

S/L 13
04.08.2023
Court. No. 29
Suvayan

CO 1306 of 2021

**Anowar Sadat & Anr.
Vs.
Ujir Seikh & Ors.**

*Mr. Rwitendra Banerjee
Mr. Shibasis Chatterjee*

...for the petitioners.

*Mr. Partha Pratim Roy
Mr. Dyutiman Banerjee*

...for the opposite parties.

1. Both the petitioners and the opposite parties are represented by their respective learned Advocates.
2. Heard learned Advocate for the plaintiffs/petitioners and the defendants/opposite parties in support and against the instant revisional application.
3. The instant revisional application is now taken up for hearing for passing appropriate order.
4. In this revisional application as filed under Article 227 of the Constitution of India the Order No. 68 dated March 6, 2020 as passed by learned Civil Judge (Junior Division), 2nd Court, Jangipur, District – Murshidabad in Title Suit No. 107 of 2015 has been impugned. By the impugned order learned Trial Court rejected the plaintiffs' application for issuance of summons to witness upon one Shyamal Roy for production of some documents relating to the proceeding under Section 14T WBLR Act before the BL & LRO, Samserganj in proceeding Nos. 29/76, 30 of 76 and 31 of 76. While passing the impugned judgment learned Trial Court noticed that for production

of the aforementioned document the plaintiffs has prayed for issuance of summons to witness upon several persons who could not file and/or produce such documents stating *inter alia* that those documents were not in their possession. While passing the impugned order learned Trial Court, thus, came to a finding that the plaintiffs in Title Suit No. 107 of 2015 was not sure about the person with whom the said documents are lying and for that reason the learned Trial Court refused to pass a favourable order for issuance of summons to witness in the name of one Sri Shyamal Roy who according to the plaintiffs is in possession of the aforementioned documents.

5. Drawing attention to the photocopy of the plaint as filed in Title Suit No. 107 of 2015 it is contended by Mr. Banerjee that the aforementioned documents are very much necessary for proving the title of the plaintiffs in respect of the suit property and, therefore, in order to discharge his burden the plaintiffs have no other alternative but to pray for issuance of summons to witness upon one Sri Shyamal Roy who as per the knowledge of the plaintiffs is in possession of the said documents being the documents relating to the proceeding under Section 14T of WBLR Act in respect of the suit property.

6. While opposing the prayer, Mr. Dyutiman Banerjee, learned Advocate for the opposite parties/defendants, however, contended that learned Trial Court is very much justified in passing the impugned

order since it is the clear finding of the learned Trial Court that the plaintiffs are not at all sure about the person with whom the said document is lying and before the learned Trial Court the plaintiffs made several attempts to call for the said documents which the learned Trial Court in his own wisdom allowed but the plaintiffs had miserably failed in producing these documents through the said witness.

7. It is further contended by Mr. Banerjee, learned Advocate for the defendants/opposite parties that learned Trial court is equally justified in passing the impugned order since there occurred inordinate delay in disposing Title Suit No. 107 of 2015 on account of the series of reckless attempt made by the plaintiffs for summoning witness.

8. On perusal of the entire materials as placed before this Court and after hearing the learned Advocate for the contending parties and also on perusal of the impugned order it reveals that learned Trial Court has given ample opportunities to the plaintiffs to produce the documents as called for through many persons whom the plaintiffs intend to rely as P.W.s by issuing summons to witness but all such effort went into vein. This Court, thus, finds sufficient justification on the part of the learned Trial Court in passing the impugned order.

9. However, considering the fact that since before the learned Trial Court, the plaintiff is duty bound to prove his own case by adducing evidence either oral or documentary, this Court considers that another

opportunity may be given to the present plaintiffs/petitioners to produce the documents through plaintiffs' proposed witness Sri Shyamal Roy but within a specified time.

10. Accordingly, the instant revisional application is hereby allowed on contest. Consequently, the impugned Order No. 68 dated March 6, 2020 as passed by learned Civil Judge (Junior Division), 2nd Court, Jangipur, District – Murshidabad in Title Suit No. 107 of 2015 is hereby set aside. Learned Trial Court is hereby directed to issue summons to witness in the name of Sri Shyamal Roy for production of the minutes of the proceeding as held under Section 14T of the WBLR Act in case Nos. 29/76, 30 of 76 and 31 of 76 in the Office of BL & LRO, Samserganj, Murshidabad. It is further ordered that the aforesaid summons to witness shall have to be issued by registered or speed post with A/D and/or under the provision of Order 5 Rule 9A of the Code of Civil Procedure and in the event the plaintiffs fails to produce his witness, namely, Sri Shyamal Roy as well as the documents called for on the returnable date or on the next date of hearing which must not be more than eight weeks from the date of communication of this order, the learned Trial Court is at liberty to close the proposed evidence of the said plaintiffs' witness Sri Shyamal Roy with a further direction that the learned Trial Court shall not issue any further summons to witness for production of the aforementioned documents.

11. With the aforementioned observation, the instant revisional application being CO 1306 of 2021 is disposed of.
12. Parties to act on the server copies of this order.
13. Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

(Partha Sarathi Sen, J.)