

(2019) 01 CAL CK 0077

In the Calcutta High Court

Case No : Civil Order/Misc.Cas (Co) No. 4565 Of 2016

Sri Somnath Pradhan & Ors.Vs Sri Goutam Bhowmick & Ors.

Date of Decision : 22-01-2019

Acts Referred:

Code Of Civil Procedure, 1908 — Order 18 Rule 17
Constitution Of India, 1950 — Article 227

Citation : (2019) 01 CAL CK 0077

Hon'ble Judges : Biswajit Basu, J

Bench : Single Bench

Advocate : Asis Chandra Bagchi, Amitabha Roy

Final Decision : Disposed Off

Judgement

None appears on behalf of the opposite parties to oppose this revisional application inspite of service.

The revisional application under Article 227 of the Constitution of India is at the instance of the plaintiffs in a suit for declaration of tenancy right and restoration of possession of the suit property and is directed against Order No. 271 dated August 31, 2016 and Order No. 274 dated November 21, 2016 passed by the learned Civil Judge, (Senior Division), Haldia in Title Suit No. 92 of 2015.

The plaintiffs on July 12, 2016 filed an application seeking recall of P.W. 1 on the ground that a document executed by the deceased defendant no. 1 on February 13, 1988 could not be proved at the time of evidence of P.W. 1 as the same was misplaced. However, the D.W. 1 was confronted with the said document but the said witness refused to acknowledge the signature of his father i.e. deceased defendant no. 1 on the said document. Therefore to prove the said document P.W. 1 may be recalled.

The learned trial Judge by the order No. 271 dated August 31, 2016 dismissed the said application of the plaintiffs/petitioners on the ground that the examination-in-chief and cross-examination of P.W. 1 has already been concluded and there is no room to entertain the said petition filed by the

plaintiffs specially when the evidence of both sides have been closed and the suit has been fixed for argument.

The petitioners filed another application on the same date, i.e. on July 12, 2016 praying that they may be allowed to prove the said document by citing one of the witnesses of the said document as witness in the suit.

The learned trial Judge by the order No. 274 dated November 21, 2016 dismissed the said application of the petitioners on the ground that by the Order No. 271 dated August 31, 2016 prayer for recalling the P.W. 1 to prove the said document since has been rejected and the plaintiffs did not challenge the said order which goes to show that the plaintiff have waived the matter.

Mr. Bagchi, learned senior counsel appearing on behalf of the petitioners submit that the power of the Court to recall and examine witness under Order 18 Rule 17 of the Code of Civil Procedure can be exercised at any stage of the suit.

Heard Mr. Bagchi, learned senior counsel.

Perused the materials on record.

The plaintiffs in the suit have alleged that the deceased defendant No. 1 removed the coal lying in their tenanted shop room i.e. the suit premises on February 13, 1988 at about 11.45 PM and in presence of the members of R.C party gave a writing to that effect.

The plaintiffs in the application for recalling of the P.W. 1 has stated that during the course of the evidence of P.W. 1 the said document could not be traced as a result the same could not be proved through P.W. 1. The plaintiffs in the said application contended further that after tracing the said document the D.W. 1 was confronted with the said document but the said witness refused to acknowledge the signature of the deceased defendant No. 1, who happened to be the father of the said witness.

The plaintiffs under such circumstances sought recall of the said P.W. 1 to prove the said document. The plaintiffs also filed the second application praying to bring any of the witnesses of the said document as witness in the suit to prove the said document.

The plaintiffs in the suit is claiming his tenancy right over the suit property and restoration of possession of the same on the ground that they were illegally dispossessed from the suit property.

In view of the nature of allegation made in the plaint and the relief sought for in the suit the document dated February 13, 1988 is a vital piece of evidence to adjudicate the dispute between the parties effectively. The plaintiffs, therefore, should be given an opportunity to prove the said document in course of the trial of the suit.

The plaintiffs since by their second application are praying that they may be

allowed to prove the said document through any of the witness of the said document, the prayer of the plaintiff for recalling of the P.W. 1 has become redundant as such the order No. 271 dated August 31, 2016 is not interfered with and is affirmed.

However, the application filed by the plaintiffs praying an order to prove the said document through any of it's witnesses is allowed by setting aside the order No. 274 dated November 21, 2016.

The learned trial Judge shall give only one chance to the plaintiffs to cite one of the witnesses of the said document to prove it and shall conclude the whole exercise in this regard within a period of two weeks from the date of communication of this order.

With the above observation, C.O. No. 4565 of 2016 is disposed of.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.