

GAHC010163452025



2026:GAU-AS:8714

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

Case No. : CRP(10)/291/2025

ON THE DEATH OF SAYED MAQSUD AHMED, HIS LEGAL HEIRS
NAMELY

1.1: MUMTAZ BEGUM
W/O LATE SAYED MAQSUD AHMED
P/R/O NABAJYOTI PATH NALIAPOOL
P.O.
P.S. AND DIST. DIBRUGARH
ASSAM
PIN-786001

1.2: DIL NAWAZ AHMED
S/O LATE SAYED MAQSUD AHMED
P/R/O NABAJYOTI PATH NALIAPOOL
P.O.
P.S. AND DIST. DIBRUGARH
ASSAM
PIN-786001

1.3: NAZRIN SULTAANA
D/O LATE SAYED MAQSUD AHMED
P/R/O NABAJYOTI PATH NALIAPOOL
P.O.
P.S. AND DIST. DIBRUGARH
ASSAM
PIN-78600

VERSUS

KHURSHID ALI AHMED
S/O. SAYED MAQSUD AHMED, R/O NABAJYOTI PATH, DIBRUGARH
NALIAPOOL, P.O., P.S. AND DIST. DIBRUGARH, ASSAM, PIN-786001

Advocate for the Petitioner : MR N N UPADHYAYA, MR. B B KAKATI,MR. V PANDEY,MR. D K BAGCHI

Advocate for the Respondent : A PAREEK, KAUSHIK JAIN

BEFORE
HONOURABLE MRS. JUSTICE YARENJUNGLA LONGKUMER

ORDER

Date : 17.06.2026

1. The instant petition under Article 227 of the Constitution of India r/w Section 115 of CPC, 1908 has been preferred by the petitioners/plaintiffs assailing the impugned order dated 21-09-2024, passed by the learned Civil Judge (Sr. Division), Dibrugarh in Title Suit No. 88/2019 debarring the petitioner/plaintiff from filing evidence and closing the evidence of PWs. The petitioners herein has also challenged the order dated 05-12-2024, passed by the learned Civil Judge (Sr. Division), Dibrugarh in Title Suit No. 88/2019, rejecting the prayer of the petitioner/plaintiff to file the PWs. The petitioner/plaintiff has also prayed for quashing the orders dated 03-03-2025 and 23-05-2025, passed in Title Suit No. 88/2019, fixing the case for arguments.

2. Heard Mr. N.N. Upadhyaya, learned counsel for the petitioners/plaintiffs. Also heard Mr. K. Jain, learned counsel for the respondent/defendant.

3. The case of the petitioner herein is that the plaintiff/ petitioner has filed the Title Suit No. 88/2019, which is pending before the court of the Civil Judge (Sr. Division) Dibrugarh. The said suit has been filed, praying for

a decree for declaration that the respondent/defendant got the sale deed No. 1041 executed and registered on 04-05-2017 by taking advantage of the poor health and mental condition of the petitioners/plaintiffs, amongst other prayers.

4. During the pendency of the title suit, the original plaintiff of the title suit, i.e. Sayed Maqsud Ahmed expired on 17-05-2021 and therefore, the petitioners/plaintiffs being the legal heirs/wife/son/daughters of the deceased were substituted and the respondent/dependent is also the son of the deceased Sayed Maqsud Ahmed.

5. The learned counsel for the petitioners/plaintiffs states that on 21-09-2024, the matter was fixed for filing of PWs by the petitioners/ plaintiffs. However, the learned trial court upon perusing the case records observed that since the case is pending for long at the stage of filing of PWs i.e. since 04-05-2023 and that the trial court had by order dated 17-05-2024 strictly directed the plaintiffs to file the PWs on the next date without fail i.e. 06-07-2024 and that the plaintiffs had again filed petition on 06-07-2024 seeking adjournments to file the affidavit, which was allowed by the trial court and therefore, observing that the plaintiffs were absent without any steps and considering the long pendency of the case at the stage of filing evidence of PWs, the impugned order dated 21-09-2024 was passed. By passing the impugned order, the plaintiffs/petitioners were barred from filing their evidence and as such, the PW evidence was closed and fixing the matter on 05-12-2024 for evidence of the DWs.

