GAHC010235832016

2026:GAU-AS:6181

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

Case No. : CRP(IO)/130/2016

SRI SUJIT LOADH
S/O LT. SACHINDR ALOADH R/O RONGPUR, P.O. SILCHAR-9, PH. BARAKPAR, DIST. CACHAR, ASSAM.

VERSUS

SMTI. APARNA DAS AND 5 ORS
W/O SRI PANKAJ KUMAR DAS D/O LT. ABINASH DAS R/O LINK ROAD, LANE NO. 1, P.O. SILCHAR-6, PH- BARAKPAR DIST. CACHAR, ASSAM.

2:SRI AMIYA KUMAR DAS
S/O LT. ABINASH DAS R/O LAKHIMPUR TOWN
P.O. and P.S. LAKHIPUR TOWN
PH-LAKHIPUE DIST. CACHAR
ASSAM.

3:SMTI. KHELA RANI DAS DHAR
D/O LT. ABHINASH DAS SHE IS REP. BY DEF. NO. 1
BY A REGISTERED POWER OF ATTORNEY

4:SMTI. LILA RANI DAS
D/O LT. ABINASH DAS

5:SMTI. NIVA RANI DAS DUTTA
D/O LT. ABINASH DAS

6:I SRI SHEKHAR DUTTA
AGED ABOUT 21 YEARS
II SONS OF LATE JAYASREE DUTTA AND SRI SUKUMAR DUTTA III SRI SUKUMAR DUTTA ADVOCATE AGED ABOUT 50 YEARS H/O LT. JAYASREE DUTTA ALL ARE RESIDENT OF RONGPUR PT.IV
M.N. DUTTA LANE

WARD NO. 5
DIST. CACHAR
P.O. SILHAR-9
PH-BARAKPAR
DIST. CACHAR

Advocate for the Petitioner : MR.S DEY, MR. T ROY,MS.B SARKAR

Advocate for the Respondent : MR.H R A CHOUDHURYR- 2, 6i-6iii, MR.F U BORBHUIYA(R- 2, 6(i)-6(iii))

BEFORE
HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI

ORDER

Date : 06.05.2026

1. Heard Mr. T. Roy, learned counsel appearing for the petitioner. Also heard Mr. F. U. Borbhuiya, learned counsel for the respondent No.2, 6 (i) to 6 (iii).

2. Despite the office note reflecting completion of service upon the other respondents, as recorded in this Court's order dated 04.02.2026, none appears on behalf of the remaining respondents on call. Accordingly, the matter is taken up for final disposal.

3. By way of the present Civil Revision Petition under Article 227 of the Constitution of India, read with Section 151 of the Code of Civil Procedure, 1908 (hereinafter referred to as CPC), the petitioner assails the order dated 16.07.2016 passed by the learned Munsiff No. 1, Cachar, Silchar in T.S. No. 297/2006, whereby Petition No. 777/11 dated 27.04.2016, filed by the plaintiff/petitioner praying, *inter alia*, for issuance of summons to the other witnesses of the plaintiff and for calling records and documents, was rejected and the case was fixed for evidence on behalf of the defendants.

4. The brief facts of the case are that the petitioner instituted a suit for specific performance of contract before the Trial Court in relation to the agreement dated 10.04.1995 concerning the land in question. In the said suit, the respondent filed its written statement, and thereafter both the petitioner and the respondent submitted their respective lists of witnesses. Accordingly, the examination-in-chief of PW-1 was filed before the Trial Court. Thereafter, the cross-examination of PW-1 was completed. However, on the date of completion of the cross-examination of PW-1, i.e., on 21.03.2016, since no further prosecution witness or evidence was produced, nor were any steps taken for issuance of summons to the remaining witnesses on behalf of the plaintiff, the matter was fixed for evidence on behalf of the defendants.

5. Thereafter, the plaintiff/petitioner filed an application seeking permission to produce the remaining prosecution witnesses by issuance of summons to them. However, by the impugned order dated 16.07.2016, the Trial Court rejected the said application.

