

11.03.2024
Item No.22
Ct. No.19
Suman/S.A.

CO 3917 of 2023

Asit Kumar Barman & Anr.

-vs-

**Deceased Nani Gopal Maity represented
by his LRs namely Bablu Maity & Ors.**

Mr. Pratip Kumar Chatterjee

Mr. Masud Mallik

...for the petitioners

Mr. Amit Baran Dash

Ms. Ankana Sarkar

...for the opposite parties

By the order dated September 30, 2023 the learned Civil Judge (Junior Division), 1st Additional Court, Contai rejected two applications filed by the plaintiffs in connection with Title Suit No.108 of 2013.

First, the prayer for adjournment on the ground of illness of the plaintiff was rejected. Second, the application for calling the Survey Commissioner Sri Satyendra Das as a summoned witness was rejected. Learned advocate for the plaintiff submits that the evidence of the PWs was closed. Mr. Chatterjee, learned advocate appearing on behalf of the plaintiffs/petitioners submits that only one more witness from the plaintiffs' side remained. The summoned witness would be necessary in order to prove the plaint case with regard to the averments made in paragraphs 4© to 4(f) of the amended plaint and prayer 10.(aa) thereof. The learned court ought

not to have rejected the said application only on the ground that the same was not supported by a verification or an affidavit.

Usual practice was that an application had to be filed before the learned court at least with the verification. Learned court further found that no reasons as to why the learned Survey Commissioner of Title Suit No.264 of 1983 should be produced as a summoned witness, had been mentioned.

Mr. Dash, learned advocate appearing for the opposite parties submits that the plaintiffs have been dragging the suit since long and the application for adjournment was rightly rejected. Secondly, without any justifiable reason as to why the summoned witness was necessary to prove the plaint case, the learned court could not have allowed such application. The application was also not in proper form.

With regard to the prayer for an adjournment, this court is of the view that one last chance should have been given to the plaintiffs to adduce evidence of the remaining PWs. It appears that a date was fixed as a last chance for further PWs. Thus, instead of closing the evidence, the learned court ought to have imposed cost and fixed another date. Accordingly, that portion of the order is set aside and the learned court is directed to allow the evidence of the

remaining PWs, upon being satisfied that cost of Rs.5000/- has been paid to the opposite parties.

With regard to calling the summoned witness, this court is of the view that in order to keep the records in order, an application properly verified, along with the reasons for summoning the witness Satyendra Das, shall be filed before the learned court and the learned court shall decide the said application afresh, in accordance with law, upon hearing the opposite parties. The reasons as to why the said Survey Commissioner/Partition Commissioner was required to be summoned is not available in the application. Although, the plaint case deals with challenge to the earlier decision in the partition suit where the report of the Commissioner had been assailed, such reason ought to have been given. Thus, an opportunity should be given to the petitioner to prefer an application in proper form with reasons and grounds. The order impugned is modified to the above extent. The said application shall be disposed of in accordance with law.

Accordingly, CO 3917 of 2023 is disposed of.

Urgent photostat certified copy, if applied for, be supplied to the learned advocates for the parties on usual undertakings.

(Shampa Sarkar, J.)