

February 6, 2024
Sl. No.14
Court No.19
s.biswas

CO 3867 of 2023

Kausani Sarkar
vs.
Smt. Abha Rani Sarkar and others

Mr. Sanjib Seth

... for the petitioner

By the order impugned, the learned court allowed an application under Order 18 Rule 16 read with Section 151 of the Code of Civil Procedure as also an application under Order 26 Rule 1 read with Section 151 of the Code of Civil Procedure, on the ground that the plaintiff was 91 years old and had shown sufficient supporting medical documents to establish a case under Order 18 Rule 16 of the Code of Civil Procedure and also for examination on commission.

Undoubtedly, the medical documents show the failing health of the plaintiff. The plaintiff's evidence would be essential for determination of the actual dispute between the parties.

The suit is for cancellation of the deed of gift, on the basis of which the petitioner claims title of the property. The plaintiff had challenged the said deed. The plaintiff averred that the same was neither executed by her nor prepared on her instructions. That she was not present for the registration of the same.

In this case, the evidence of the plaintiff is essential. Thus, the court did not commit any illegality. She is 91 years old and is unwell. The court exercised discretion.

Moreover, the examination on commission is also required in view of the age and illness of the plaintiff.

Under such circumstances, this court does not find any reason to interfere with the order impugned. The court has given adequate opportunity to the petitioner to cross-examine the plaintiff and be present during both the examination-in-chief and cross-examination. Non-service of the summons upon the defendant nos.2a and 2b cannot be a ground for not allowing the applications filed by the plaintiff.

The defendant nos.2a and 2b are known to the petitioner. It appears that the petitioner entered into a development agreement with the said defendants. They are also entitled to be present in the examination-in-chief and cross-examination of the plaintiff. Non-service of summons upon the said defendants would not be an impediment towards recording of evidence of the plaintiff, in terms of the Order 18 Rule 16 of the Code of Civil Procedure. They will get adequate opportunity to cross-examine the plaintiff. Under the provisions of law, the

petitioner can intimate the said defendants. The evidence can be recorded at any stage of the suit, on an urgent basis. The court found sufficient cause to allow such evidence to be recorded at the very initial stage of the suit. This is an exception to the general rule. The plaintiff has to depose in order to prove the plaint case. Such evidence will be kept with the records.

The revisional application is accordingly disposed of.

All the parties are directed to act on the basis of the server copy of the order.

Urgent Photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Shampa Sarkar, J.)