

GAHC010176372024



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

Case No. : I.A.(Civil)/2573/2024

DEBASISH ROY
S/O LATE SRISH CHANDRA ROY,
R/O BILPAR, DIST.- CACHAR, ASSAM, PIN- 788005.

VERSUS

RUPAK PAUL AND 2 ORS
S/O- LATE RAKESH CHANDRA PAUL, R/O- PARK ROAD,
P.O AND P.S- SILCHAR, DIST- CACHAR, ASSAM

2:M/S SARADAMANI STORE
A PARTNERSHIP FIRM HAVING ITS PRINCIPAL PLACE OF BUSINESS AT
CENTRAL ROAD
P.O. AND P.S.- SILCHAR
DULY REP. BY ITS PARTNERS NAMELY- SISIR KUMAR ROY.

3:ASHISH KUMAR ROY
S/O LATE SRISH CHANDRA ROY
R/O BILPAR
DIST.- CACHAR
ASSAM
PIN- 788005

Advocate for the Petitioner : MR G N SAHEWALLA, MS K SARMA,MR H K SARMA,MS. S. TODI

Advocate for the Respondent : ,

**BEFORE
HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI**

ORDER

Date : 30.08.2024

Heard Ms. S. Todi, learned counsel for the applicant. Also heard Mr. D. Chakraborty, learned counsel for the opposite party no. 1 and Mr. A. Bhattacharya, learned counsel for the opposite party nos. 2 and 3.

2. This is an application under Section 151 CPC seeking direction for sending back the case records of Title Suit No. 133/2010 and Title Appeal No. 07/2022 which is tagged along with the accompanying Regular Second Appeal, i.e. RSA No. 128/2024 on the ground that certain documents available in the said case records which is required to be filed as evidence in affidavit in another Title Suit being Title Suit No. 66/2022.

3. Ms. S. Todi, learned counsel for the applicant submits that the case records are necessary for preparing the evidence in affidavit in Title Suit No. 66/2022 in which eviction is sought against the opposite party no. 1.

4. Mr. D. Chakraborty, learned counsel for the opposite party no. 1 has strongly opposed the said prayer and submits that the prayer sought cannot be granted in law. He further draws the attention of this Court to Section 65 of the Indian Evidence Act, 1872, which provides taking of secondary evidence relating to documents in certain cases.

5. I have given my prudent consideration to the arguments made by both the parties and perused the averments made in the said

application.

6. It appears that the opposite party /plaintiff, had instituted a Title Suit which was registered as T.S. No. 133/2010 before the Learned Munsiff No.1, Cachar Silchar, wherein it was alleged that the applicant had engaged in illegal action in order to oust the opposite party from the suit premises.

7. It further appears that the applicant had entered a tenancy agreement with the partnership firm, changed the ownership structure of the firm that originally owned the suit premises.

8. Resultantly the opposite party filed a suit seeking a declaration affirming the tenancy rights of the opposite party upon the suit premise.

9. It further appears that the applicant herein as defendant filed written statement.

10. It further appears that during the pendency of the said proceeding before the Learned Munsiff No.1, Cachar Silchar, the applicant was permitted to file an additional written statement along with a counter-claim in Title Suit bearing No. T.S. No. 133/2010.

11. It further appears that the opposite party being aggrieved by the same, assailed the said order by preferring a Civil Revision Petition, registered as CRP(I/O) 57/2013, before the Hon'ble Gauhati High Court, and vide its order dated 11.04.2014, the Hon'ble Gauhati High Court was pleased to set aside the said order.

12. It further appears that the Learned Munsiff Court No. 1,

Cachar, Silchar, Vide its judgment and order dated 18.12.2021, was pleased to dismiss the said suit.

13. It further appears that that the opposite party being dissatisfied by the judgment and order dated 18.12.2021 passed by the Learned Munsiff No. 1, Cachar, Silchar in Title Suit No. 133/2010, filed an appeal registered as T.A. No. 7/2022 before the Learned Civil Judge (Senior Division) No. 1, Cachar, Silchar wherein the Learned Civil Judge (Senior Division), by judgment and order dated 12.03.2024, dismissed the appeal and upheld the judgment and order dated 18.11.2021 passed by the Learned Munsiff No. 1, Cachar, Silchar.

14. It further appears that the opposite party being highly aggrieved by the judgment and order dated 12.03.2024 passed by the Learned Civil Judge (Senior Division) No. 1, Cachar, Silchar in T.A. No. 7/2022, filed a Civil Revision Petition, registered as CRP 51/2024, before the Hon'ble Gauhati High Court.

15. However, this Court, vide its judgment and order dated 24.06.2023, granted liberty to the opposite party to prefer a Regular Second Appeal against the judgment and order dated 12.03.2024 passed by the Learned Civil Judge (Senior Division) No. 1, Cachar, Silchar in T.A. No. 7/2022 and further directed the registry to retain the case records received from the Lower Court for one month.

16. It further appears that the opposite party, having been granted liberty to prefer a Regular Second Appeal against the judgment and order dated 12.03.2024 passed by the Learned Civil Judge (Senior Division) No. 1, Cachar, Silchar in T.A. No. 7/2022, instituted the

connected Regular Second Appeal (RSA) before the Hon'ble Gauhati High Court, registered as R.S.A No. 128/2024.

17. Pertinent that upon hearing both the parties, this Hon'ble Court, vide order dated 22.07.2024, observed the following, which is quoted below for ease of reference:

"List this matter after 4(four) weeks. Registry is directed to tag the LCR with this record in view of the above order passed in CRP No.51/2024"

18. It further appears that meanwhile upon dismissal of Title Suit No. 133/2010 by the Learned Munsiff Court No.1, Cachar, Silchar, the applicant instituted a Title Suit, registered as T.S. No. 66/2022 before the Learned Munsiff No.1, Cachar, Silchar seeking eviction of the opposite party on the ground that the opposite party is a defaulter and that the applicant requires the suit premises for its personal use.

19. Pertinent that this suit is currently pending adjudication before the Learned Munsiff No.1, Cachar, Silchar.

20. It further appears that the Title Suit bearing No. 66/2022, which is currently pending before the Learned Munsiff No. 1, Cachar, Silchar, pertains to the eviction of the opposite party and that the suit is presently at the stage of evidence, with the next date fixed for the filing of evidence by the plaintiff being 31.08.2024.

21. In this connection it is submitted by the learned counsel for

the applicant that in order to enable the applicant to file its evidence by way of affidavit, it is crucial that the documents relied upon by the applicant be submitted in original form before the Learned Court below.

22. It is pertinent to mention that the opposite party herein as plaintiff had filed Title Suit No. 133/2010 before the Learned Munsiff No. 1, Cachar, Silchar, in which the applicant was arrayed as a defendant. It is stated that in the said proceeding, the applicant filed its evidence by way of affidavit and relied upon certain original documents which also forms part of proceeding in Title Suit No. 66/2022, which is pending before the Learned Munsiff No. 1, Cachar, Silchar.

23. As such, the ground on which the prayer for sending the case records to the Trial Court in respect of Title Suit No. 66/2022 is that in order to file the evidence by way of affidavit on the next date of listing of the said suit, the original documents which are currently tagged along with the accompanying Regular Second Appeal before this Court and forms part of the case records is required.

24. However, it appears that no details of any documents have been provided in the Interlocutory Application.

25. Be that as it may, the Code provides procedure for giving secondary evidence relating to documents.

26. Hence there is no merit in the prayer sought in the Interlocutory Application and accordingly the Interlocutory Application stands rejected.

Disposed of.

JUDGE

Comparing Assistant