



GAHC010177252022

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

Case No. : CRP(IO)/212/2022

JYOTISH BAISHYA
S/O LATE HARINDRA BAISHYA, R/O VILL-NIZ-POKOA, MOUZA-POKOA,
DIST-NALBARI, ASSAM

VERSUS

HARI RAM BAISHYA
S/O LATE KINA RAM BAISHYA, R/O VILL-NIZ-POKOA, MOUZA-POKOA,
DIST-NALBARI, ASSAM

B E F O R E

Hon'ble MR. JUSTICE SANJAY KUMAR MEDHI

Advocate for the petitioner : Shri P. Das, Advocate.

Advocate for the respondent : Shri A. Choudhury, Advocate.

Date of hearing : 11.08.2023

Date of judgment : 11.08.2023



JUDGMENT & ORDER

Heard Shri P. Das, learned counsel for the petitioner whereas Shri A. Choudhury, learned counsel is present for the sole respondent.

2. The instant petition has been filed under Article 227 of the Constitution of India against an order dated 14.07.2022 passed by the learned Civil Judge, Nalbari in Title Appeal No. 8/2017.

3. The petitioner was the defendant in TS No. 10/2012 which was instituted for declaration of right, title and interest. The decree passed by the learned Trial Court is the subject matter of challenge in the concerned Title Appeal No. 8/2017.

4. It is the case of the petitioner that their application under Order 41 Rule 27 of the CPC for permitting adducing of evidence at the appellate stage has been allowed.

5. Thereafter, an application of file for invoking the provisions of Order 13 Rule 1(3a) of the CPC for confronting certain witnesses by some documents. The said petition was objected to by the respondent-plaintiff by filing written objection. Vide the impugned order dated 14.07.2022, the prayer has been rejected.

6. Shri Das, the learned counsel has submitted that under Order 13 Rule 1 (3a), the rigours imposed under Order 13 Rules 1 & 2 has been removed to a great extent as such permission could be given to cross-examine the witness of the other party. Shri Das, the learned counsel submits that interest of justice would be served only if the petitioner is allowed to confront the witness by those documents which are certified copy of *chitha* of the suit land.

7. On the other hand, Shri Choudhury, the learned counsel for the sole respondent has submitted that apart from the fact that the order dated 14.07.2022 does not suffer

from any jurisdictional error, the said order has been passed by taking into consideration of the relevant factors and therefore not liable to be interfered with. Additionally, he submits that there is no question of suffering of any prejudice inasmuch as the documents which has been sought to be produced to confront the witness are already on record in the form of Ext. *Ga* & Ext. *Gha*.

8. Rejoining his submission, Shri Das, the learned has submitted that though it is the matter of fact that the said documents were exhibited as Ext. *Ga* and Ext. *Gha*, those were overlooked by the learned Trial Court which has necessitated in filing the present application.

9. The rival submissions made by the learned counsel for the parties have been duly considered.

10. The powers to be exercised under Order 13 Rule 1 (3a) CPC is an exception to the other provisions of Order 13 Rules 1 & 2. While Order 13 Rule 1 makes it incumbent upon the parties to produce all documentary evidence in original on or before the settlement of issues, Rule 3 makes it clear that the said restriction is not applicable when documents are produced for the cross-examination of the witnesses of the other party or handed over to a witness to merely refresh his memory.

11. For ready reference, Order 13 Rules 1, 2 & 3 CPC are extracted herein below:-

“1. Original documents to be produced at or before the settlement of issues :-

(1) The parties or their pleader shall produce on or before the settlement of issues, all the documentary evidence in original where the copies thereof have been filed along with plaint or written statement.

(2) The Court shall receive the documents so produced:

Provided that they are accompanied by an accurate list thereof prepared in such form as the High Court directs.

(3) Nothing in sub-rule (1) shall apply to documents-

(a) produced for the cross-examination of the witnesses of the other party; or



(b) handed over to a witness merely to refresh his memory.

2. Effect of non-production of documents –

3. Rejection of irrelevant or inadmissible documents :- *The Court may at any stage of the suit reject any document which it considers irrelevant or otherwise inadmissible, recording the grounds of such rejection.”*

12. However, it transpires that the documents sought to be produced are already on record in the form of Ext. *Ga* and *Gha*. In that view of the matter, this Court is of the considered opinion that the purpose which has been sought to be achieved by filing the petition under Order 13 Rules 1 & 2 CPC can be otherwise achieved inasmuch as that documents are already on records as indicated above. The apprehension expressed by Shri Das, the learned counsel for the petitioner that since the said Ext. *Ga* & *Gha* were overlooked by the Trial Court is a misconceived one inasmuch as the First Appellate Court can exercise all the powers and it is a Court of facts as well as of law and therefore there would be no restriction upon the petitioner, who is the appellant to confront the witness with the said documents which are already on record in the form of Ext. *Ga* & *Gha*.

13. In view of the aforesaid findings and observations, this Court is of the view that the order dated 14.07.2022 is not liable to be interfered with. However, it is clarified that the petitioner would have the right to confront the witness with the documents which are already on record as Ext. *Ga* & Ext. *Gha*.

14. Petition accordingly stands disposed of.

JUDGE

Comparing Assistant