

GAHC010166222023



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

Case No. : CRP(IO)/246/2023

LOKHESWAR BARUAH
S/O SRI RANJIT KUMAR BARUA, R/O RUKMINIGAON, GUWAHATI-781022,
DIST- KAMRUP (M), ASSAM

VERSUS

RAJESH KUMAR JALAN
S/O LATE LAKSHMI NARAYAN JALAN, R/O HOUSE NO. 17, CHITRALEKA
LANE, USHA NAGAR, DISPUR, GUWAHATI-781006, DIST-KAMRUP (M),
ASSAM.

For the Petitioner(s) : Mr. S. Ali, Advocate

For the Respondent(s) : Mr. A. Barkataki, Advocate

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

ORDER

Date : 15.05.2024

This is an application under Article 227 of the Constitution challenging the order dated 14.06.2023 passed by the Court of the learned Civil Judge No.2, Kamrup (M) at Guwahati in connection Petition No.2967/2022 filed by the

Petitioner herein who was the defendant in the suit under Section 151 of the Code of Civil Procedure, 1908 (for short "the Code").

2. This Court has duly perused the application so filed under Section 151 of the Code wherein it has been mentioned that on 14.07.2022 when the Plaintiff Witness No.1 was put to cross-examination, certain questions were put in respect to Dispur P.S. Case No.1633/2014 under Sections 467/420/423 of the Indian Penal Code and Case No.54/2015 registered by CID under Sections 120B/468/471/409 of the Indian Penal Code and his arrest on 05.12.2016 and in the year 2018 and regarding raids in his office on 29.03.2019 which the Plaintiff Witnesses No.1 refused to answer. It is under such circumstances, the said application was filed seeking a direction from the Court to direct the PW-1 to answer to those questions as stated in Paragraph No.1 of the said application.

3. The learned Trial Court vide the order dated 14.06.2023 rejected the said application stating that the said aspect which have been mentioned in paragraph No.1 of the said application filed under Section 151 was not found relevant to the subject matter of the present suit and as such the same is not a matter in issue in the instant suit. Being aggrieved, the defendant who is the Petitioner herein has approached this Court by filing the instant petition.

4. I have heard Mr. S. Ali, the learned counsel appearing on behalf of the Petitioner who has drawn the attention of this Court to Section 132, Section 146 and Section 147 of the Indian Evidence Act, 1872 and submitted that taking into account that in the instant case, the proviso to Section 132 would not be applicable, the PW-1 ought to have been directed by the learned Trial Court to answer to the said questions which were put to him.

5. This Court has duly taken note of the suit which was filed in the year 2014

seeking specific performance of agreement for sale of land dated 28.08.2009 and the Addendum to the agreement for sale of the land dated 30.04.2010. In addition to that, the plaintiff sought for realization of compensation. The defendants on the other hand filed a counter claim on 18.02.2015 seeking realization of a sum of Rs.40,00,000/- along with interest @20% per annum against the plaintiff as well as for a decree declaring that the rescission of the agreement/contract dated 28.08.2009 as well as the Addendum dated 30.04.2010. It is also seen that the cause of action as stated in the said counter claim is in Paragraph No.IX are dated 28.08.2009, 30.04.2010 and 12.10.2011.

6. This Court further finds it very relevant to take note of Section 8 of the Indian Evidence Act, 1872 which stipulates as to when a motive, preparation and previous or subsequent conduct becomes relevant. A perusal of the said section transpires that any fact is relevant which shows or constitutes a motive/preparation for any fact in issue or relevant fact. In addition to that, it has been stipulated that the conduct of any party or of any agent to any party to any suit or proceedings, in reference to such suit or proceedings, or in reference to any fact in issue therein or relevant thereto and the conduct of any person, an offence against whom is the subject of any proceedings is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact and whether it was previous or subsequent thereto.

7. In the instant case, there is nothing to show that the cases more particularly the Dispur P.S. Case No.1633/2014 registered under Section 467/420/423 of the Indian Penal Code and Case No.54/2015 registered by the CID under Section 120B/468/471/409 of the Indian Penal Code and the arrest of the PW-1 on 05.12.2016 and in the year 2018 and the raids which were conducted in its office on 29.03.2019 have any relevance to the fact in issue as

well as the relevant facts in the suit and in the counter claim.

8. Considering the above, this Court finds no ground for interfering with the order dated 14.06.2023 for which the instant petition stands dismissed.

9. The interim order passed on 04.08.2023 stands vacated and as the parties are duly represented, they are directed to appear before the learned Trial Court 03.06.2024 for further proceedings of the suit.

JUDGE

Comparing Assistant