

GAHC010176942022



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

Case No. : CRP(IO)/211/2022

DR. IMDADUL HAQUE @ IMRADUL
S/O- LATE DIDAR ALI @ DIDAR GANI, R/O- VILL- MANGALDAI TOWN,
WARD NO.3, P.S. MANGALDAI, DIST.- DARRANG, ASSAM, (PIN CODE-
784125)

VERSUS

MD ABDUL MALIK AND 3 ORS
S/O LATE ABDUL WAHID, R/O MANGALDAI TOWN, WARD NO. 8
(ISLAMPUR), MOUZA-CHAPAI, P.S.-MANGALDAI, DIST-DARRANG, ASSAM
(PIN-784125)

2:MD ASHRAFUL HAQUE @ DILUAR HAQUE
S/O LATE DIDAR ALI @ DIDAR GANI
R/O MANGALDOI TOWN
WARD NO. 2
MOUZA CHAPAI
P.S.-MANGALDAI
DIST-DARRANG
ASSAM (PIN-784125)

3:ON THE DEATH OF ASHADUL HAQUE
HIS LEGAL HEIRS

3.1:MRS. SAZIDA SULTANA
(NOW W/O ABDUL KALAM AZAD)
R/O MANGALDAI TOWN
WARD NO. 2
MOUZA-CHAPAI
P.S.-MANGALDAI
DIST-DARRANG
ASSAM

(PIN-784125)

3.2:ABUZAR SALMAN KHURSID
R/O MANGALDAI TOWN
WARD NO. 2
MOUZA-CHAPAI
P.S.-MANGALDAI
DIST-DARRANG
ASSAM
(PIN-784125) (MINOR AT THE TIME OF FILING OF SUIT
NOW MAJOR)

3.3:TANVIR ALAM KHURSHID
R/O MANGALDAI TOWN
WARD NO. 2
MOUZA-CHAPAI
P.S.-MANGALDAI
DIST-DARRANG
ASSAM
(PIN-784125) (MINOR AT THE TIME OF FILING OF SUIT
NOW MAJOR)

3.4:AFREEN NAREEN HAQUE
R/O MANGALDAI TOWN
WARD NO. 2
MOUZA-CHAPAI
P.S.-MANGALDAI
DIST-DARRANG
ASSAM
(PIN-784125) (MINOR AT THE TIME OF FILING OF SUIT
NOW MAJOR)

4:ON THE DEATH OF INAMUL HAQUE
HIS LEGAL HEIRS

4.1:SALEHA BEGUM
NOW W/O - ILIAS ALI

P/R AT VILL - MOLLAPARA

P.S - MANGALDAI
DIST - DARANG

ASSAM
PIN - 784529

4.2:SAMIM YASMIN ARA HAQUE
W/O - BULBUL HUSSAIN

R/O - BECHIMARI
MANGALDAI

MOUZA - CHAPAI
P.S - MANGALDAI

DIST - DARRANG
ASSAM
PIN - 78452

Advocate for the Petitioner : MR. A SATTAR

Advocate for the Respondent : MS. R CHOUDHURY (R-1)

BEFORE

HON'BLE MR. JUSTICE KALYAN RAI SURANA

For the petitioner	: Mr. A. Sattar, Advocate
For State respondent No.1	: Mrs. R. Choudhury, Advocate.
Date of hearing	: 05.01.2024.
Date of judgment	: 05.01.2024.

JUDGMENT AND ORDER

(ORAL)

Heard Mr. A. Sattar, learned counsel for the petitioner. Also heard Mrs. R. Choudhury, learned counsel for the respondent no.1. None appears on call for the other respondents.

2. By filing this application under Article 227 of the Constitution of India, the petitioner has assailed the order dated 29.06.2022 passed by the learned Munsiff No.1, Darrang, Mangaldai [now renamed as Civil Judge (Junior Division) No.1, Darrang, Mangaldai) in T.S. No. 32/2013. By the said order, application of the petitioner, who is the plaintiff under Order VII Rule 14(3) read with Section 151 CPC and Section 57 of the Evidence Act which was registered as petition

no. 2553/2020 dated 18.12.2020 was rejected.

3. In brief, the case of the petitioner-plaintiff is that he had filed a suit being T.S. 22/2012, renumbered as T.S. No. 32/2013 seeking preemptory right under the principles of Mohammedan law in particular plot of land described in the schedule of the plaint. The petitioner claims that he is the "*Shafei-a-Sharik*" in respect of the suit property and accordingly, the suit was filed, *inter alia* for pre-emption, recovery of possession, declaratory decree and further consequential orders. The respondents-defendants had contested the suit by filing written statement.