6. Being aggrieved, the petitioners/plaintiffs filed a petition under Section 151 of the CPC, praying for vacating the order dated 20-09-2024, and for granting an opportunity to file the plaintiffs' evidence. In the said

application, registered as Petition No. 8560/2024, the plaintiffs stated that they had engaged a new advocate on 04-12-2024 to conduct the suit and upon discussing the matter, it was revealed that the trial court had closed the evidence of the plaintiffs on 21-09-2024. It was stated in the petition that the plaintiffs were unaware of the fact that their evidence had not been filed and they were under the impression that their earlier advocate was diligently managing the case. However, the plaintiffs had later received a no-objection certificate from their previous advocate, but this situation was not brought to their knowledge on time. Another ground taken by the plaintiffs in the said petition was that the plaintiff No. 1 did not reside in Dibrugarh, that the plaintiff No. 2 is a person aged 70 years and that the plaintiff No. 3 is suffering from depression and therefore, they were unable to take steps on time. It was stated that the failure to file the evidence was neither intentional nor deliberate, but had arisen due to circumstances beyond the control of the plaintiffs.

7. On 05-12-2024, the said petition vide No. 8560/2024 was heard on merits by the learned trial court and after hearing the parties by the impugned order dated 05-12-2024, the petition No. 8560/2024 was rejected.

8. Being aggrieved with the above mentioned orders dated 21-09-2024, 05-12-2024, 03-03-2025 and 23-05-2025, the petitioners have come before this Court. The learned counsel for the petitioners/plaintiffs submits that by a no objection letter dated 20-09-2024, the previous counsel has returned the briefs to the plaintiffs and on 21-09-2024, when the matter was taken up for PWs, the plaintiffs could not engage an advocate at such short notice and finally, they could engage a new counsel only on 04-12-2024. The

learned counsel for the petitioners/plaintiffs has placed reliance on the case of ***Ram Pal & Ors. vs. Dhan Singh Nawasa Likhi & Anr.***, which was decided by the High Court of Punjab and Haryana in CR No. 6523 of 2018 on 29-11-2018. He has also relied on a judgment of the co-ordinate Bench of this Court in RFA No. 26/2012 and a judgment dated 24-08-2017 passed by another co-ordinate Bench of this Court in CRP No. 332/2013.

9. By relying on the above mentioned authorities, the learned counsel for the petitioners/plaintiffs submits that in similar circumstances, this Court had allowed the parties to adduce evidence before the learned trial court subject to payment of cost. He has submitted that in the above-mentioned cases, even though there was delay in the filing of evidence, the co-ordinate Bench of this Court had allowed the petition as it was found that there was communication gap between the counsel appearing on behalf of the petitioner and that the non-filing of the evidence was due to factors beyond the control of the petitioner and therefore, the Court had directed that the parties should be given an opportunity to adduce evidence and contest the matter.

10. In view of these submissions made hereinabove and the principles laid down in the above-mentioned judgments, the learned counsel prays that this instant petition may also be allowed by setting aside and quashing the impugned orders, subject to payment of costs.

11. *Per contra*, learned counsel for the respondent by relying on the affidavit-in-opposition filed on behalf of the respondent, has submitted that the petitioner/plaintiff has filed the title suit and he has to be vigilant about his own case and he cannot shift the burden of his negligence upon the shoulders of the engaged counsel and engaging a new counsel cannot be a

