

HIGH COURT OF TRIPURA
AGARTALA
RSA 37 OF 2022

1. **Smt. Sarmistha Basak**, aged-37,
D/o Lt. Ramesh Chandra Basak.
2. **Smt. Sarmila Basak**, aged-40,
D/o Lt. Ramesh Chandra Basak,
Both are residents of Ujan Abhoynagar, Agartala,
P.O. Abhoynagar, P.S. East Agartala,
District-West Tripura.

...Plaintiff-appellants

Vrs.

1. **Smt. Dhanadebi Jamatia**,
W/o Sri Benoy Kumar Jamatia.
2. **Smt. Jharna Jamatia**, W/o Sri Laxmibir Jamatia.
3. **Smt. Sumita Debbarma**, W/o Sri Kartik Debbarma.
4. **Smt. Kusum Kumari Roy**, W/o Lt. Anil Kumar Roy.
5. **Sri Saibal Roy**, S/o Lt. Anil Kumar Roy.
6. **Sri Prabal Roy**, S/o Lt. Anil kumar Roy,

All are residents of Ujan Abhoynagar, Agartala,
P.O. Abhoynagar, P.S. East Agartala,
District-West Tripura.

...Defendant-respondents.

Present:

For the appellant(s) : Mr. D.R.Chowdhury, Sr. Advocate.
Mr. S. Sarkar, Advocate.

For the respondent(s) : Mr. T.K.Deb, Advocate.

Date of hearing & : 16.08.2023
delivery of judgment
and order

Whether fit for : YES
reporting

HON'BLE MR.JUSTICE ARINDAM LODH
Judgment & Order (Oral)

This is a second appeal under Section 100 of the Civil Procedure Code, 1908 [for short, the "Code"] filed by the plaintiff-appellants against the Judgment and Decree dated 09.03.2022, passed by the learned District Judge,

West Tripura, Agartala in connection with Case No. TA 63/2019, whereby and whereunder the appellate court had affirmed the judgment & decree dated 30.09.2019, in connection with Case No. T.S. 54 of 2014 passed by learned Civil Judge (Jr. Division), Court No.7, Agartala, West Tripura.

2. Briefly stated, the present appellants, who were the original plaintiffs had filed a suit for declaration of right, title, interest and recovery of khas possession of the suit land described in the schedule of the plaint. On being summoned, the defendants appeared and contested the suit by way of filing written statement. Issues were framed, evidences were recorded and thereafter having heard the learned counsel appearing for the parties to the lis, learned Civil Judge (Jr. Division), Court No.7, Agartala, West Tripura had dismissed the suit on the ground that the plaintiffs had failed to establish their case that the defendants had dispossessed them from the land described in the schedule of the plaint.

3. Being aggrieved, the plaintiffs had preferred first appeal before the court of learned District Judge, West Tripura, Agartala. The learned District Judge having gone through the records and after being heard the arguments advanced by learned counsel appearing for the contesting parties, dismissed the appeal vide judgment and decree dated 09.03.2022 and thereby confirmed the judgment and decree passed by the learned Civil Judge (Jr. Division), Court No.7, Agartala, West Tripura.

4. Feeling aggrieved, the plaintiffs have filed the present second appeal against the defendants/respondents and at the admissions stage, this court had formulated following substantial question of law:

“Whether the Judgment and Decree passed by the learned Courts below suffers from perversity?”

5. Heard Mr. D. R. Chowdhury, learned senior counsel assisted by Mr. S. Sarkar, learned counsel appearing for the plaintiff-appellants. Also heard Mr. T.K.Deb, learned counsel appearing for the defendant-respondents.

6. At the very outset, this court had put a question to Mr. Chowdhury, learned senior counsel to show the findings of the courts below so as to justify that the findings are perverse. Referring to Order 26, Rule 10-A of the Code, Mr. Chowdhury, learned senior counsel has submitted that in this case, the courts below ought to have passed an order of appointment of a Survey Commissioner to measure and identify the disputed land in question, which is mandatory in law.