6. Mr. T. Roy, learned counsel appearing for the petitioner, submits that on 12.11.2012, the Trial Court did not permit prosecution witnesses Nos. 2 and 3 to be examined and, upon completion of the cross-examination of PW-1, straightaway fixed the suit for evidence on behalf of the defendants. According to the learned counsel, the said order of the Trial Court is wholly erroneous and perverse.

7. Per contra, learned counsel appearing for the respondent submits that since the petitioner failed to produce any prosecution witnesses on the date when the cross-examination of PW-1 was completed, and further failed to seek

issuance of summons to the remaining prosecution witnesses, the order of the Trial Court fixing the matter for evidence on behalf of the defendants cannot be faulted.

8. I have considered the submissions advanced by the learned counsel appearing for the parties and have perused the materials available on record. Since the controversy essentially pertains to the propriety of closure of the plaintiff's evidence and the subsequent prayer for reopening the same, it would be apposite, at the outset, to refer to Order XVI, Rule 1 CPC, which reads as follows:

> "***[1. List of witnesses and summons to witnesses***- *(1) On or before such date as the Court may appoint, and not later than fifteen days after the date on which the issues are settled, the parties shall present in Court a list of witnesses whom they propose to call either to give evidence or to produce documents and obtain summonses to such persons for their attendance in Court.*
>
> *(2) A party desirous of obtaining any summons for the attendance of any person shall file in Court an application stating therein the purpose for which the witness is proposed to be summoned.*
>
> *(3) The Court may, for reasons to be recorded, permit a party to call, whether by summoning through Court or otherwise, any witness, other than those whose names appear in the list referred to in sub-rule (1), if such party shows sufficient cause for omission to mention the name of such witness in the said list.*
>
> *(4) Subject to the provisions of sub-rule (2), summonses referred to in this rule may be obtained by the parties on an application to the [Court or to such officer as may be appointed by the Court in this behalf within five days of presenting the list of witnesses under sub-rule(1)].]"*

9. A plain reading of the aforesaid provision leaves no manner of doubt that the scheme of Order XVI Rule 1 CPC obligates the parties not only to file the list of witnesses within the prescribed period but also to take timely steps for

securing their attendance before the Court. The legislative intent underlying the provision is to ensure orderly conduct of trial and to obviate avoidable delays in recording evidence.

10. In the backdrop of the aforesaid statutory framework, the facts emerging from the impugned order assume significance. The Trial Court, while dealing with the application filed by the plaintiff/petitioner for reopening of evidence and issuance of summonses to additional witnesses, recorded as follows:

> " *By filing the petition no. 777/11 as aforesaid, the plaintiff/ petitioner stated that due to delay in completion of cross-examination of PW1 the plaintiff was unable to take steps for summons to other witnesses of the plaintiff side as the other witnesses are not willing to give evidence in the suit without summons from the court. Further, on last 21/03/2016, suddenly the cross-examination of PW1 was completed and the next date was fixed for filing evidence of defendant side due to absence of any petition for issuance of summons to other witness of the plaintiff side. Under such circumstances, if the plaintiff/petitioner is not afforded with an opportunity to examine the witnesses named in the petition by issuing summons then the plaintiff/ petitioner will be deprived from substantial justice. The plaintiff/ petitioner, has therefore prayed for issuance of summons to the witnesses named in the petition to appear and give evidence with their respective original registered deeds and deed of agreement of sale with defendant no.1 to 5 of this suit by modifying or changing the date fixed for evidence of defendant side.*
>
> *As against the aforesaid petition of the plaintiff side, the defendant side by filling written objection petition no. 1539/20 stated that the petition of the plaintiff/petitioner is not maintainable. Also, several dates have been fixed for cross-examination of PW1 and submission of evidence of other PWs but the plaintiff did not take any step for submission of evidence of other PWs. There is gross and deliberate laches and negligence on the part of the plaintiff. Further, there is no prayer for vacating the order dated 24/04/2016 fixing date for defendant' evidence and this court is now functus officio in so far as the prayer made in instant petition.*

The defendant side has therefore prayed for rejection of the instant petition,

Perused the case record. On such perusal, it is found that the plaintiff side submitted evidence in chief on affidavit of PW1 on 16/11/2013.Thereafter, due to various reasons like prayer for adjournment by plaintiff & defendant side and also prayer of plaintiff side for striking out the name of deceased defendant no.5, the cross-examination of PW1 could not be completed till 21/03/2016. On 21/03/2016 this suit was posted for cross-examination of PW1 and further PWs. Accordingly, the PW1 appeared on 21/03/2016 and faced his cross-examination. However, since the plaintiff side did not adduce any further evidence on that date and also did not made any prayer for time for that purpose hence the evidence of plaintiff side was closed on 21/03/2016.

