

CRP 53/2007

BEFORE

THE HON'BLE MR JUSTICE T.N.K. SINGH

Sri Debarshi Bhattacharjee

S/O. Shri Bireswar Bhattacharjee

R/O. Red Cross Road,

Dist. Karimganj.

Petitioner

VERSUS

1.Smti Bithi Dey

W/O. Lt. Biman Dey

2.Shri Aparup Dey

S/O. Lt. Biman Dey

Both are r/o Shanti Bhaban

Gobindapally, P.O.Hojai

Dist. Nagaon.

3.Shri Bikash Dey Laskar

4.Shri Bidhan Kumar Dey Laskar

Both are S/O. Lt. Basanta Kumar Dey

Laskar, r/o Main Road, near

Shambhu Sagar Park, Karimganj Town

Dist. Karimganj.

For the Petitioner/plaintiff: Mr. D. Mazumdar, Advocate

For the Respondets : None appears.

Date of hearing : 28.2.2007

Date of Judgment : 28.2.2007.

JUDGMENT AND ORDER (ORAL)

1. Heard Mr D. Mazumder, learned counsel for the petitioner-plaintiff .

2. By this revision petition the petitioner is assailing the order of the learned Civil Judge(Senior Division), Karimganj dated 30.11.06 rejecting the application filed by the petitioner -plaintiff for recalling the order dated 30.5.06 passed by the learned Civil Judge (Senior Division) Karimganj rejecting the application filed by the petitioner-plaintiff for adjournment. The present impugned order dated 30.11.06 is an interlocutory order against which the revision cannot be filed under section 115 of the CPC because of the amendment to that section i.e 115 of the CPC by the C.P.C. Amendment Act 46 of 1999. In this regard, the learned counsel appearing for the petitioner-plaintiff submits that the present petition is under Article 227 of the Constitution of India.

3. The concise fact leading to the filing of the present petition is that the petitioner-plaintiff filed the T.S. No. 13/04 before the learned Civil Judge(Senior Division), Karimganj against the present respondents for declaration of right and interest in respect of the suit property and also for cancellation a partition deed No. 338 executed by the respondents dated 27.1.2004.

4. The respondents also filed the written statement in the said Title Suit No. 13/04 in the Court of the learned Civil Judge (Senior Division) Karimganj and the learned trial court after perusal of the plaint as well as written statement framed issues on 28.4.2005 and fixed 15.6.05 for the plaintiff's evidence. Thereafter the petitioner-plaintiff filed a number of adjournments of the T.S. No. 13/04 so as to enable the petitioner-plaintiff to produce his evidence. It appears from the record that the application filed by the petitioner-plaintiff for adjournments had been granted by the learned trial court in a number of occasions by passing different orders viz 15.6.05, 10.8.05, 23.9.05, 29.11.05, 12.1.06, 18.2.06, 20.3.06 and 20.6.06. Again on 30.5.06 the petitioner-plaintiff filed application for adjournment of the Title Suit No. 13/04.

5. By the amendment Act 46 of 1999, Order 17 Rule 1 CPC had been amended. According to the provision of Order 17 Rule 1 CPC no adjournment shall be granted more than 3 times to a party during the course of hearing. In the present case, first hearing of the Title Suit No. 13/04 was held on 28.4.2005 i.e. the date on which the learned trial court framed the issues.

6. The Apex Court in Civil Appeal No.3241/06 between M.R. Tyagi Vs Sri Devil Sahai Gautam held that the order for allowing repeated adjournments is a criminal waste of public time. In that case the petitioner-plaintiff made the repeated adjournments when the suit was pending before the learned trial court. The Apex Court in M.R. Tyagi (supra) had deprecated such irresponsible approach of Courts granting numerous and unnecessary adjournments in the strongest terms. The frequent grant of unnecessary adjournments has come in for very serious public criticism. The Apex Court further held that- it is not surprising that frequent adjournments are unnecessarily sought, but what is surprising is that courts generously grant such adjournments, regardless of the fact that it results in delayed disposal of cases.

7. This Court, after taking into consideration of the ratio laid down by the Apex Court in M.R. Tyagi (supra), is of the considered view, that allowing of adjournment to the petitioner-plaintiff will result misplaced of justice to the petitioner-plaintiff which is result to injustice to the defendant-respondent.

8. On perusal of the impugned order dated 30.11.06 passed by the learned Civil Judge (Senior Division), Karimganj, it appears that the learned Trial court had made a finding in the impugned order dated 30.11.06 that the petition for review dated 20.6.2006 filed by the plaintiff for reviewing the earlier order dated 30.5.06 rejecting the application for adjournment is not maintainable. As per provisions of Order 17 Rule 1 CPC, the plaintiff is not entitled to get adjournment for more than 3 times. But in this case he made adjournment as many as 8 times and on 9th day the Court was pleased to reject the prayer. Sufficient opportunities were allowed on 15.6.05, 10.8.05, 23.9.05, 29.11.05, 12.1.06, 18.2.06, 20.3.06, 26.4.06 for adducing evidence. After making such finding the learned Trial court passed the impugned order dated 31.11.06 declining to review the earlier order dated 30.5.06 rejecting the application for adjournment filed by the petitioner-plaintiff and also rejecting the prayer of the petitioner-plaintiff to produce his evidence.

9. This Court also perused the application dated 20.6.06 filed by the petitioner-plaintiff for reviewing the order dated 30.5.06 rejecting the application for adjournment. From the perusal of the application, it appears that the petitioner-plaintiff was not able to produce his evidence as he was engaged other personal duties and away from Karimganj.

10. It is fairly well settled principles of law that this Court by exercising power under Article 227 of the Constitution can interfere with the interlocutory order in case the justice requires to do so. In the instant case, all

owing the present application under Article 227 of the Constitution against interlocutory order dated 30.11.06 will amount to misplaced justice to the petitioner which result to injustice to the respondent.

11. Such being the situation, the petitioner-plaintiff could not make out any case for interfering with the impugned order dated 30.11.06 by this Court under Article 227 of the Constitution of India.

12. In the facts and circumstances of the case mentioned above and also taking into consideration of the ratio laid down by the Apex Court in M.R.Tyagi (supra) and also the ratio laid down by the Apex Court in Surya Dev Rai Vs Ram Chander Rai & Ors (2003) 6 SCC 675, this Court is of the considered view that the revision petition is devoid of merit and accordingly dismissed.