from the court nor any process server came to his house and no notice was served upon him by registered post or otherwise and that his absence is not intentional or willful and that his name is wrongly reflected as Panna Ghashi. But, he did not state as to where from he came to know about the ex-parte order dated 11.11.2022, and he also did not state as to why he chose to appear as defendant, if he is not Panna Ghashi. Further, it appears that the learned trial court had examined the Process Server and Gaonburha as C.W.1 and C.W.2. The statement of C.W.1 indicates that when he had gone to the house of the petitioner to serve summons, but, he had refused to accept the same on the ground of discrepancy in his name and his father's name. And C.W.2, the Gaonburha also stated that the petitioner had refused to accept the notice. The learned trial court also examined the petitioner as C.W.3, and his statement indicates that he is Panna Needham and the Title Suit No. 03/2022 was filed against Panna Ghashi, and as such he refused to accept notice as he is Panna Needham not Panna Ghashi. But, as per advice of his Advocate he entered appearance in the present case. Thereafter, the learned trial court on the basis of the evidence of C.W.1 and C.W.2, had found that the petitioner has not been telling the truth and in fact both the names, Panna Ghashi and Panna Needham were reflected in the summon. The learned trial court had also examined five more witnesses, C.W.4, C.W.5, C.W.6, C.W.7 and C.W.8, who had also categorically

stated that the petitioner is not Panna Needham, but, Panna Ghashi and he is not from their family and his father's name is not Robert Needham and thus having found the conduct and version of the petitioner not worthy of credence, the learned trial court has dismissed the petition filed under Order 9 Rule 7 of the C.P.C. However, the learned trial court had allowed him to cross-examine the witnesses of the plaintiffs for the purpose of fair trial.

8. Thus, having examined the impugned order, in the light of the materials available on the record, especially in the light of the statements of C.W.1 and C.W.2, this court is of the considered opinion that the same suffers from no illegality or infirmity. In fact, both the names are reflected in the summons, so issued to the petitioner and despite that, he refused to accept the same.

9. Further, it appears that the petitioner has not approached the court with clean hands. Sometimes, he claims that he is not the defendant of the case and sometimes he claims that he is defendant of the case and filed petition under Order 9 Rule 7 of the C.P.C. Mr. Dhar, the learned counsel for the petitioner had rightly pointed this out and the decision of a coordinate bench of this court in **Dipak Sharma (Supra)**, referred by him also strengthened his submission.

10. In the case of **MCD vs. State of Delhi**, reported in **(2005) 4 SCC 605**, also Hon'ble Supreme Court has held that a person, who does not approach the court with clean hands and/or if his case is based on falsehood, the case of such person should be summarily thrown out at any stage of litigation.

11. Thus, we find the ground, so assigned by the petitioner, for not accepting the summons, is not satisfactory. Besides, it also appears that he has not approached the court with clean hands. And further, in view of the statements of the C.W.4, C.W.5, C.W.6, C.W.7 and C.W.8, who have categorically stated that Robert Needham died unmarried and the present petitioner is not the son of the

Robert Needham.

12. In the given factual, as well as legal position, this court is left unimpressed with the submission of Mr. Gogoi, the learned counsel for the petitioner that the impugned order, dated 16.06.2023, so passed by the learned trial court, suffers from any illegality or infirmity requiring any interference of this court.

13. Accordingly, this petition stands **dismissed**.

JUDGE

Comparing Assistant