Now, the prayer of the plaintiff/petitioner in the instant petition is to re-open the evidence for plaintiff side. However, there is no specific provision in the C.P.C for re-opening the evidence of a party when the evidence of that party is already closed. In this respect, the Hon'ble Supreme Court of Indian in the case of K.K.Velusamy Vs N. Palanisamy reported in 2011(4)SCALE61 has held that, "In the absence of any provision providing for re-opening of evidence or recall of any witness for further examination or cross-examination, for purposes other than securing clarification required by the court, the inherent power under Section 151 of the Code, subject to its limitations, can be invoked in appropriate cases to re-open the evidence and/or recall witnesses for further examination..... The power under Section 151 or Order 18 Rule 17 of the Code is not intended to be used routinely, merely for the asking. If so used, it will defeat the very purpose of various amendments to the Code to expedite trials. But where the application is found to be bona fide and where the additional evidence, oral or documentary, will assist the court to clarify the evidence on the issues and will assist in rendering justice, and the court is satisfied that non-production earlier was for valid and sufficient reasons, the court may exercise its discretion to recall the witnesses or permit the fresh evidence. But if it does it should ensure that the process does not become a protracting tactic."

In view of the above observations made by Hon'ble Apex Court in K.K. Velusamy's case, the question which now comes up for

consideration in the case in hand is that, whether the plaintiff had valid and sufficient reasons for not making the prayer for issuance of summons to the witnesses named in the instant petition at an earlier stage of the trial?

In a quest for an answer to the above question, perusal of case record reveals that the plaintiff side had filed list of witnesses on 12/11/2012. As per the requirement of Order 16 Rule 1(4) of C.P.C, summonses for witnesses are to be obtained by the plaintiff within five days of presenting the list of witnesses. However, the plaintiff side failed to do so and has not shown any reason for such failure. Further, perusal of case record reveals that the PW1 was present for facing cross-examination on 09/02/2016 but the defendant side filed a petition praying for adjournment which was allowed and the suit was posted on 21/03/2016 for cross-examination of PW1 and further PWs. This shows that the plaintiff side had the knowledge that the plaintiffs are required to adduce further evidence, if any, on 21/03/2016. However, as stated above, on 21/03/2016 the plaintiff side neither adduced any further evidence nor made any prayer for time to adduce further evidence, due to which the plaintiff side evidence was closed on that date. Besides that, though the petitioner/plaintiff in the instant petition has stated that the plaintiff was unable to take steps for summons to other witnesses due to delay in completion of cross-examination of PW1 but the petitioner/plaintiff has not specifically stated as to why such delay has resulted in the inability of the plaintiff to take steps for summons. In my opinion, there is no logical connection between the fact of delay in cross-examination of PW1 and inability of the plaintiff to take steps for summons upon witnesses, rather in my opinion delay in cross examination of PW1 has afforded more time to the plaintiff to take steps for adducing further evidence. Hence, the aforesaid ground shown by the plaintiff is not valid and sufficient to re-open the evidence.

The petitioner/plaintiff in the instant petition has also sought to make it a ground that the steps for summons could not be taken as the cross-examination of PW1 was suddenly completed on 21/03/2016. In my opinion, the plaintiff cannot expect that the cross-examination of PW1 would take more time as per the expectation of the plaintiffs. The cross-examination of a witness is to be completed on the day the witness appears before the court unless there are valid reasons for keeping the further cross-

examination reserved. In the case in hand, there is nothing in the case record to show that an impression was given to the plaintiff side on 09/02/2016 that the PW1 would be partly cross-exetined on 21/03/3016 and his further cross-examination will be kept reserved. Hence, the aforesaid ground shown by the plaintiff/petitioner is not a valid and sufficient ground.

