

CRP 480/2010
BEFORE
THE HON'BLE MR. JUSTICE AMITAVA ROY

In assailment is the order dated 15.11.2010 passed by the learned Munsiff No.4, Kamrup, Guwahati in Title Suit No.105/2006 recalling its earlier order dated 12.04.2010 granting permission, thereby to the present petitioner to adduce rebuttal evidence on the counter claim on the opposite party.

I have heard Mr. S.S. Sharma, learned Senior Counsel for the petitioner and Mr. O.P. Bhati, learned counsel for the opposite party.

For the order proposed to be passed, it is not considered necessary to dwell in details on the pleadings in the suit concerned i.e. Title Suit No.46/1997, presently pending in the Court of the Civil Judge, Senior Division No.2, Kamrup, Guwahati (registered afresh as Title Suit No.105/2006).

Suffice it to mention that the present petitioner had filed the above suit seeking a decree inter alia for declaration in his right, title and interest in and confirmation of his possession of the suit property. The opposite party, in their joint written statement resisted the suit. They also registered their counter claim against the petitioner who has meanwhile submitted his written statement thereto as well. The parties have examined their witnesses and have also introduced documentary evidence. While the suit was thus pending for arguments on a verbal prayer made on behalf of the petitioner, he was allowed to adduce rebuttal evidence vis- -vis the counter claim of the opposite party, by the order dated 12.04.2010 as alluded hereinabove.

The opposite party, thereafter, filed an application for a recall of the said order contending inter alia that at that stage of the suit such a permission was unwarranted and if availed would result in injustice to them. A written objection was submitted by the petitioner and eventually by the order impugned, the permission granted on 12.04.2010 was recalled.

Whereas, Mr. Sharma has urged that the reasons recorded in the impugned order are patently erroneous and that in the interest of fair adjudication, the petitioner ought to be allowed to offer rebuttal evidence, Mr. Bhati has argued that in absence of any reason or cause shown by the petitioner, the order dated 12.04.2010 per se is untenable and therefore has been rightly recalled. He has maintained that the parties having adduced evidence in support of their respective pleaded cases and the witnesses having been crossexamined and discharged, such a prayer is wholly misconceived.

Upon hearing the learned counsel for the parties, this Court is of the view that having regard to the stage of the suit and the nature of the pleaded recommendations of the parties, the permission to the petitioner to adduce rebuttal evidence to the counter claim on a verbal prayer ought not to be sustained. To that extent the conclusion recorded in the order impugned does not warrant interference.

However, the reasons recorded therefor do not appeal to this Court. As the suit is of a composite nature encompassing the claim and counter claim of the parties as noticed hereinabove in absence of any legal bar engrafted in the Code of Civil Procedure, prohibiting either of them to adduce fresh or rebuttal evidence as the case may be depending on the exigencies, it is considered appropriate to close this petition by leaving the petitioner at liberty to file an appropriate application if so advised before the learned Court below reiterating his prayer for rebuttal evidence to the counter claim of the opposite party. To clear possible misgivings, the order dated 15.11.2010 in the above perspective is thus interfered with. Needless to say, that if such an application is filed, the learned trial Court without being influenced by any of the observations made hereinabove would deal with the same after hearing the learned counsel for the parties and in accordance with law.

The parties would appear before the learned Court below on 06.06.2011 to take further order(s) in this regard.