

10.07.2024
Item No.06, DL
Ct.19
A.J.

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION**

C.O. 4379 of 2023

Mosammat Saleha Begum

-Vs-

Sk. Zakir Hossen

Mr. Samim Ahammed,
Mr. Dyutiman Banerjee,
Ms. Gulsanwara Pervin. ...for the petitioner.

Md. Basha Mir. ...for the opposite party.

Affidavit of service filed on behalf of the petitioner be kept
with the record.

The matter has been brought to the list at the instance of
the petitioner for extension of interim order but the parties
consented for final disposal of it.

The instant application under Article 227 of the
Constitution of India is at the instance of the plaintiff in a suit for
eviction which is directed against orders dated September 19, 2023
and November 23, 2023 passed by the 2nd Court of the learned Civil
Judge (Junior Division) at Serampore, District: Hooghly in the said
suit being Title Suit No. 605 of 2015.

The plaintiff is tracing her title through a deed of Hiba and
in course of her evidence, sought to prove the certified copy of the
said deed but failed, the said certified copy, however was marked 'X'
for identification.

To prove the said certified copy as a secondary evidence in
terms of Section 60(c) of the Bharatiya Sakshya Adhiniyam, 2023
(BSA), the plaintiff then applied for amendment of the plaint to state
that the original of the said deed is lost in the flood.

The learned Trial Judge by the order dated September 19,
2023 has dismissed the said application on the ground that the suit
has reached to the stage of argument.

The other application of the plaintiff for marking the said certified copy as an exhibit, has also been dismissed vide order dated November 23, 2023 on the ground that the plaintiff had got ample opportunity to prove the said document by bringing the attested witnesses of it but the plaintiff did not avail the said opportunity.

The plaintiff is seeking eviction of the defendant on the strength of her title over the suit property, her failure to prove such title would disentitle her to get such decree.

The certified copy of the Title Deed is already on record. It would be unjust if she is not given an opportunity to prove the said document formally.

The proposed amendment is necessary to enable the plaintiff to prove the said certified copy of the said Hibanama as a secondary evidence.

Therefore, the order impugned dated September 19, 2023 is set aside.

The plaintiff is required to file amended plaint **within a period of 14 days from date.**

The defendant is at liberty to file additional written statement **within a period of 14 days from date of receipt of a copy of the said amended plaint.**

The order impugned dated November 23, 2023 does not call for any interference inasmuch as a secondary evidence cannot be proved in the manner as prayed for by the plaintiff. It is however made clear that this order will not prevent the plaintiff to prove the said certified copy of the said Hibanama in accordance with law.

C.O. 4379 of 2023 is disposed of with the above terms without any order as to costs.

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

(Biswajit Basu, J.)