Rule 10-A of the Code, reads as under:

"Rule 10-A . Commission of scientific Investigation-- (1)

Where any question arising in a suit involves any scientific investigation which cannot, in the opinion of the Court, be conveniently conducted before the Court, the Court may, if it thinks it necessary or expedient in the interests of justice so to do, issue a commission to such person as it thinks fit, directing him to inquire into such question and report thereon to the Court.

(2) The provisions of Rule 10 of this Order shall, as far as may be, apply to relation to a Commissioner appointed under this rule, as they apply in relation to a Commissioner appointed under Rule 9."

7. In my opinion, nature of dispute arose between the parties to the present suit would not be governed by Rule 10-A of the Code and it would be governed by Order 26, Rule 9 of the Code, which reads as under:

"Rule 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.”

8. On plain reading of Rule 9 of the Code, it is clear that there is no mandate for any court to pass an order *suo moto* appointing a Commissioner for local investigation. It is the discretion given to the court under the Code, and in a particular circumstance, the court can exercise such discretion for the purpose of elucidating any matter in dispute.

9. After perusal of the documents and other relevant materials placed by the parties, if the court finds it difficult to identify the land in question or otherwise, in the context of a case, then, it can exercise its discretionary power for proper adjudication of the disputes between the rival parties.

10. So, the submission of learned senior counsel that it is the mandate of law to pass an order of local investigation by an expert in this field, is difficult to consume and accordingly, it is repelled.

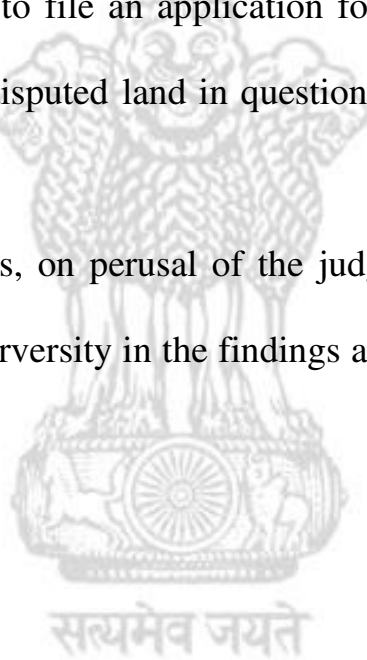
11. There may be yet another situation, when either of the contesting parties may take the recourse of Order 26, Rule 9 of the Code to substantiate their claim in respect of identification of the disputed land or otherwise in the context of a case, through the process of the court. In that case, the court on consideration of the merits of such claim can appoint a Commissioner having expertise in the field to inspect the land and investigate the matter on the spot in terms of writs/directions of the court.

12. The object of local inspection is not to collect evidence which can be taken in court, but, to obtain evidence, which due to its peculiar nature, can only be had at the spot. It also to be made clear that the report of the Commissioner is not absolute and the same can be confronted by the party not

satisfied with the report. The Hon'ble Supreme Court in *Zarif Ahmad Vrs. Mohd. Farooq*, reported in (2015) 13 SCC 673 held that--where local investigation is ordered by a court through a local Commissioner but the evidence adduced by a party is reliable and cogent, then the court can ignore the Commissioner's report.

13. In the instant case, the plaintiffs are to prove their own case. If the plaintiffs are not satisfied with the averments made in the written statement, they could easily file an application for local investigation by an expert and urge before the court to pass an order for local investigation. Neither before the trial court nor before the first appellate court the plaintiffs thought it necessary at all to file an application for appointing an expert for local investigation of the disputed land in question described in the schedule of the plaint.

14. In view of this, on perusal of the judgments of both the courts below, I do not find any perversity in the findings and accordingly, the instant appeal stands dismissed.



JUDGE

SANJAY GHOSH Digitally signed by SANJAY GHOSH
Date: 2023.08.18 17:06:37 +05'30'