



GAHC010153632019

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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CRP(IO)/213/2019

SUNITA JALAN @ SUNITA AGARWALLA
D/O- SRI GIRDHARILAL AGARWALLA, PRESENT W/O- SRI UMA SHANKAR
AGARWALLA, R/O- AT ROAD, MORAN TOWN, P.O AND P.S- MORANHAT,
DIST- SIVASAGAR, ASSAM

VERSUS

MANOJ JALAN AND ANR
S/O- LATE RAM NIWAS JALAN, R/O- C/O- RAMAN GARODIA, OPP TOKRI
GOLA, MAKUM ROAD, P.O AND P.S- TINSUKIA, DIST- TINSUKIA, ASSAM,
PIN- 786125

2:SHARDA DEVI GARODIA
W/O- HEMRAJ GARODIA
R/O- C/O- RAMAN GARODIA
OPP TOKRI GOLA
MAKUM ROAD
P.O AND P.S- TINSUKIA
DIST- TINSUKIA
ASSAM
PIN- 78612

Advocate for the Petitioner : MR. P P DUTTA

Advocate for the Respondent : MR. B BARUAH

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH



JUDGEMENT AND ORDER (CAV)

Date : 31-03-2022

1. Heard Mr. P.P. Dutta, the learned counsel for the petitioner and Mr. B. Baruah, the learned counsel appearing on behalf of the respondents.
2. The instant application under Article 227 of the Constitution is directed against the order dated 07.01.2019 passed in Title Suit No. 126/2012 by the Munsiff No. 2, Dibrugarh, whereby the petitioner's application under Order VII Rule 14 was rejected.
3. The brief facts of the instant case is that the petitioner as plaintiff has instituted a suit which has been registered and numbered as Title Suit No. 126/2012 before the Court of the Munsiff at Dibrugarh. The said suit is for declaration of right, title and interest of the plaintiff over Schedule A and B; for recovery of khas possession of the same; for perpetual injunction; compensation of Rs. 100/- per diem with effect from 17.08.2012 etc. In the said suit the specific case of the plaintiff is that on 14.06.1999 the father-in-law of the plaintiff sold a plot land measuring 0 Bigha 3 Kathas 15 Lechas covered by Dag No. 426 under Periodic Patta No. 74 situated at Moran Town, A.T. Road, P.O. Moranhat, P.S. and Mouza Moran in the District of Dibrugarh, Assam together with pucca houses for a consideration of Rs. 40,000/- vide a deed of sale bearing Deed No. 5101 dated 14.06.1999. It is the further case of the plaintiff that the relationship between the plaintiff and her husband became very bad for which the plaintiff had filed a divorce suit on 03.08.2007 in the Court of the District Judge at Dibrugarh, Assam against her husband that is one Raj Kumar Jalan. The said divorce case was registered and numbered as



T.S. (D) No. 52/2007 and on 30.06.2010 the Court of the Addl. District Judge, FTC, Dibrugarh dissolved the marriage between the plaintiff and her husband by a decree of divorce. It is further the case of the plaintiff that on 17.08.2012 at around 2 p.m.-3 p.m., the defendant No. 1 broke open the lock of the house premises of the plaintiff more fully described in Schedule A and trespassed therein and kept the house premises under his possession along with the household goods which have been most specifically described in Schedule B. Thereupon, the defendant No. 1 brought the defendant No. 2 and defendant No. 3 to the house premises and are forcefully residing thereon. The plaintiff thereupon initiated various criminal proceedings and also the instant suit seeking declaration of right, title and interest in respect to the properties described in Schedule A and B and other reliefs as already have been stated hereinabove. The specific case of the plaintiff is that the Schedule A land in respect to which the plaintiff has sought for declaration of right, title and interest as well as for recovery of khas possession is the land conveyed to the plaintiff by her father-in-law vide the Registered Deed of Sale bearing Deed No. 5101 Sl. No. 1980 dated 14.06.1999.

