

**HIGH COURT OF TRIPURA
AGARTALA**

CRP No.18/2023

1. Smt. Bela Acharjee, aged 82 years, W/O. Lt. Sunil Kr. Acharjee,
 2. Sri Pinaki Acharjee, aged 60 years, S/O. Lt. Sunil Kr. Acharjee,
Both are resident of Puran Bazar, P.O.-Khowai, P.S.-Khowai, District-
Khowai Tripura.
- The Plaintiff Respondent Petitioner(s).

V E R S U S

1. Sri Paritosh Deb, S/O. Lt. Rabindra Ch. Deb,
2. Sri Prantush Deb, S/O. Lt. Rabindra Ch. Deb,
3. Sri Bikash Deb, S/O. Lt. Rabindra Ch. Deb
4. Sri Biswanath Deb, S/O. Lt. Rabindra Ch. Deb,
5. Smt. Laxmi Rani Deb, W/O. Lt. Rabindra Ch. Deb,
All are residents of Uttar Durganagar, P.O.-Khowai, P.S.-Khowai,
District-Khowai Tripura.

.....The Defendant Counter Claimant Respondent(s).

For Petitioner(s)	: Mr. D. Deb, Advocate.
For Respondent(s)	: None.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

12/05/2023

By the impugned order dated 13.04.2023 passed in T.S.(CC) No. 01 of 2021, the learned Civil Judge (Sr. Division), Khowai, Tripura has proposed to invoke Order XXVI Rule 9 of the Code of Civil Procedure (CPC, for short) for appointment of a Pleader Commissioner and asked the counter claimants, i.e. the respondents herein to submit necessary details as

to the name and required fee of the Survey Commissioner before the trial Court on the next date.

2. Learned counsel for the plaintiff-petitioners submits that it is apparent from the perusal of the impugned order itself that the suit is at the stage of framing of issues and as such, the necessity whether the disputed property was to be surveyed by a Pleader Commissioner for elucidating the matter in dispute had not arrived. The learned trial Court could have felt the necessity to appoint a Pleader Commissioner after framing of the issue and at the stage of adducing of evidence.

3. It appears that after filing of written statement and counter claim, the defendants/respondents herein had filed a petition on 15.12.2022 for appointment of Survey Commissioner under Order XXVI Rule 9 of the CPC for local inspection. A written objection was submitted by the petitioners herein on 27.01.2023 taking the plea that such a move is only to disturb their peaceful possession over their land. It was also pointed out that an order granting injunction in favour of the respondents was issued by the Court preventing the counter claimants from disturbing the peaceful possession of the respondents over their land but they intentionally failed to do so. It was also submitted on behalf of the respondents that one of the vital deeds on which the counter claimants put

their reliance is a forged one and, therefore, under this circumstances there is no necessity for engagement of a Survey Commissioner in this suit.

4. On the other hand, the counter claimants/respondents herein had submitted that since both the parties are neighbours at the eastern side, the respondents had, out of greed, extended their area day by day by ill-designing their boundary and on 12.12.2014 predecessor of the counter claimants noticed illegal occupation of the respondents over a portion of land belonging to the counter claimants against which predecessor of the counter claimants raised objection but the respondents did not pay any heed to it and constructed pillars of their building in an urgent manner. The counter claimants prayed that appointment of a Survey Commissioner for field inquiry would enable the Court to find out the possession and plot number of the disputed land.

5. Order XXVI Rule 9 & 10 read as under:

"9. Commissions to make local investigations.-In any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property, or the amount of any *mesne* profits or damages or annual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court:

Provided that, where the State Government has made rules as to the persons to whom such commission shall be issued, the Court shall be bound by such rules.

10. Procedure of Commissioner. -(1) The Commissioner, after such local inspection as he deems necessary and after reducing to writing the evidence taken by him, shall return such evidence, together with his report in writing signed by him, to the Court.

(2) **Report and depositions to be evidence in suit.** - The report of the Commissioner and the evidence taken by him (but not the evidence without the report) shall be evidence in the suit and shall form part of the record; but the Court or, with the permission of the Court, any of the parties to the suit may examine the Commissioner personally in open Court touching any of the matters referred to him or mentioned in his report, or as to his report, or as to the manner in which he has made the investigation.

(3) **Commissioner may be examined in person.**- Where the Court is for any reason dissatisfied with the proceedings of the Commissioner, it may direct such further inquiry to be made as it shall think fit."

6. It is apparent therefrom that this power to appoint Commissioner to make local investigation is for the purpose of elucidating any matter in dispute or of ascertaining the market value of any property or the amount of any *mesne* profits or damages or annual net profits and that the report of the Pleader Commissioner and the evidence taken by him (but

not the evidence without the report) shall be evidence in the suit and shall form part of the record but the Court or with the permission of the Court, any of the parties to the suit may examine the Commissioner personally in open Court touching any of the matters referred to him or mentioned in his report or as to his report or as to the manner in which he has made the investigation. Where the Court is for any reason dissatisfied with the proceedings of the Commissioner, it may direct such further inquiry to be made as it shall think fit.

7. The report of the Pleader Commissioner so appointed can be questioned by any of the parties with permission of the Court. As it appears from the impugned order, the case is at the stage of framing of issues. Appointment of the Survey Commissioner at this stage *per se* does not amount to prejudice to either of the parties, but the learned trial Court before accepting the report of the Survey Commissioner is required to give opportunity to the parties to object to the same. As such, this Court is not inclined to interfere in the matter at this stage. Petitioners are at liberty to raise objections to the Pleader Commissioner's report, if aggrieved thereby at the appropriate stage which the Court shall take into account before its acceptance.

8. With these observations, the instant revision petition is disposed of without interfering in the impugned order.

Pending application(s), if any, also stands disposed of.

(APARESH KUMAR SINGH), CJ

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