

**HIGH COURT OF TRIPURA
AGARTALA**

CRP No.14/2023

Shri Debanta Ghosh

..... Petitioner(s).

V E R S U S

Shri Susanta Ghosh

.....Respondent(s).

For Petitioner(s) : Mr. S.M. Chakraborty, Sr. Advocate,
Mr. Suman Bhattacharjee, Advocate.

For Respondent(s) : Mr. Sankar Lodh, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

29/05/2023

Heard Mr. S.M. Chakraborty, learned senior counsel assisted by Mr. Suman Bhattacharjee, learned counsel appearing for the petitioner and Mr. Sankar Lodh, learned counsel appearing for the respondent.

2. In two paragraphs in the original written statement and the amended written statement filed on 09.03.2021 the defendant/petitioner herein pleaded that the right, title and interest of the plaintiff over the suit property had totally got extinguished after elapse of 12 years from 26.01.2008 and the suit was totally barred by limitation. Petitioner's application for amendment under Order VI Rule 17 of the Code of Civil Procedure was filed one year after the amended written statement for

making corrections in the date, i.e. 26.01.2008 as indicated in paragraphs-9 and 12 of the written statement. The same had been rejected by the impugned order dated 05.09.2022 upon objection by the plaintiff.

3. While Mr. S.M. Chakraborty, learned senior counsel assisted by Mr. Suman Bhattacharjee, learned counsel for the petitioner submits that the proposed amendment shall not change the nature of the relief and the plaintiff will again get a chance to cross-examine the defendant on the aforesaid issue of the date of commencement of the plea of adverse possession i.e. 26.01.2006 instead of 26.01.2008, learned counsel for the plaintiff/respondent submits that the said date is not an inadvertent error in the pleadings which has once been amended also as it finds mention at three places; twice in paragraph-9 and once in paragraph-12 of the written statement. Moreover, the date of commencement of the plea of adverse possession would relate from 12 years from the date indicated by the defendant and the plea of limitation against the plaintiff would also run from that date. There is lack of diligence on the part of the defendant as no explanation whatever has been furnished for filing such a belated amendment petition when the evidence of the plaintiff is complete and the defendant's examination is underway. As such, the learned trial Court has

rightly rejected the prayer by the impugned order dated 05.09.2022 which does not suffer from any error of jurisdiction calling for interference under Article 227 of the Constitution of India.

4. I have considered the submissions of learned counsel for the parties and taken note of the pleadings placed from the record and also gone through the impugned order.

5. It is the undisputed case of the defendant that the original written statement contained the relevant date i.e. 26.01.2008 at three places in paragraphs-9 and 12 and remain unaltered even after a further amendment carried out in the year 2021. The proposed amendment actually intends to set up a new plea of the date from which 12 years period of adverse possession would commence and also the plea of limitation taken against the plaintiff. The suit is at the stage of defendant witnesses. As such, the learned trial Court has rightly rejected the proposed amendment as there is also lack of diligence on the part of the defendant/petitioner.

6. On consideration of the aforesaid facts and circumstances, do not find any error of jurisdiction in the impugned order calling for interference under Article 227 of the Constitution of India.

7. Accordingly, the instant revision petition is dismissed.
Pending application(s), if any, also stands disposed of.
8. Send back the lower court records forthwith.

(APARESH KUMAR SINGH), CJ

PULAK BANIK Date: 2023.05.31
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