4. The defendants who are the respondents herein filed their written statement-cum-counter claim. In the written statement-cum-counter claim the respondents have taken a specific stand that the Registered Deed of Sale bearing Deed No. 5101 Sl. No. 1980 dated 14.06.1999 is a forged and a fabricated document. It was the specific stand in the said written statement that the Sale Deed bearing No. 5101 Sl. No. 1980 dated 14.06.1999 is a forged and a fabricated document as late Ram Nibas Jalan (the vendor of the plaintiff) had expired on 02.06.1999 prior



to the alleged execution of the sale deed dated 14.06.1999. The other details of the written statement being not relevant for the purpose of the instant case, this Court is not referring to the same. It may, however, be relevant to take note of that the death certificate of the said late Ram Nibas Jalan was not filed at the time of filing the written statement by the Defendants/Respondents. In the counter claim the respondents herein sought for dismissal of the suit filed by the plaintiff and also for cancellation of the Sale Deed No. 5101 Sl. No. 1980 dated 14.06.1999 and for confirmation of possession.

5. Issues were framed on 06.04.2015. Pursuant thereto, the plaintiff submitted the evidence-in-chief of 5(five) witnesses on 01.07.2015. The Sr. Assistant of the Office of the Sr. Sub-Registrar, Dibrugarh was the plaintiff witness No. 6 who was examined and cross-examined on 22.09.2015. Thereafter the petitioner filed an application on 06.09.2016 which was registered and numbered as Petition No. 1557/2016 to call for the Registrar, Birth and Death, Bokajan as official witness.
6. The trial Court vide an order dated 09.01.2017 rejected the said application on the ground that mere calling for the witness without having any reasons as to how his evidence would assist the Court in coming into a just decision is not tenable in the eye of law and consequently rejected the said petition and fixed 20.02.2017 for defendants' witness.
7. The records further show that on 08.05.2017, a petition was filed on behalf of the respondent defendants seeking leave to bring on record the death certificate of late Ram Nibas Jalan as it was the Defendants/Respondents specific case that late Ram Nibas Jalan expired



on 02.06.1999. The said application was registered and numbered as Misc.(J) No. 58/2017. The trial Court vide an order dated 08.05.2017 directed the petitioner to file objections to the said petition. It may be relevant from a perusal of death certificate enclosed to the petition dated 08.05.2017 that the same was issued on 18.04.2017 almost after 18(eighteen) years from the date of the alleged death of late Ram Nibas Jalan.

8. It is further relevant herein to take note of that the said Misc. (J) Case No. 58/2017 separately proceeded while the suit also proceeded separately. This would be apparent from the order dated 08.05.2017 passed in the suit i.e. in Title Suit No. 126/2012 wherein there is a mention of the application filed under Order VIII Rule 1A of the Code of Civil Procedure to accept a new document, i.e. the death certificate of late Ram Nibas Jalan at the said stage and there was a further direction that the petition be registered as Misc. Case and necessary order would be passed accordingly. While in Title Suit No. 126/2016, on 31.05.2017 an order was passed granting of adjournment to the defendants for filing evidence-on-affidavit and fix 21.06.2017 for further evidence whereas on 31.05.2017, an order was passed in Misc. Case No. 57/2017 fixing 07.06.2017 for written objection. Thereafter in Misc.(J) Case No. 57/2017 as the petitioner herein did not appear, on 07.06.2017, an order was passed fixing 20.06.2017 for hearing/order on Misc. Case No. 57/2017. On 20.06.2017, the order was passed thereby allowing the said Misc.(J) Case No. 57/2017. The reasons assigned in the order dated 20.06.2017 being relevant is quoted herein below:

“Perusal of the case record reveals that, in the para 21 of the W.S. the defendants have asserted that, Late Ram Nibas Jalan expired on 2.6.1997 at Bokajan and hence, the question of executing in any kind of Sale Deed on 14.6.1999 does not arise. Hence, the Sale Deed so submitted by the plaintiff is a false and a fabricated document.