4. In course of time, issues were framed and the trial had began and the petitioner side had examined 4 (four) PWs. The PW-4, Smti Madhabi Kalita, who was the Senior Sub-Registrar, Mangaldai had stated in her examination-in-chief that "As the sale deed no. 2283 was called for by this Court, hence, contents of the same are not endorsed in the volume book, which is called for by the summons issued to me."

5. Thereafter, the petitioner had submitted an RTI query to the SPIO office of the Deputy Commissioner, Darrang, Mangaldai dated 10.01.2020 and in response to the same, along with the RTI reply, the petitioner claims to have been provided with the Search Report bearing no. DRD/07/2019/68 dated 04.03.2020. The contents of the said report is quoted below:

"SEARCH - REPORT

The Statutory records of this office duly searched in presence of Dr Imdadul Haque and found as follows:

- 1. The manual copy of Regd. Deeds in Volume/Books was stopped since 31-12-2003.*
- 2. The Registered Deeds have been kept in computer storage by since 03-01-2012.*

3. The Registered Deeds (Backlog) have been computerized since 01-01-2004 to 31-12-2011 and works are under process which is yet to be completed.

Search Application No. 124/2020

Search by: Dr. Imdadul Hoque (Applicant)''

6. The learned counsel for the petitioner has submitted that in view of above, having seen that the original sale deed no. 2283 had not been entered in the volume book, which would mean that within the meaning of the Registration Act, 1908, the registration of the particular document is not complete. Hence, it is submitted that the petitioner had filed an application under Order VII Rule 14 (3) read with Section 151 CPC and Section 57 of the Evidence Act seeking leave of the Court to file certain documents received through RTI. The learned Trial Court, by the impugned order dated 29.06.2022, had rejected the said application.

7. Submitting in favour of the impugned order, the learned counsel for the respondent no.1 has submitted that there is no infirmity in the impugned order and therefore, as there is no jurisdictional error, the same ought not to be interfered with. It is submitted that the Court had given reasons on each of the provisions under which the application was made by addressing the provisions of Order VII Rule 14(3) CPC read with Section 151 CPC as well as Section 57 of the Evidence Act.

8. It is also submitted that 5 (five) PWs were examined over a long period of time from 03.11.2018 to 13.02.2020, when the suit was fixed for further examination of DW-1 and at that belated stage, the said application was filed on 18.12.2020. Accordingly, she opposes the prayer.

9. It appears to the Court that in the present case in hand, a unique fact situation has emerged. It is not in dispute that a sale deed in respect of the suit

land was executed and registered as sale deed no. 2283 dated 20.11.2006. A sale deed is a document which is envisaged under the provisions of Section 54 of the Transfer of Property Act. Under Section 52 of the Registration Act, when a document is presented for registration, a duty is cast on the registering officer, amongst others, to have it copied, without any unnecessary delay, in the book appropriated therefor according to the order of its admission. As per the provision of Section 60 of the Registration Act, after compliance of the provisions of Section 34, 35, 58 and 59, an endorsement is required to be made containing the word "registered" together with the number and page of the book in which the document has been copied. As per the provisions of Section 61(2) of the Registration Act, registration of a document shall be deemed to be completed only on compliance with other requirements as well as the making of endorsement and certificate referred to and mentioned in Sub-Section (1) of Section 61 and thereafter, the original document is required to be returned by whom it was presented.

10. Therefore, from the provisions referred above, it appears that the registration of document is completed only after it is entered in the volume books. In the present case in hand, the sale deed no. 2283 dated 20.11.2006, has admittedly not been entered in the volume books. As per the RTI reply, manual copy of registered deeds in volume books was stopped since 31.12.2003 and the backlog of computerization of those records from 01.01.2004 to 31.12.2011 are under process which is not yet completed. Therefore, this would include the registered deed which is in issue in the present case by which the suit land is transferred to the respondents-defendants and over which the petitioner claims preemptory rights.

11. The other situation, which is observed is that there is no dispute at that

Bar that a sale deed is registered. However, the registration process is not yet completed for about 19 (nineteen) years now. Thus, one of the question is as to whether such delay in entering a sale deed in a volume book would negate the claim of a right of preemption. In this regard, if we consider the provisions of illustration (e) of Section 114 of the Evidence Act, there is a presumption that all official works are duly done. Therefore, here is a case where a sale deed has been executed, the original sale deed has been brought from the custody of the Sub-Registrar's office to the Court in connection with the summons issued to PW-4 and yet the learned Trial Court is of the opinion in the impugned order that "the sale was not valid as per law". Therefore, it appears to the Court that even before the trial, judgment as to legality of the sale deed is already on board. The Court is rather surprised that the respondents have not come forward to challenge the order.