Moreover, perusal of case record reveals that this suit is of the very old pending and is originally of the year 2003. Under such circumstances, if the evidence of plaintiff side is re-opened, that too without any valid and sufficient reasons, then such a course would, in my opinion, cause more injustice to the defendant side than the justice which may be done to the plaintiff side by allowing the prayer. The concept of justice is to be applied equally to both the parties of a litigation, and as stated above, allowing the prayer in instant petition would cause more injustice to the defendants.

Considering the above discussion, the prayer of the plaintiff in petition No.777/2011 stands rejected."

11. The records reveal that the examination-in-chief of PW-1 on affidavit had been filed as far back as on 16.11.2013. Thereafter, for diverse reasons, including adjournments sought by the parties and proceedings arising out of the death of one of the defendants, the cross-examination of PW-1 came to be completed only on 21.03.2016. Significantly, on the said date, though the matter had been specifically fixed not merely for cross-examination of PW-1 but also for further prosecution evidence, no additional witness was produced on behalf of the plaintiff, nor was any prayer made seeking time for adducing further evidence. Consequently, the Trial Court closed the evidence of the plaintiff and fixed the matter for evidence on behalf of the defendants.

12. The subsequent application filed by the plaintiff/petitioner was, in essence, one seeking reopening of the plaintiff's evidence. Though the Code does not contain any express provision enabling reopening of evidence once closed, the Hon'ble Apex Court in the case of ***K.K. Velusamy v. N. Palanisamy***, reported

in ***(2011) 11 SCC 275***, recognised that the inherent powers under Section 151 CPC may, in appropriate cases, be invoked for such purpose. The Apex Court, however, simultaneously sounded a note of caution by holding that such power cannot be exercised routinely so as to defeat the legislative objective of expeditious disposal of trials. Reopening of evidence can be permitted only where the application is bona fide, the additional evidence is necessary for a just adjudication of the controversy, and the Court is satisfied that earlier non-production was for valid and sufficient reasons.

13. Tested on the anvil of the aforesaid principles, this Court finds no infirmity in the approach adopted by the Trial Court. Admittedly, the plaintiff had filed the list of witnesses on 12.11.2012. However, despite the clear mandate of Order XVI Rule 1 CPC, no steps were taken within the prescribed period for issuance of summonses to the said witnesses. Even thereafter, despite repeated opportunities granted during the prolonged pendency of the cross-examination of PW-1, the plaintiff failed either to secure the attendance of the remaining witnesses or to seek appropriate directions from the Court in that regard.

14. Equally untenable is the plea that the plaintiff was taken by surprise because the cross-examination of PW-1 concluded on 21.03.2016. A litigant cannot legitimately proceed on the assumption that cross-examination of a witness would necessarily remain inconclusive on a given date. More importantly, the order dated 09.02.2016 itself reflected that the matter stood posted on 21.03.2016 not only for continuation of cross-examination of PW-1 but also for further prosecution evidence. The plaintiff was therefore fully aware of the necessity of remaining prepared with further evidence on the said date.

15. The explanation furnished by the plaintiff that delay in completion of cross-examination prevented steps from being taken for issuance of summonses is also devoid of merit. Far from constituting a handicap, the prolonged pendency of the cross-examination in fact afforded the plaintiff sufficient time and opportunity to take recourse to the procedure contemplated under Order XVI Rule 1 CPC. The omission to do so, therefore, cannot now be cured by invoking the discretionary jurisdiction of the Court under Section 151 CPC.

16. It is also not without significance that the suit itself is an old pending matter of the year 2003. In such circumstances, reopening of evidence in the absence of any valid or convincing explanation would inevitably result in further delay and serious prejudice to the defendants. Procedural fairness in a civil trial operates equally in favour of both parties, and indulgence shown to one litigant cannot be at the cost of endless prolongation of proceedings to the detriment of the other side.

17. Viewed thus, the course adopted by the Trial Court in closing the evidence of the plaintiff on 21.03.2016 and rejecting the subsequent application for reopening of evidence cannot be said to suffer from any perversity, illegality or jurisdictional infirmity warranting interference under Article 227 of the Constitution of India.

18. Accordingly, the Civil Revision Petition stands dismissed.

JUDGE

Comparing Assistant