The petitioner further stated in the instant petition that, they could not collect the death certificate of Late Ram Nibas Jalan from the concerned authority on the believe that, the death certificate issued by the Gaonbura is itself sufficient.

Now, since the matter has become controversial, the defendants have applied for the death certificate of Late Ram Nibas Jalan issued by Birth and Death Registrar CHC on 18.4.17.

It is pertinent to mention that, the Sale Deed dated 14.6.1999 which is in dispute has strong nexus with the date of death of Late Ram Nibas Jalan who was the executor of the Sale Deed.

Here in the present case from the bare reading of the petition it is disclosed that, the document which is sought to be induced by the petitioner was not in his possession or power at the time of presentation of the W.S.

Further the said document will throw light in reaching a just decision of the main question of the instant suit i.e. whether the Sale Deed dated 14.6.1999 is a genuine or not.

Further, the plaintiff side will get ample opportunities to cross-examine the defendant with regard to the said document and hence, they will not be prejudiced.

Situated thus, the petition stands allowed and accordingly the death certificate of Late Ram Nibas Jalan is accepted.”

9. The record further shows that on 21.06.2017, the suit proceedings i.e. T.S No. 126/2017 was continued without any reference to the order dated 20.06.2017 and the suit proceedings proceeded to the stage of cross-examination of the defendant witnesses.
10. The petitioner thereafter filed an application on 18.07.2017 under the provisions of Order XVI Rule 6, 7 and 14 of the Code of Civil Procedure praying for passing necessary order for calling for the relevant Registrar and records of death certificate bearing No. 0067765 issued on



11.07.2016 in the name of the late Ram Nibas Jalan. In the said petition, it was specifically mentioned that the petitioner had filed an application on 22.05.2017 under the Right to Information Act and obtained the death certificate of late Ram Nibas Jalan bearing No. 0067765 dated 11.07.2016 issued by the Registrar, Birth and Death, Bokajan CHC and as per the said certificate, the date of death of late Ram Nibas Jalan was 09.04.2005. It further appears from a perusal of the said application that the petitioner was provided with the information, vide a communication dated 04.07.2017. To the said application, a written objection was filed by the respondents. The trial Court vide an order dated 08.01.2018, rejected the said application on the ground that vide an order dated 09.01.2017, similar application filed by the petitioner was rejected and thereby res judicata duly applied to the same. It is surprising to note that the trial Court did not take into consideration that by way of the application filed under Order XVI Rule 6, 7 and 14 dated 18.07.2017, the petitioner had sought for calling for the records in view of the information which she received under the Right to Information Act, on the basis of the communication dated 04.07.2017, not only the petition filed on 06.09.2016 and the petition filed on 18.07.2017 were separate and distinct, but also new information had come to light after the filing of the application, dated 08.05.2017 by the Respondents/Defendants.

11. The petitioner challenged the said order before this Court in CRP(I/O) No. 150/2018 but the said revision application was withdrawn with a liberty to approach the trial Court by filing appropriate application and it was directed that on filing such application the same to be disposed of as per law.



12. Thereupon the petitioner filed an application under Order VII Rule 14 read with Section 151 of the Code seeking leave of the trial Court to bring on record the said documents. To the said application the respondents herein filed their written objection on 09.07.2018.
13. The trial Court vide an order dated 07.01.2019 rejected the said application on the ground of res judicata as the matter has already been decided on 09.01.2017 and 08.01.2018 and thereby fixed 25.02.2019 for cross-examination of the remaining DWs. Being aggrieved by the said order dated 07.01.2019 whereby the petitioner's petition under Order VII Rule 14 was rejected, the petitioner has approached this Court by way of the instant proceedings invoking the supervisory jurisdiction of this Court under Article 227 of the Constitution.
14. This Court vide an order dated 19.07.2019, issued notice and stayed the further proceedings of Title Suit No. 126/2012 pending before the Court of the Munsiff No. 2 at Dibrugarh. The said order has been extended from time to time by this Court. It is relevant to take note of that after receipt of the notices from this Court the respondents filed an affidavit-in-opposition denying to the contents and the contentions made in the revision application.
15. I have heard the learned counsels for the parties and given my anxious consideration to the matter. From the facts narrated herein above, it would show that the petitioner filed the suit on 15.10.2012 claiming right, title and interest in respect to the Schedule A and B properties. As already stated herein above the Schedule A property, the petitioner claims on the basis of the Registered Deed of Sale bearing Deed No. 5101 Sl. No. 1980 dated 14.06.1999. The defendants filed their



