

01.09.2021
Item No.24
Ct. No.7
CHC

**C.O.1249 of 2021
(Physical Hearing)**

**Sri Sujit Kumar Kar
Vs.
Sri Atanu Kar & ors.**

Mr. Kartick Bhattacharyya
...for the petitioner

Mr. Pinaki Ranjan Mitra
...for the opposite parties

The impugned order dated 16th January, 2021 in L.R. Misc. Case No.10 of 2018 passed by learned Civil Judge (Junior Division), 7th Court, Howrah, allowing the application under Section 137 of the Evidence Act read with Order XVIII Rule 17 and Section 151 C.P.C. and thereby allowing recalling of P.W.1 is the subject of challenge in this revisional application.

Mr. Kartick Bhattacharyya, learned advocate representing the petitioner/plaintiff submits that the court below has acted with material irregularity without considering the true purport of the provisions contained in Order XVIII Rule 17 C.P.C., as it was a purposive application simply to fill up the lacuna contained in the evidence. Moreso, during cross-examination of P.W.1, a specific question has been

put to P.W.1 whether he has produced any document relating to actual value of the locality of the said mouza in respect of which preemption has been sought for.

According to learned advocate for the petitioner, the impugned order allowing Order XVIII Rule 17 C.P.C. is in utter disregard of the provisions of the law and the same should not be allowed to be continued.

Learned advocate, Mr. Pinaki Ranjan Mitra representing the opposite parties/defendants submits that the documents sought to be marked exhibits were not ready with them, and as such the same could not be filed, and it was not a product of mala fide intention so as to fill up the lacuna contained in the evidence.

It is further submitted if such documents are allowed to be exhibited upon recalling P.W.1, it will not only clear the ambiguity in the case, but same will have a bearing on the ultimate decision of the suit.

The point raised by both the parties is very short; whether learned court below was justified in allowing application under Order XVIII Rule 17 C.P.C. even after closure of cross-examination of P.W.1, wherein there has been specific question put to the witness, whether the witness has produced any document

relating to actual value of the locality of the said mouza.

Mr. Bhattacharyya, learned advocate representing the petitioner has placed reliance referring a decision reported in **AIR 2009 SC 1604** delivered in the case of **Vadiraj Naggappa Vernekar (D) Through LRS. Vs. Sharad Chand Prabhakar Gogate** that the instant application under Order XVIII Rule 17 C.P.C. was nothing but an attempt to fill up lacuna in the evidence, and further the provisions contained thereunder cannot be interpreted in a manner that the opposite parties may have a chance of cross-examination even after recalling is allowed.

This is a suit for preemption which was admittedly instituted in 2018, and the order impugned allowing Order XVIII Rule 17 C.P.C. was allowed on 16th January, 2021.

Upon perusal of such impugned order, it appears that P.W.1 during his deposition perused some of the documents, as mentioned in the impugned order, but failed to produce those three documents upon due notice to the other sides for effective adjudication of the matter in controversy between the parties. No plausible explanation to the satisfaction of the court has been offered, as regards non production of those three documents, sought to be marked exhibits, and there is nothing mentioned in such impugned order.

After the closure of the cross-examination of P.W.1, initiation of such application is nothing but a harrasive one, which must be saddled with some compensatory costs. At the same time, the Court must not be oblivious of the situation that Order XVIII Rule 17 C.P.C. is to clarify any doubts which the Court may have with regard to the evidence led by the parties. If such documents are allowed to be exhibited with opportunity to make sufficient cross-examination for the purpose, such evidence upon recalling of witness (P.W.1) may have a bearing on the ultimate decision of the suit, and as such, learned trial court allowed Order XVIII Rule 17 C.P.C. in exercise of his judicial discretion, but at the same time forgetting about the harassment already caused to the petitioner, which remained uncared for.

Having considered the submission of both sides, and taking into account the long harassment caused to the petitioner together with the anticipated bearing of such evidence to be adduced on recall by P.W.1, the Court is of the view that the impugned order needs to be modified granting compensatory costs to the tune of Rs.4,000/-, to be payable by opposite parties within 15 days to the petitioner, failing which this order shall stand automatically vacated without making any reference to this parties.

With the aforesaid observations, the revisional application stands disposed of. The other portion of the order will, however, remain unaltered.

Urgent certified photostat copy of this order, if applied for, be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Subhasis Dasgupta, J.)