

GAHC010203302024



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

Case No. : CRP(IO)/428/2024

BRAZABALA HAZARIKA
W/O- LATE BIPIN CH. HAZARIKA,
R/O- RRB ROAD, SOUTH HAIBORGAON,
MOUZA- TOWN,
P.S -SADAR, DIST- NAGAON, ASSAM, PIN-782002

VERSUS

KARABI BARUAH BORAH
W/O- PUSPENDRA BORAH,
R/O- AIBHETI,
MOUZA- HATICHUNG,
P.S- JAJARI, DIST- NAGAON, ASSAM, PIN-782002

Advocate for the Petitioner : MR. A C SARMA, MR N BRAHMA, MR G BHARADWAJ, MR B DEORI

Advocate for the Respondent : ,

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 28.10.2024

Heard Mr. A.C. Sarma, learned Senior counsel, assisted by Mr. G. Bharadwaj, learned counsel for the petitioner.

2. In this petition, under Article 227 of the Constitution of India, the petitioner has put to challenge the correctness or otherwise of the order dated 07.08.2024, passed by the learned Civil Judge (Junior Division) No. 1, Nagaon, in Title Suit No. 75/2015.

3. It is to be noted here that vide impugned order dated 07.08.2024, the learned trial Court had refused to extend time to the Commissioner appointed for recording cross-examination of the D.W.3 (petitioner herein) and thereafter, dispensed with the cross-examination of D.W.3 and expunged the evidence-on-affidavit submitted by D.W.3.

4. Mr. Sarma, learned Senior counsel for the petitioner submits that the respondent herein, as plaintiff, instituted a suit against the petitioner in the Court of learned Munsiff No. 1, Nagaon, being Title Suit No. 75/2015, praying for a decree for declaration of right, title and interest and recovery of possession and other relief(s). In the said title suit, the petitioner had submitted written statement and made a prayer for recording her evidence on commission as she is an old lady, aged about 80 years, and bedridden and unable to attend the Court. Thereafter, the learned trial Court had allowed the prayer for recording evidence of D.W.3 on commission. However, due to some reasons, the Commissioner could not record the cross-examination of D.W.3, for which an extension of time for submitting commission report was sought for. But, the learned trial Court had refused to extend time and thereafter, dispensed with the cross-examination of D.W.3 and expunged the evidence of D.W.3. Mr. Sarma also submits that the impugned order is illegal and arbitrary as the learned trial Court had not extended time for cross-examination of D.W.3 and expunged her evidence for no fault of her. Instead of appointing a new Commissioner, the learned trial Court had chosen to dispense with cross-examination of D.W.3 and

expunged her evidence which is not permissible, and for which serious prejudice is caused to her and therefore, Mr. Sarma has contended to set aside the impugned order dated 07.08.2024, and to grant time for cross-examination of D.W.3.

5. Having heard the submission of Mr. Sarma, learned Senior counsel for the petitioner, I have carefully gone through the petition and the documents placed on record and also perused the impugned order dated 07.08.2024.

6. It appears that the learned trial Court, vide impugned order dated 07.08.2024, had refused to extend time to the Commissioner for cross-examination of D.W.3 and dispensed with the examination of D.W.3 and also expunged her evidence. It also appears from the impugned order and from the documents placed on record that it was not the fault of the petitioner herein for not recording of her evidence on commission by the Commissioner appointed by the learned trial Court. For the fault of the Commissioner, the petitioner herein cannot be penalised by dispensing with her cross-examination and expunging her evidence. It causes serious prejudice to her. Mr. Sarma submits that with her evidence being expunged, the petitioner has no case at all.

7. Thus, having examined the impugned order in the light of the facts and circumstances on the record and also in the light of the submission so advanced by Mr. Sarma, learned Senior counsel for the petitioner, this Court is of the view that the impugned order dated 07.08.2024, fails to withstand the legal scrutiny and on such count, the same requires interference by this Court and accordingly, the same stands set aside and quashed.

8. The learned trial Court is directed to afford an opportunity to the Commissioner to cross-examine the petitioner and with a direction to complete

the said process within a period of two months from today.

9. In terms of above, this revision petition stands disposed of at the motion stage itself.

JUDGE

Comparing Assistant