12. Be that as it may, under such circumstances, when the petitioner-plaintiff has come to know about the non-copying of the sale deed in the volume book only when the PW-4 was examined, the query of the Court would be whether this is a fact which the plaintiff could have known before filing of the suit. To the said query of the Court, the only answer would be that a person who is interested in a property would have "notice" of execution of a sale deed, but whether it has been reduced or entered in the volume book would not be within his knowledge. Therefore, as nothing has been brought to the notice of the Court that only on and from the date when the registration is complete, right to sue would accrue, the Court is of the considered opinion that a subsequent knowledge of events which were not available with the petitioner would entitle him to present an application to call for a document which was not available when the suit was filed. This is merely an observation and not a

conclusive finding of the Court because in connection with this application under Article 227 of the Constitution of India, the Court is not exercising an appellate jurisdiction and therefore, the Court is not commenting on the legality of the document or the validity of the sale. The limited concern is only to examine whether the non-entering of the sale deed in the volume book was something of which diligence was required in respect of the plaintiff before filing of the suit. To that limited question, the answer of the Court would be that it was not required of a plaintiff to have due diligence or enquiry made as to whether the Sub-Registrar's office has entered the sale deed in the volume book or not.

13. Under such circumstances, the Court finds that no reasons were assigned by the learned Trial Court in rejecting the application in question i.e. petition no. 2553/2020 dated 18.12.2020.

14. Therefore, the Court is unable to concur with the legality of that part of the impugned order wherein the learned Trial Court had rejected the application made by the petitioner because of the fact that the application was made not under Order VII Rule 14(1) CPC, but it was under Order VII Rule 14(3) CPC, which permits the Court to grant leave to receive document and evidence which are not presented when the suit was filed.

15. Under the unique facts of this case, even if it is assumed that the petitioner-plaintiff ought to have filed the said document at the time of presentation of plaint, the Court is satisfied with the explanation tendered that the non-entering of the sale deed in the volume book came to the notice of the petitioner only when PW-4 was examined, from the said date, the document regarding non-entering of the sale deed in the volume book would be a subsequent event and therefore, even if the provision of VII Rule 14(3) CPC is not applied, the Court would have residuary power under Section 151 CPC to

take into consideration the subsequent event.

16. The Court would like to mention herein that no particular provision of law has been pointed out where a document which has come to the notice subsequently can be brought into record by using a particular provision in the Civil Procedure Code. Therefore, having noticed that a sale deed has been registered, but has not been entered into the volume books, the petitioner would have a right to introduce such facts before the learned Trial Court, which cannot prejudice the respondents in any manner.

17. It is observed from the impugned order that the learned Trial Court had ventured into the arena of questioning the intention of the petitioner by observing as follows: "in view of the above legal position relating to non-copying of the sale deed in the respective volume book maintained by the Sub-Registrar's office and its consequent legal status of non-completion of valid sale, any reason shown by the plaintiff or any sort of evidence to that effect would be of no consequence at all". Therefore, it appears that the learned Trial Court had tried to evaluate the evidentiary value of the evidence which would come on record in future as if it was pre-judging the standard of evidence to be led by the petitioner. The Court does not find that this is otherwise permissible in law to pre-judge why an evidence is sought to be led and then take a call whether to allow it or not. In this case the original sale deed was called for, and also the volume book was produced, but the entry of the sale deed was not made in the volume book and therefore, if we accept the stand of the petitioner, the Court finds that there is some relevancy of bringing in notice of the Court the subsequent event as to why the sale deed was not entered in the volume book.

18. In view of above, the Court is inclined to observe that on both the counts referred above, being a post-suit document sought to be introduced as

evidence and pre-judging of an evidence by the learned Trial Court is found to be vitiated by jurisdictional error. Therefore, the impugned order 29.06.2022 passed by the learned Civil Judge (Junior Division) No.1, Darrang, Mangaldai in T.S. No. 32/2013 is liable to be set-aside and quashed and accordingly, the same is set-aside and quashed.

19. Consequently, the petition no. 2553/2020 dated 18.12.2020 filed by the petitioner is restored to file of the learned Trial Court. The said learned Court shall hear the parties afresh and pass appropriate orders thereon without being influenced by the observations made in this order.

20. The interim order passed earlier stands vacated.

21. Both parties are represented before this Court through their learned counsel. Therefore, both the appearing parties shall appear before the learned Trial Court on 02.02.2024 and by producing a certified copy of this order before the said learned Court, shall await further instructions from the said learned Court.

22. This petition stands disposed of.

JUDGE

Comparing Assistant