

GAHC010201392023



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

Case No. : CRP(IO)/285/2023

APURBA KUMAR DAS
S/O- LATE MANOHAR DAS, R/O- DURGA SAROBAR, HOUSE NO. 134, P.O.
GUWAHATI-781009, DIST. KAMRUP(M), ASSAM

VERSUS

TULASI DAS AND 3 ORS
W/O- LATE SIBA RAM DAS, R/O- DURGA SAROBAR, HOUSE NO. 134A, P.O.
GUWAHATI-781009, DIST. KAMRUP(M), ASSAM

2:MANOJ KUMAR DAS
S/O- LATE SIBA RAM DAS
R/O- DURGA SAROBAR
HOUSE NO. 134A
P.O. GUWAHATI-781009
DIST. KAMRUP(M)
ASSAM

3:ANJAN JYOTI DAS
S/O- LATE SIBA RAM DAS
R/O- DURGA SAROBAR
HOUSE NO. 8
P.O. GUWAHATI-781009
DIST. KAMRUP(M)
ASSAM

4:SMTI. JONALI DAS
W/O- SRI SUBAN DAS
R/O- TETELIA
HOUSE NO. 43
P.O. GOTANAGAR
GUWAHATI-33

DIST. KAMRUP(M)
ASSA

For the appellant (s) : Mr. O. P. Bhati, Advocate

Mr. P. Sarma, Advocate
Mr. S. K. Gupta, Advocate

For the respondent (s) : Mr. Sheeladitya, Advocate

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH
O R D E R

01.05.2024

This is an application under Article 227 of the Constitution challenging the order dated 10.07.2023 passed in Title Suit No.679/2022 whereby the prayer made by the petitioner herein to produce the originals of Ext.1, Ext.16, Ext.17, Ext.20 and Ext.21 was rejected by the learned Trial Court.

2. Before further proceeding, this Court finds it very pertinent to observe that Ext.1 is the Sale Deed No.7628 dated 05.09.1969 ; Ext.16 is the Jamabandi of Patta No.73 of Dag No.117; Ext.17 is the mutation order dated 13.03.1979 passed in Mutation Case No.836/78-79; Ext.20 is the No Objection Certificate dated 17.04.2000 issued by the Guwahati Metropolitan Development Authority to the plaintiff and Ext.21 is the site plan approved by the Guwahati Metropolitan Development Authority on 07.04.2000.

3. It is relevant to take note of that on earlier occasion, the petitioner herein as plaintiff had filed an application under Order XVI Rule 6 of the Code of Civil Procedure, 1908 (for short, 'the Code') for production of the

above mentioned exhibited documents by issuing summons to the Central Establishment Section, Housing Loan Department, Reserve Bank of India (RBI) on the grounds that the originals of those documents were lying with the said authority. The said application however was rejected by the learned Trial Court vide an order dated 25.02.2020. Being aggrieved, the petitioner has approached this Court by filing Civil Revision Petition being CRP(IO) No.86/2020 challenging the order dated 25.02.2020. However, during the pendency of the said proceedings, the RBI had liquidated the loan in the month of February, 2021 and the said original documents which were to be exhibited as Ext.1, Ext.16, Ext.17, Ext.20 and Ext.21 were returned to the plaintiff. It is under such circumstances, CRP(IO) No.86/2020 was withdrawn with a liberty to file an application before the Court for exhibiting those original documents. Accordingly, the said application was filed which was numbered as petition No.448 before the learned Trial Court. The learned Trial Court vide the order dated 10.07.2023 rejected the said application relying on the order dated 25.02.2020 passed by the learned Trial Court on the ground that the plaintiff had failed to show due diligence to adduce the original of the aforesaid documents at the time of filing the evidence on affidavit. It is under such circumstances, the instant application has been filed under Article 227 of the Constitution.

4. Mr. O. P. Bhati, the learned counsel for the petitioner submitted that the learned Trial Court completely misconstrued the provisions under which the present application being petition No.448 was filed and the same has nothing to do as regard the adjudication to an application which was filed in terms with Order XVI Rule 6 of the Code. The learned counsel

for the petitioner further submitted it is on account of the leave granted by this Court, the said application was filed. In addition to that the learned counsel for the petitioner further submitted that the leave was granted by this Court to file an appropriate application even after the filing of the evidence by the plaintiff, and as such, the learned Trial Court ought not to have rejected the said application on the ground that the said application for leave was not filed at the time of filing of the evidence on affidavit.

5. On the other hand, Mr. Sheeladitya, the learned counsel appearing on behalf of the respondents submitted that the petitioner herein is only delaying the adjudication of the suit and in the process has delayed the adjudication of the counterclaim which has been filed by the respondents herein as defendants. The learned counsel for the respondents submitted that admittedly the plaintiff has received those documents in the month of February, 2021 and there has been no diligence or explanation as to why in the year 2023, that too after a lapse of almost 2 years, the said application was filed. The learned counsel for the respondents therefore submitted that this is a fit case for dismissal of the instant proceedings with costs.

6. I have heard the learned counsel appearing on behalf of the parties and given due consideration to their respective submissions. From a perusal of the materials on record, this Court is surprised in the manner in which the learned Trial Court has passed the said impugned order in as much as the order reflects that the learned Trial Court was swayed by the order passed by the said Court on 25.02.2020 which was an order passed in the proceedings under Order XVI Rule 6 of the Code.

7. This Court further is also perturbed by the fact that when the leave

has been granted by this Court to file an application on the basis of the understating that the petitioner has already received the original documents and such application was filed, the learned Trial Court ought not to have rejected the said application on the ground that the petitioner herein did not file those documents at the time of submission of his evidence on affidavit.

8. Accordingly, this Court therefore sets aside the order dated 10.07.2023 and directs the learned Trial Court to permit the petitioner to adduce the originals of Ext.1, Ext.16, Ext.17, Ext.20 and Ext.21.

9. This Court however makes it very clear that the permission so granted by this Court shall not touch on the admissibility of the said documents which the learned Trial Court shall adjudicate at the trial of the suit.

10. This Court further takes note of that vide an order dated 13.09.2023, the further proceedings of Title Suit No.679/2022 was stayed. The said order stands vacated and as the parties are duly represented, they are directed to appear before the learned Trial Court on 20.05.2024 and the learned Trial Court shall proceed with the adjudication of the suit by taking into account the above directions and observations and in accordance with law.

11. In view of the above, the instant petition stands disposed of.

JUDGE