ground to condone the delay caused in filing the evidence. The learned counsel submits that the petitioners/plaintiffs herein have not come before the Court with clean hands as before the impugned order dated 21-09-2024 was passed, the petitioners/plaintiffs have been given enough opportunities to file their evidence-on-affidavit, however, the same was not done. It is also stated that the title suit is now at the stage of arguments and as such, if the instant petition is allowed, the same will further delay the proceedings of the suit which was filed in the year 2019. The learned counsel for the respondent has referred to the various orders passed by the trial court in the Title Suit No. 88 of 2019 which are annexed in the affidavit-in-opposition of the respondent. The learned counsel for the respondent has placed reliance on ***Rajneesh Kumar & Anr. vs. Ved Prakash***, reported in ***2024 INSC 891, Ishwarlal Mali Rathod vs. Gopal & Ors***, in ***Special Leave Petition (Civil) Nos. 14117-14118 of 2021, Kartik Sena Singha vs. Debashis Chakraborty & Anr.*** reported in ***2019:GAU-AS:37*** and ***MD Eushoof Ali vs. Smti Halima Khatoon & Ors.*** reported in ***2025:GAU-AS:13461.***

12. By relying on these aforementioned judgments, the learned counsel for the respondent has argued before this Court that the petitioner/plaintiff had himself remained idle of his right and obligations and being the plaintiff in the title suit, he was under an obligation to pursue his case diligently and to have contact with the engaged counsel to appraise his case and to know about the results of the proceedings. The learned counsel also submits that the Hon'ble Supreme Court in the case of ***Ishwarlal Mali Rathod (supra)*** has emphasized that the arrears in the justice delivery system are mounting because of delay and dilatory tactics and because of repeated

adjournments by advocates and mechanically and in routine manner adjournments being granted by the courts. He has stated that the Hon'ble Supreme Court has held that due to the delay in access to justice and not getting the timely justice, it may shaken the trust and confidence of the litigants in the justice delivery system. The learned counsel therefore, pleads that the instant petition may be dismissed as the same is bereft of merit and as the petitioners/plaintiffs have not been able to show any extraordinary reasons for the delay caused in filing the evidence-on-affidavit of PWs.

13. This Court has given its due considerations to the submissions made by the parties and perused pleadings and as well as the authorities relied upon by the counsel for the parties.

14. Upon perusal of the impugned order dated 05-12-2024 and upon examination of the orders of the trial court annexed in the affidavit-in-opposition, this Court has noted that the trial court had granted as many as 11 adjournments to the plaintiffs/petitioners for submitting their evidence-on-affidavit. The trial court had passed orders of adjournment on 14-12-2022, 28-02-2023, 04-05-2023, 05-07-2023, 19-09-2023, 01-12-2023, 08-01-2024, 23-02-2024, 07-05-2024, 17-05-2024, 06-07-2024 and finally on 21-09-2024. As such, it is seen from the records that 11 numbers of adjournments have been granted by the trial court from the year 2022 till 2024. No doubt, the trial court as well as this Court has the discretion to allow the plaintiffs to file their evidence even after a long period of delay. However, that discretion needs to be exercised more strictly when there has been repeated adjournments and as in the present case, it is found that there has been 11 adjournments made by the plaintiffs/petitioners. This

Court is of the view that the petitioners/plaintiffs cannot be allowed to file their evidence-on-affidavit as a matter of right at this belated stage.

15. This Court has to consider the conduct of the plaintiffs/petitioners and to see whether there is negligence on their part or abuse of the process or deliberate attempt to prolong the suit. Each case has to be decided on its own merits. In the cases relied upon by the petitioners, the facts and circumstances were different.

16. Upon going through the entire records and the orders of adjournments granted by the trial court, this Court is not able to find any exceptional cause shown by the plaintiffs/petitioners for the delay in the filing of their evidence-on-affidavit. In fact, the suit was filed in the year 2019 and it is surprising to note that till the year 2024, the evidence-in-chief of the PWs was yet to be filed even after the court granted 11 adjournments. As stated by the parties, the suit is now at the stage of arguments and this Court is of the view that allowing the instant petition would not serve the interests of justice and in fact lead to prolonging the pendency of the Title Suit No. 88/2019.

17. In view of the observations made hereinabove, the instant petition stands dismissed and disposed of accordingly.

JUDGE

Comparing Assistant