

**HIGH COURT OF TRIPURA**  
**\_A\_G\_A\_R\_T\_A\_L\_A\_**

**CRP. No.15 of 2023**

***Sri Raviul Hossain***

***.....Petitioner***

**VERSUS**

***Smt. Basana Khatoon @ Basana Begam and Ors.***

***.....Respondents***

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For Petitioner(s) : Mr. S. M. Chakraborty, Sr. Advocate.  
Mr. S. Saha, Advocate.  
For Respondent(s) : None.

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**HON'BLE THE CHIEF JUSTICE [ACTING]**  
**\_O\_R\_D\_E\_R\_**

**12/04/2023**

Heard.

[2] This petition has been filed under Article-227 of the Constitution of India read with Section-115 & 151 of the code of Civil Procedure, 1908 for exercising the power of superintendence against TA. No.05 of 2019 by the learned District Judge, Sepahijala, Sonamura.

[3] The petitioner has prayed for the following reliefs:

“In the premises as aforesaid it is prayed that this Hon’ble High Court will be pleased to admit this petition stay further proceedings of the Title Appeal No.05 of 2019 pending for passing judgment on 12.04.2023 before the Ld. District Judge, Sepahijala, Sonamura, call for records, issue notice as to why the impugned order dated 31.03.2023 in case No. T.A.05 of 2019 passed by the Ld. Court of the District Judge, Sepahijala, Sonamura, shall not be quashed and after hearing the petition allow the prayer of the appellant-petitioner and direct the Ld. District Judge, Sepahijala to remand the matter before the Ld. Civil Judge, Sr. Division, Sepahijala, Sonamura for fresh trial.”

[4] The facts in brief are that the plaintiff-respondent No.1 Smt. Basana Khatoon filed a partition suit on 11.09.2009 before the learned Civil Judge, Sr. Division Court No.1, West Tripura, Agartala, seeking partition of the property measuring 3.63 acres allegedly left behind her father Abdul Gofur, which was registered as T.S.(P) 83 of 2009. In the said suit nothing was stated

about the share of Sufia Khatun another wife of Abdul Gafur who died on 12.09.1990 whereas Abdul Gafur died on 01.07.1984.

[5] However, this fact escaped notice of the appellant-petitioner who is almost illiterate and can put his signature in Bengali only. After prolonged contest, the suit was decreed in preliminary form on 19.09.2015 for 3.11 acres only, wherein, the entire one eight share of the suit land of both wives of Abdul Gofur vis Sufia Khatoon and Shymala Khatoon, was given to one wife i.e. defendant No.6 Shymala Khatoon only and this fact escaped notice of the appellant petitioner and his learned counsel. So, no appeal was preferred against the preliminary decree.

[6] Accordingly, a petition was filed for passing final decree by way of appointing survey commissioner. During pendency of the said petition, defendant No.6 Shymala Khatoon died on 08.07.2016 and on 26.07.2016 Court directed to strike-off her name from the preliminary decree and also to give her alleged one eight share to her legal heirs only. But no correction was made in the preliminary decree. Accordingly, survey commissioner was appointed, who submitted his report after about six months of his visiting the suit land in collusion with the plaintiff respondent No.1 Smt. Basana Khatun, whimsically dividing the property in such a manner so that the residential house of the appellant petitioner could be demolished. Though a date was fixed for submitting objection, if any, against the survey commissioner report, no objection could be filed by the engaged counsel of the appellant petitioner, as he was seriously ill and lost his mental balance for a long time.

[7] The appellant had no knowledge about passing of the final decree accepting the said report of survey commissioner. Accordingly final decree was passed making the said report as part of the final decree, keeping the name of deceased Shyamala Khatun as defendant No.6. All those facts came to the notice of the learned counsel of the appellant and he argued the appeal on 29.03.2012 with a prayer to remand the matter for correction of the decrees and

thereafter to appoint fresh survey commissioner for partition of the decreed property fixing three months for the said corrections and holding fresh survey etc. next date was fixed on 12.04.2023 for passing the judgment.

