

GAHC010178962023



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

Case No. : CRP(IO)/390/2023

ASHIYA BEGUM
W/O- LATE SHASHJAHAN ALI,
R/O- GHILAGURI MERBIL GAON,
P.O- BETBARI,
P.S- SIVASAGAR,
DIST- SIVASAGAR, ASSAM

VERSUS

MD. ITUL ALI
S/O- BABU ALI,
R/O- GHILAGURI MERBIL GAON,
P.O- BETBARI,
P.S AND DIST- SIVASAGAR

Advocate for the Petitioner : B KHAKHLARY, MR P KALITA,U SWARGIARY,MAMONI
BORBORUAH BORGOHAIN,MR R RAJKHOWA,MR. B PHUKAN

Advocate for the Respondent : ,

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

03.09.2024

Heard Mr. B. Phukan, learned counsel for the petitioner.

2. In this petition under Article 227 of the Constitution of India, read with Section 151

of the Code of Civil Procedure, the petitioner, namely, Mrs. Ashiya Begum, has challenged the correctness or otherwise of the orders dated 16.11.2022 and 30.06.2023 passed by the learned Munsiff No.1, Sivasagar, in Title Suit No.25/2014.

3. It is to be noted here that vide impugned order dated 16.11.2022, the learned Munsiff No.1, Sivasagar, has dismissed the petition filed by the petitioner, being petition No.249/2022, for allowing cross-examination of the defendant before argument. But, the learned Munsiff No.1 has dismissed the petition and posted the case for argument on account of the defendant be unrepresented. Thereafter, vide order dated 30.06.2023, the learned Munsiff No.1, Sivasagar, has dismissed the petition, being petition No.569/2023, filed by the petitioner under Order 6 Rule 17 of the CPC for allowing to file amended or additional written statement for the ends of justice.

4. Mr. Phukan, learned counsel for the petitioner submits that the respondent herein had instituted the Title Suit No.25/2014 before the learned Munsiff No.1, Sivasagar for declaration and recovery of possession of the suit land. In the said suit, the present petitioner, as defendant, had filed written statement and thereafter, the respondent herein had filed the evidence of his witnesses in affidavit in the said Title Suit and they were cross-examined. Thereafter, the petitioner had filed her evidence. But, she was debarred from facing cross-examination, vide order dated 16.11.2022, and posted the case for argument. Thereafter, on 27.01.2023, the petitioner had filed another petition for adjournment expressing her willingness to replace the earlier counsel by engaging a new one and to continue with further proceeding of the suit and accordingly, the petitioner was allowed to change her counsel. Thereafter, on 02.06.2023 the newly engaged counsel of the petitioner has filed a petition, being petition No.569/2023 with a prayer for filing additional written statement to determine the real question in controversy between the parties. But the learned Munsiff No.1, Sivasagar, vide order dated 30.06.2023, had rejected the said petition and fixed the suit on 17.07.2023, for argument.

5. Mr. Phukan submits that the petitioner is aggrieved and dissatisfied with both the orders dated 16.11.2022 and 30.06.2023 passed by the learned Munsiff No.1, Sivasagar and that unless the petitioner is allowed to face the cross-examination, she will be

seriously prejudiced and would not be able to establish her case. Therefore, Mr. Phukan contended at least to face cross-examination.

6. It is to be noted here though notice was issued to the respondent and served upon him personally yet he chose not to contest this petition.

7. Having heard the submission of learned counsel for the petitioner, I have carefully gone through the petition and the documents placed on record and also perused the impugned orders dated 16.11.2022 and 30.06.2023.

8. It is to be noted here that vide order dated 16.11.2022, the learned Munsiff No.1, Sivasagar, had closed the evidence of the defendant, due to the petitioner's lackadaisical attitude. It also appears that the petitioner had taken as many as 16 numbers of adjournments for cross-examination of D.W.1. It also appears that the learned court had found that the case has been posted for argument and the stage of amendment of pleadings already over and the ground assigned for the same is not at all satisfactory and there is lack of diligence on the part of the defendant and also the petition is vague and aimed at filling up of lacuna and therefore it had dismissed the same and posted the matter for argument. The reason so assigned by the learned trial court for dismissing the petitions appears to be justified and also reasonable.

9. But, at the same time it has to be born in mind that fair trial is now recognized a fundamental right guaranteed under Article 21 of the Constitution of India. Fair trial is a right of both the parties to the proceeding. Fair trial includes the grant of fair and proper opportunity to both the parties. There, is no doubt that the petitioner was given sufficient opportunity. Despite, this court is of the view that one last opportunity has to be given to the petitioner in the interest of justice.

10. Thus, having considered the submission of the learned counsel for the petitioner, and also considering the facts and circumstances on the record, this Court is inclined to dispose of this petition by directing the learned Munsiff No.1, Sivasagar, to grant the petitioner one last opportunity to face cross-examination. It is further provided that the petitioner shall appear before the learned Munsiff No.1, Sivasagar, on or before

20.09.2024, or on a date to be fixed by the learned court, to face the cross-examination. The impugned order, dated 16.11.2022, stands set aside.

11. Interim order, if any, passed earlier, stands vacated. The petitioner has to bear own cost.

Sd/- Robin Phukan
JUDGE

Comparing Assistant