written statement-cum-counter claim on 24.01.2013 and in their written statement they had stated that late Ram Nibas Jalan expired on 02.06.1999. However, the death certificate of late Ram Nibas Jalan was not produced by the defendants at the time of filing their written statement though the said document is a vital document on which the defendants base their defence. The petitioner, thereafter, adduced evidence of 6(six) witnesses including an official witness and filed an application to call for the Registrar, Birth and Death, Bokajan as an official witness vide petition No. 1557/2016 dated 06.09.2016. The said petition was rejected vide an order dated 09.01.2017 on the ground that mere calling for the witness without spelling how the reasons as to how the evidence of the said witness would be relevant for adjudication of the dispute. At this stage, it may be relevant to take note that it was in the written statement-cum-counter claim mentioned that late Ram Nibas Jalan expired prior to the execution of the Deed of Sale. As such calling for the said witness was very relevant. This Court is therefore of the opinion that the rejection of the petition No. 1557/2016 vide the order dated 09.01.2017, on the face of it, was a jurisdictional error committed by the trial Court.

16. Thereafter, the record shows that on 08.05.2017, the Respondents/Defendants at the stage of adducing evidence brought on record the death certificate dated 18.04.2017 showing that late Ram Nibas Jalan expired on 02.06.1999. On the basis of the said application filed under Order VIII Rule 1A(3) of the Code, the trial Court registered a Misc. Case being Misc. (J) Case No. 57/2017 and fixed 31.05.2017 for filing of the objections. The records further show that while Title Suit No.



126/2012 proceeded on separate dates; Misc.(J) Case No. 57/2017 proceeded on separate dates. This aspect of the matter would be clear from the fact that vide an order dated 31.05.2017, the Title Suit No. 126/2012 was fixed on 21.06.2017, whereas the Misc.(J) Case No. 57/2017 was first fixed on 07.06.2017 and thereafter on 20.06.2017 on which date the Misc.(J) Case No. 57/2017 was allowed holding inter alia that the death certificate of late Ram Nibas Jalan was a relevant document for the purpose of deciding their dispute.

17. The record further shows that when the Respondents/Defendants filed an application on 08.05.2017 which was registered as Misc. (J) Case No. 57/2017, the petitioner immediately took steps under the Right to Information Act before the concerned authority and filed an application on 22.05.2017. It was only vide a communication dated 14.04.2017, the petitioner was provided the information that, late Ram Nibas Jalan expired on 09.04.2005; along with various documents including the counter foil maintained by the Registrar of Birth and Death, Bokajan CHC, the death certificate dated 11.07.2016 of late Ram Nibas Jalan, the certificate issued by the Sarkari Gaonbura, Karbi Anglong Autonomous Council and the medical certificate of cause of death of late Ram Nibas Jalan. On the basis thereof, the petitioner immediately on 18.07.2017 filed an application under Order XVI Rule 6, 7 and 14 for calling for the records from the Office of the Registrar of Birth and Death, Bokajan CHC, Karbi Anglong, Assam as regards the death certificate bearing No. 0067765 issued on 11.07.2016 in the name of late Ram Nibas Jalan. At this stage, it may be relevant to mention that the application filed on 06.09.2016 was calling for the Registrar, Birth and Death as witness while