[8] But, unfortunately, on 31.03.2023 behind the back of the appellant-petitioner one put-up petition was submitted before the learned District Judge by the respondent No.1 Basana Khatun and the learned District Judge without supplying copy of the said petition to the appellant or his counsel or hearing the counsel of the appellant, passed the impugned order on 31.03.2023 directing the trial Court to correct the errors made in the preliminary decree and final decree as well as in the plaint and accordingly, directed the office to send the lower court record before the learned Civil Judge, Sr. Division West Tripura, Agartala for making the above correction.

[9] Hence, the present petition has been filed before this Court for proper adjudication.

[10] Having heard the argument of the learned counsel appearing for the petitioner as well as after gone through the material evidence on record, it is seen that an appeal has been preferred and during the pendency of the said appeal when the matter was due for judgment, a request has been made in writing by the plaintiff-respondent in the appeal seeking correction of the decree. Considering the same, the learned Appellate Court below on 31.03.2023 has passed a detailed order and for the purpose of reference, the same may be extracted hereunder:

“The case record is put up today on a put up petition filed on behalf of plaintiff respondent Bashana Khatun and by a separate petition makes a prayer for correction of the decree before passing the judgment so fixed on 12.04.2023 as otherwise the purpose of this suit will be frustrated.

Perused the same.

Heard and considered.

At the time of hearing Ld. Counsel Mr. S. Chakraborty appearing for respondent no. 1 Bashana Khatun has submitted that in the original suit i.e. TS(P) 83 of 2009, one of the co-sharer Smt. Shyamala Khatun was made a party as defendant no. 6 but subsequently during the pendency of the suit she died leaving behind defendant no. 3 and 4 as her legal heirs who are entitled to get the shares of defendant no. 6.

Accordingly, they made a petition before the trial court for striking out the name of defendant no. 6 Shyamala Khatun from the plaint as well as preliminary decree and her share be distributed/ allotted equally to the plaintiff and defendant no. 3 and 4 in addition to their respective share and accordingly, the Ld. Trial Court by an order dated 26.08.2016 allowed such petition and also directed to struck off the name of the defendant no. 6 from the plaint, judgment and preliminary decree and also directed to distribute the one each share of defendant no. 6 equally to the plaintiff and defendant no. 3 and 4. in addition to their one-ninth share.

But it appears from the case record that, after passing of that order dated 26.08.2016, the office of the Ld. Trial Court did not correct the plaint, judgment and preliminary decree accordingly and as such the name of defendant no. 6 has also reflected in the final decree which are required to be corrected immediately.

Hence, office is directed to send back the case record to the Ld. Trial Court through messenger for the purpose of making correction of the plaint, judgment and preliminary decree as well as final decree as per order of the Ld. Trial Court dated 26.08.2016 passed in TS(P) 83 of 2009 and also to send back the case record to this court after such correction on or before the next so fixed.

Inform accordingly.

Send a copy of the order to the Ld. Court below as well as parties to the suit.

To date fixed 12.04.2023 for judgement.”

[11] The above quoted order has been passed allowing the correction of the plaint, judgment and preliminary decree and accordingly communicated to the Appellate Court's order to the original Court. Aggrieved by the same, the present petition has been filed.

[12] That without giving any opportunity to the petitioner herein, who was the appellant in the lower Appellate Court and defendant in the suit, the present order is said to be passed without giving any opportunity of personal notice and hearing and thus, it is purely violative of principle of natural justice.

[13] It is seen from the order dated 31.03.2023 (supra) that a request has been made for correction of the errors and subsequently, the order has been passed by the Court below. A fair reading of the request made by the plaintiff-respondent's counsel in the appeal, it is seen that such request is neither supported by any evidence or the petition is recognized under any Civil Procedure Code. It is not understood to this Court as to under what provision such request is made and without serving any notice on the appellant, the learned Court below on the same day has passed the order for making necessary corrections in the plaint, judgment and preliminary decree.

[14] This kind of action of the lower Appellate Court draws attention of this Court and this Court is not in a position to accept the same. Hence, this Court finds that the orders passed by the Court below i.e. on 31.03.2023 cannot be allowed and also sustained in the eye of law and accordingly, the same stands set aside.

[15] It is further clarified that in pursuance of the orders passed on 31.03.2023 by the learned lower Appellate Court, any corrections made by the learned trial Court to the plaint, judgment and preliminary decree becomes redundant. In the light of the above, the present petition stands disposed of. As a sequel, miscellaneous applications pending, if any, shall stand closed.

**CHIEF JUSTICE [ACTING]**