

10.06.2024
(D/L-33)
Ct.-19
(Susanta)

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

C.O. 253 of 2024

With

I.A. No. CAN 1 of 2024

Smt. Gopa Dutta & Anr.

-Vs-

Bimal Kumar Saraf & Ors.

Mr. Tarak Nath Halder,

... For the Petitioners.

Mr. Partha Pratim Roy,

.... For the Opposite Parties.

The petitioners are the substituted defendants in Ejectment Suit no. 304 of 2004 pending before the Additional Court of learned Civil Judge (Junior Division) at Sealdah, District 24-Parganas (South).

The petitioner no.1 is the wife of the deceased defendant no. 4 and being the constituted attorney of her husband, she had filed her evidence-in-chief in the suit as D.W.1 but such evidence was not accepted as her husband died before she was being cross-examined.

The petitioner no. 1, on being substituted in the suit, intended to adduce evidence but the learned Trial Judge by the order impugned dated September 01, 2023 has refused to allow the petitioner no. 1 to depose in the suit and by the order impugned dated October 09, 2023 has dismissed her application under Section 151 of the Code of Civil Procedure praying permission to file evidence-in-chief on the ground that the evidence of the petitioner no. 1 has not been accepted earlier.

The petitioner no. 1 had filed evidence-in-chief earlier in the suit in a different capacity which has been changed after being substituted in the suit as defendant as such, is entitled to adduce evidence in her such changed capacity. Therefore, the refusal to the prayer of the petitioner no. 1 to tender evidence-in-chief on the ground that her earlier evidence was not accepted, is not justified.

The orders impugned are therefore set aside.

The learned Trial Judge is requested to fix a date for evidence-in-chief of the petitioner no. 1, which is required to be concluded on the said date itself; in default, the evidence of the said witness shall be closed. The plaintiffs are directed to start the cross-examination of the said witness on the said date and to conclude it expeditiously.

The parties are not entitled to pray for any unnecessary adjournments.

The suit is pending since 2004; as such after conclusion of the evidence of the petitioner no.1, the learned Trial Judge shall proceed to dispose of the suit expeditiously.

C.O. 253 of 2024 is thus disposed of with the above terms without any order as to costs.

In view of the disposal of the revisional application, the connected application being I.A No. CAN 1 of 2024 is also disposed of accordingly without any order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)