the petition filed on 18.07.2017 was for calling for documents. To the said application so filed by the petitioner, a written objection was filed on 08.11.2017 primarily on the ground of res judicata in view of the order dated 09.01.2017 and the plaintiff's evidence having been closed. The trial Court vide an order dated 08.01.2018 rejected the said application filed by the petitioner under Order XVI Rule 6, 7 and 14 of the Code on the ground of res judicata as the trial Court had already vide an order dated 09.01.2017 rejected a similar request. It is noteworthy to mention that while the application filed being Petition No. 1557/2016 dated 06.09.2016 was at the stage when the petitioner was not in possession of the various documents pertaining to the death of late Ram Nibas Jalan whereas the application filed under Order XVI Rule 6, 7 and 14 was based upon documents which the petitioner could get under the Right to Information Act and as such there was a change in circumstances and consequently the question of res judicata did not apply.

18. Be that as it may, the petitioner filed an application before this Court challenging the order dated 08.01.2018 which was registered and numbered as CRP(I/O) No. 150/2018. This Court permitted the petitioner to withdraw the said revision application with a liberty to approach the trial Court by filing appropriate application and on filing such application the same was directed to be disposed of as per law. The petitioner thereupon filed an application under Order VII Rule 14 read with Section 151 seeking leave of the Court below to produce the said documents which she received under the Right to Information Act. The trial Court vide the impugned order dated 07.01.2019 without applying its mind to the facts of the case and the directions passed by this Court whereby the



trial Court was directed to dispose the said application as per law rejected the said application on the ground of res judicata as the matter has already been decided as per the orders dated 09.01.2017 and 08.01.2018. This Court is of the opinion that the said order dated 07.01.2019 is on the face of it erroneous inasmuch as the orders dated 09.01.2017 and 08.01.2018 pertained to calling for the Registrar, Birth and Death as witness and calling for the records of the death certificate of late Ram Nibas Jalan respectively whereas the application under Order VII Rule 14 of the Code was seeking the leave of the Court to produce the said documents which the petitioner received by virtue of the information provided on 04.07.2017. It cannot be understood on what basis the trial Court had come to a conclusion that res judicata was applicable to the adjudication of all the applications as the said applications were separate and distinct. This Court further fails to understand that on one hand vide an order dated 20.06.2017 the trial Court had permitted the respondents to bring on record the death certificate of late Ram Nibas Jalan dated 18.04.2017 wherein late Ram Nibas Jalan was shown to have expired on 02.06.1999 but surprisingly does not permit the petitioner to bring on record the documents which she could procure under the Right to Information Act including the counter foil, the death certificate, the certificate issued by the Official Gaonbura of the Karbi Anglong Autonomous District Council and the Medical certificate as regards the cause of death of late Ram Nibas Jalan which were vital for the purpose of adjudication of dispute. At this stage, this Court finds it apt to rely upon a judgment of ***Maria Margarida Sequeira Fernandes & Ors. V. Erasmo Jack De Sequeira (Dead)***

Through Lrs. reported in (2012) 5 SCC 370 wherein the Supreme Court had emphasized that truth should be the guiding star in the entire judicial process. Paragraphs 32, 33, 34, 35, 36, 37, 38, 51 and 52 being relevant are quoted herein below:

“32. *In this unfortunate litigation, the Court’s serious endeavour has to be to find out where in fact the truth lies.*

33. *The truth should be the guiding star in the entire judicial process. Truth alone has to be the foundation of justice. The entire judicial system has been created only to discern and find out the real truth. Judges at all levels have to seriously engage themselves in the journey of discovering the truth. That is their mandate, obligation and bounden duty. Justice system will acquire credibility only when people will be convinced that justice is based on the foundation of the truth.*

34. *In Mohanlal Shamji Soni v. Union of India⁹ this Court observed that in such a situation a question that arises for consideration is whether the Presiding Officer of a court should simply sit as a mere umpire at a contest between two parties and declare at the end of the combat who has won and who has lost or is there not any legal duty of his own, independent of the parties, to take an active role in the proceedings in finding the truth and administering justice? It is a well-accepted and settled principle that a court must discharge its statutory functions—whether discretionary or obligatory—according to law in dispensing justice because it is the duty of a court not only to do justice but also to ensure that justice is being done.*

