

GAHC010178542023



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

Case No. : CRP(IO)/263/2023

ASAF ALI
S/O- DASU SHEIKH,
VILL- CHANDMARI,
P.O.- BALBALA,
P.S.- AGIA, DIST.- GOALPARA,
ASSAM, PIN- 783120.

VERSUS

SAFIOR RAHMAN
S/O- DASU SHEIKH,
R/O- ROSELANE ANUPAM PATH,
HATIGAON, GUWAHATI,
HOUSE NO.- 8,
P.S.- HATIGAON,
DIST.- KAMRUP, GUWAHATI, ASSAM.

For the Petitioner(s) : Mr. M. U. Mahmud, Advocate

For the Respondent(s) : Mr. S. Das, Advocate

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

ORDER

Date : 12.03.2024

1. The instant application under Article 227 of the Constitution has been filed challenging the order dated 26.06.2023 passed by the learned Court of Munsiff

No.2, Goalpara in Title Suit No.148/2018.

2. From a perusal of the impugned order dated 26.06.2023, it reveals that that the learned Trial Court disposed of the Petition No.916/2022 and Petition No.304/2023 vide the impugned order.

3. This Court finds it relevant to take note of that the Petition No.916/2022 is a petition filed by the counsel of the plaintiff seeking a direction for calling for the relevant part of the Register Book and relevant part of other document/documents where the executants had put thumb impressions and signatures at the time of registering the deed of relinquishment vide deed No.660/2023 dated 19.06.2003 from the Office of the Sub-Registrar, Goalpara and examine those existing signatures of the executants on those documents through expert by comparing with the admitted thumb impression and signatures of the plaintiff.

4. The Petition No.304/2023 is an application filed by the defendant stating inter alia that in respect to the said relinquishment deed, an FIR was filed by the plaintiff which was registered and numbered as Agia P.S. Case No.21/2016 against the defendant and in connection therewith, the signature of the deed concerned were forwarded to the Directorate of Forensic Science, Assam, Kahilipara, Guwahati for report regarding the signature of the plaintiff and accordingly, the report was duly submitted to the Superintendent of Police, Goalpara on 19.09.2016 which was kept on record with the record of Agia P.S. Case No.21/2016 and G.R. Case No.420/2016. It was therefore prayed that the records of CR Case No.388/2016 along with Agia P.S. Case No.21/2016 and G.R. Case No.420/2016 pending before the learned CJM, Goalpara was required to be called for by the learned Court for the ends of justice.

5. This Court had duly perused the order dated 26.06.2023 whereby the learned Trial Court have partly allowed the application filed by the plaintiff being Petition No.916/2022 however rejected the Petition No.304/2023. This Court is shocked and surprised to see that the learned Trial Court while allowing the petition filed by the Plaintiff did not take into consideration that the said petition is not supported by an affidavit but rather a petition filed by the counsel that too on verification. The said petition on the face of it was maintainable in view of the provisions of Order XIII Rule 10 read with Order VI Rule 15(4) of the Code of Civil Procedure, 1908. Under such circumstances, the said application ought to have been rejected by the learned Trial Court.

6. This Court has also taken note of the Petition No.304/2023 wherein it is seen that the entire case records of CR Case No.388/2017 along with Agia P.S. Case No.21/2016 and the G.R. Case No.420/2016 have been called for. There is no mention in the said application as to why the entire case records was necessary inasmuch as a perusal of the said application only pertained to the report which was submitted in Agia P.S. Case No.21/2016. The defendant therefore ought to have asked for that document only and nothing further.

7. Be that as it may, this Court also finds it relevant to take note of that it is the mandate of Order XIII Rule 10(2) of the Code of Civil Procedure, 1908 that certain pre-requisites are required to be satisfied when an application is filed. Under such circumstances, this Court sets aside the order dated 26.06.2023 passed by the learned Court of the Munsiff No.2 at Goalpara in Title Suit No.148/2018.

8. This Court however grants the liberty to both the Plaintiff and the Defendant to file appropriate application in terms with the provisions of law, if they require any document to be brought on record by the learned Trial Court.

9. This Court has also taken note of that vide an order dated 23.08.2023 further proceedings in Title Suit No.148/2023 have been stayed. The said stay order is vacated and the parties are directed to appear before the learned Trial Court on 05.04.2024.

10. With above observations and directions, the instant petition stands disposed of.

JUDGE

Comparing Assistant