

19.04.2022
Item No.8
Ct. No.7
CHC
(disposed of)

**C.O.536 of 2022
(Physical Hearing)**

**Smt. Arati Halder
Vs.
Sri Somesh Kumar Nandy & ors.**

Mr. Animesh Paul
...for the petitioner

The subject-matter of challenge in this revisional application is against a petition, dated 29th May, 2018, filed by the opposite parties/plaintiffs praying for re-examination of P.W.1 under Order 18 Rule 17 C.P.C. to take in evidence a certified copy of sale deed, dated 29th May, 2018, being allowed.

Mr. Paul, learned advocate appearing for the petitioner frankly admits that today is the date fixed in the court below for evidence of D.W.2.

Learned advocate appearing for the petitioner/defendant, while challenging the order dated 10th February, 2021, submits that the Court below has erroneously allowed the petition under Order 18 Rule 17 C.P.C. forgetting that there has been previous rejection of the prayer for amendment, filed by the opposite parties/plaintiffs touching upon the issues now sought to be adduced in the form of evidence upon recalling P.W.1 in aid of Order 18 Rule 17 C.P.C.

Learned advocate for the petitioner further submits that the document, sought to be produced was very much available in the possession of the petitioner/defendant, and the same could not be produced at the actual point of time.

The entire exercise of the opposite parties/plaintiffs, according to petitioner, is to fill up the lacuna disclosed in the cross-examination of P.W.1.

While elaborating such point, learned advocate for the petitioner discloses that the petitioner has availed of the opportunity of making cross-examination of P.W.1, even at the time of recalling of P.W.1.

Thus it is conspicuous that the evidence of plaintiff has already been concluded even after collection of evidence upon recall of P.W.1, and there has been opportunity utilized by the petitioner/defendant to cross-examine the P.W.1, examined on recall.

In view of the above, the impugned orders do not call for any interference.

This would not, however, prevent the petitioner from disputing with the document, if at all marked exhibit, during the evidence upon recall of P.W.1 in aid of Order 18 Rule 17 C.P.C., and if any such point is agitated, the same shall be addressed to and resolve in accordance with the provisions of the law, providing sufficient opportunity of hearing to either of the parties

to this case, but without granting any unnecessary adjournment, unless it is extremely unavoidable.

As today is the date fixed for adducing evidence of D.W.2, the petitioner is at his liberty to dispute with the document, if at all marked exhibit, vide the evidence of P.W.1 on recall.

Petitioner is directed to make communication of this order to the learned court below as well as to the learned advocate appearing in the court below for the opposite parties and opposite parties as well.

With this direction and observation, the revisional application stands disposed of.

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.)