35. *What people expect is that the court should discharge its obligation to find out where in fact the truth lies. Right from the inception of the judicial system it has been accepted that discovery, vindication and establishment of truth are the main purposes underlying the existence of the courts of justice.*

36. *In Ritesh Tewari v. State of U.P.¹⁰ this Court reproduced an oft-quoted quotation which reads as under: (SCC p. 687, para 37)*

“37. *... Every trial is voyage of discovery in which truth is the quest.”*

(emphasis in original)

This Court observed that the “power is to be exercised with an object to subserve the cause of justice and public interest, and for getting the evidence in aid of a just decision and to uphold the truth.”

37. *Lord Denning in Jones v. National Coal Board¹¹ has observed that: (QB p. 63)*

“... In the system of trial [that we] evolved in this country, the Judge sits to hear and determine the issues raised by the parties, not to conduct an investigation or examination on behalf of [the] society at large, as happens, we believe, in some foreign countries.”

38. *Certainly, the above is not true of the Indian judicial system. A Judge in the*

Indian system has to be regarded as failing to exercise its jurisdiction and thereby discharging its judicial duty, if in the guise of remaining neutral, he opts to remain passive to the proceedings before him. He has to always keep in mind that "every trial is a voyage of discovery in which truth is the quest". In order to bring on record the relevant fact, he has to play an active role; no doubt within the bounds of the statutorily defined procedural law.

51. *In the administration of justice, Judges and lawyers play equal roles. Like Judges, lawyers also must ensure that truth triumphs in the administration of justice.*

52. *Truth is the foundation of justice. It must be the endeavour of all the judicial officers and Judges to ascertain truth in every matter and no stone should be left unturned in achieving this object. Courts must give greater emphasis on the veracity of pleadings and documents in order to ascertain the truth."*

19. Another aspect of the matter which needs to be taken into consideration as to whether the leave sought for can be granted at this stage taking into consideration that the evidence of the plaintiff is already over and the defendants' evidence is at the stage of cross-examination of the defendants' witness. It is pertinent to note that only on 08.05.2017 the defendant filed an application to bring on record the death certificate of late Ram Nibas Jalan although it was the defendants' specific case in their written statement that late Ram Nibas Jalan expired prior to the execution of the Registered Deed of Sale dated 14.06.1999 and as such the Defendants were duty bound to bring on record the said document at the time of filing of their written statement. The defendants even did not bring on record the said document at the stage of 'Issues and Documents' or at any further stage when the plaintiffs were adducing their evidence. The death certificate of late Ram Nibas Jalan is dated 18.04.2017 which came into existence after the closure of the evidence of the plaintiff. The petitioner immediately on coming to learn about the said application made necessary enquiries under the Right to Information

Act and the petitioner received all the documents in respect of which it sought for leave only after 04.07.2017 and thereafter, immediately filed an application under Order XVI Rule 6, 7 and 14 which was rejected by the trial Court vide an order dated 08.01.2018 and thereupon on the basis of the liberty so granted had filed an application under Order VII Rule 14. At this stage this Court would like to refer to the judgment of the Supreme Court in the case of ***Sugandhi (Dead) by Legal Representatives & Anr. V. P. Rajkumar reported in (2020) 10 SCC 706*** wherein the Supreme Court was dealing with the provision of Order VIII Rule 1A(3) of the Code which is a pari materia to Order VII Rule 14(3) of the Code. Paragraphs 6, 7, 8, 9 and 10 being relevant is quoted herein below:

“6. Rule 1-A of Order 8 CPC provides the procedure for production of documents by the defendant which is as under:

“1-A. Duty of defendant to produce documents upon which relief is claimed or relied upon by him.—(1) Where the defendant bases his defence upon a document or relies upon any document in his possession or power, in support of his defence or claim for set-off or counterclaim, he shall enter such document in a list, and shall produce it in court when the written statement is presented by him and shall, at the same time, deliver the document and a copy thereof, to be filed with the written statement.

