

GAHC010217412023



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

Case No. : CRP(IO)/319/2023

PRAMOD CH. KALITA AND ANR
S/O- LATE KAMAKHYA RAM KALITA

2: PRADIP KALITA
S/O- LATE KAMAKHYA RAM KALITA

ALL ARE R/O- TARUN NAGAR

H.NO-36
ABC
P.O- DISPUR

P.S- BHANGAGARH
GUWAHATI-05

DIST- KAMRUP(M)
ASSA

VERSUS

JUNU KALITA AND 2 ORS.
W/O- BHABESH KALITA,
R/O- SANKARDEV PATH,
P.S- FATASIL AMBARI, GUWAHATI-25,
DIST- KAMRUP (M), ASSAM

2:KABITA KALITA
W/O- ABU SAYED

R/O- B.C ROAD UZAN BAZAR

P.S- UZANBAZAR

P.S- LATASIL
GUWAHATI-01

DIST- KAMRUP (M)
ASSAM
3:MINATI KALITA
D/O- LATE KAMAKHYA RAM KALITA
R/O- TARUN NAGAR
H.NO-36 ABC P.O- DISPUR

P.S- BHANGAGARH
GUWAHATI-05
DIST- KAMRUP(M)
ASSA

For the petitioner (s) : Mr. N. Das, Advocate

For the respondent (s) : Mr. R. Ali, Advocate

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

03.05.2024

This is an application under Article 227 of the Constitution challenging the order dated 07.08.2023 passed by the learned Civil Judge No.3, Kamrup (M) at Guwahati in petition No.180/2023 in Title Suit No.104/2016.

2. It is the case of the petitioners herein that the order which has been impugned in the instant proceedings is being challenged on a limited scope to the extent that in an application under Order XI Rule 14 of the Code of Civil Procedure, 1908 (for short, 'the Code') wherein the plaintiffs had sought for a direction upon the defendants to produce certain documents, the learned Trial Court having not passed any direction against the defendants to produce those documents could not have permitted the plaintiffs to adduce secondary evidence of the document Nos.5 & 9, that too without following

the procedure in terms with Sections 63 & 65 of the Indian Evidence Act, 1872.

3. This Court has duly heard the learned counsels for the parties and given a thoughtful consideration to the respective submissions. This Court has also perused the application under Order XI Rule 14 of the Code filed by the plaintiffs who are the respondents in the instant proceedings.

4. From a perusal of the said petition, it reveals that the plaintiffs have sought for a direction upon the defendants to produce document Nos.5 & 9, i.e. the copy of the notice dated 20.05.2015 as well as the copy of the trade license dated 19.02.2008, the originals which the plaintiffs claimed were in possession of the defendants.

5. Be that as it may, it is very pertinent to observe that in the said application, there was no prayer or even a statement to the effect that in the circumstance that no direction is passed, the plaintiffs may be permitted to adduce secondary evidence. The learned Trial Court vide the impugned order came to a conclusion that the defendants have disputed the correctness of the plaintiffs' statement that the document Nos.5 & 9 are under the possession and custody of the defendants. The learned Trial Court, therefore, came to an opinion that no purpose is likely to serve by directing the defendants to produce the same as apparently, the defendants have denied the possession of the same. Under such circumstances, in the opinion of this Court, the Trial Court ought to have concluded the matter on the application under Order XI Rule 14 of the Code.

6. Be that as it may, without any pleadings or a relief sought for in the application under Order XI Rule 14 of the Code, the learned Trial Court granted the liberty to the plaintiffs to adduce secondary evidence of

document Nos.5 & 9.

7. This Court finds it very pertinent to take note of Section 63 of the Indian Evidence Act, 1872 which stipulates certain conditions under which secondary evidence can be permitted. Under such circumstances, when a request is being made to adduce the secondary evidence, then the adversarial party duly have rights to object to the same. However, the learned Trial Court in the instant case, even without taking into consideration the requirement of Sections 63 & 65 of the Indian Evidence Act, 1872 had passed such a direction.

8. Accordingly, the impugned order dated 07.08.2023 is interfered with only to the extent of granting liberty to the plaintiffs to adduce secondary evidence of document Nos.5 & 9.

9. However, the instant order shall not act as a bar on the part of the plaintiffs to file an appropriate application to adduce secondary evidence of document Nos.5 & 9, i.e. the copy of the notice dated 20.05.2015 as well as the copy of the trade license dated 19.02.2008 or to prove the said documents in any other manner permissible under the law.

10. Taking into account the above, the order dated 29.09.2023 passed by this Court is vacated and the parties who are duly represented are directed to appear before the learned Trial Court on 17.05.2024.

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

JUDGE