

Ct.
No.
652

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akb

**15.05
2024**

C.O. 3182 of 2018
Srimanta Kumar Das & Ors.
-Versus-
Emran Hossain & Ors.

Mr. Subir Banerjee
Ms. Dipanwita Das

...For the Petitioners

Opposite parties are not represented, in spite of service.

Challenging impugned order No. 34 dated 4th April, 2018 passed by the learned Civil Judge (Junior Division), Buniadpur, Dakshin Dinajpur in P.S. No. 25 of 2013, present application has been preferred.

Petitioners' contention is that the opposite parties instituted the aforesaid case, being P.S. 25 of 2013 for partition of the joint property of the petitioners and the opposite parties. The petitioners have been arrayed as defendants in the said suit and the petitioners are all residents of different places and involved in different professional engagements and it is very difficult and strenuous undertaking for them to appear physically before the Court.

Petitioners accordingly decided to empower their trusted person Sri Biplab Das to take the responsibility to conduct the said suit on their behalf, including tendering evidence for and on behalf of the petitioner before the learned Court. Accordingly, after completion of the

evidence on behalf of the plaintiffs/opposite parties herein, the aforesaid Constituted Attorney of the petitioners appeared and tendered evidence as witness on behalf of the petitioners in the said suit. However, the learned Court below by the order impugned did not allow the said Constituted Attorney of the petitioners to depose on behalf of the petitioners mainly on the ground that the petitioners did not seek permission from the Court to depose through power of attorney.

Being aggrieved by that order Mr. Subir Banerjee, learned Counsel appearing on behalf of the petitioner submits that the Court below failed to appreciate that the Constituted Attorney was specifically empowered to depose on behalf of the petitioners and he failed to appreciate that no separate application is necessary to seek permission for deposing in a suit by a Constituted Power of Attorney. He further submits that the Constituted Attorney of the petitioners is well conversant with the facts and circumstances of the case and as such has the knowledge to depose for and on behalf of the petitioners and he had also gathered and collected information and knowledge about the factual aspects of the matter and accordingly petitioners have prayed for setting aside the order impugned and prayed for allowing the Constituted Attorney to tender evidence by

deposing on behalf of the petitioners.

On perusal of the order impugned, I find that the Court below have made specific observation that Sri Biplab Das, who is Power of Attorney holder is not a party to the present suit and he further held that no leave was sought for from the Court by the defendants/petitioners herein to tender their evidence through the said Power of Attorney.

Having considered the facts and circumstance of the case, C.O. 3182 of 2018 is hereby disposed of giving liberty to the defendants/petitioners herein to seek leave before the Court below for adducing evidence through their Constituted Power of Attorney holder.

In the event of seeking such leave by the petitioners herein as above, the Court below will dispose of such prayer for granting leave in accordance with law without being influenced by any observation made herein.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, on priority basis on compliance of all usual formalities.

(Ajoy Kumar Mukherjee, J.)