(2) Where any such document is not in the possession or power of the defendant, he shall, wherever possible, state in whose possession or power it is.

(3) A document which ought to be produced in court by the defendant under this Rule, but, is not so produced shall not, without the leave of the court, be received in evidence on his behalf at the hearing of the suit.

(4) Nothing in this Rule shall apply to documents—

- (a) produced for the cross-examination of the plaintiff's witnesses, or*
- (b) handed over to a witness merely to refresh his memory.”*

7. Sub-rule (1) mandates the defendant to produce the documents in his possession before the court and file the same along with his written statement. He must list out the documents which are in his possession or power as well as those which are not. In case the defendant does not file any document or copy thereof along with his written statement, such a document shall not be allowed

to be received in evidence on behalf of the defendant at the hearing of the suit. However, this will not apply to a document produced for cross-examination of the plaintiff's witnesses or handed over to a witness merely to refresh his memory. Sub-rule (3) states that a document which is not produced at the time of filing of the written statement, shall not be received in evidence except with the leave of the court. Rule 1(1) of Order 13 CPC again makes it mandatory for the parties to produce their original documents before settlement of issues.

8. Sub-rule (3), as quoted above, provides a second opportunity to the defendant to produce the documents which ought to have been produced in the court along with the written statement, with the leave of the court. The discretion conferred upon the court to grant such leave is to be exercised judiciously. While there is no straitjacket formula, this leave can be granted by the court on a good cause being shown by the defendant.

9. It is often said that procedure is the handmaid of justice. Procedural and technical hurdles shall not be allowed to come in the way of the court while doing substantial justice. If the procedural violation does not seriously cause prejudice to the adversary party, courts must lean towards doing substantial justice rather than relying upon procedural and technical violation. We should not forget the fact that litigation is nothing but a journey towards truth which is the foundation of justice and the court is required to take appropriate steps to thrash out the underlying truth in every dispute. Therefore, the court should take a lenient view when an application is made for production of the documents under sub-rule (3).

10. Coming to the present case, the defendants have filed an application assigning cogent reasons for not producing the documents along with the written statement. They have stated that these documents were missing and were only traced at a later stage. It cannot be disputed that these documents are necessary for arriving at a just decision in the suit. We are of the view that the courts below ought to have granted leave to produce these documents."

20. In the facts of the instant case and also taking into consideration the judgment of the Supreme Court rendered in the case of **Maria Margarida Sequeira Fernandes (Supra)** and **Sugandhi (Supra)**, this Court is of the view that procedural and technical hurdles should not be allowed to come in the way of the Court while doing substantial justice. Granting of the leave in the instant case would not cause any prejudice to the adversary party (the Respondents herein) inasmuch as the Respondents had only after the closure of the evidence of the



plaintiff sought the leave on 08.05.2017 to bring on record a document which came into existence only on 18.04.2017. Further as the endeavour of the Court should be to find the truth, this Court grants the leave to the petitioners as sought for in their application under Order VII Rule 14 which was registered as Petition No. 995/2018 thereby permitting the petitioner to bring on record the death certificate of late Ram Nibas Jalan bearing No. 0067765 dated 11.07.2016 issued by the Registrar, Birth and Death, Bokajan CHC, the counter foil No. 0067765, the certificate of the Sarkari Gaonbura, Karbi Anglong Autonomous Council bearing Sl. No. 891 as well as the medical certificate of the cause of death of late Ram Nibas Jalan. For the purpose of adducing the said documents as evidence, the petitioner is further permitted to file additional evidence on affidavit and also to call for relevant witnesses for proving the said documents. The Defendants/Respondents herein shall be permitted to cross-examine the petitioner as well as the other official witnesses who appear to prove the said documents.

21. With the above observations and directions the instant petition stands disposed of. The interim order staying the suit proceedings stands vacated and the parties are directed to appear before the trial Court on 19.04.2022.

JUDGE

Comparing Assistant