

HIGH COURT OF TRIPURA

A_G_A_R_T_A_L_A_

CRP No.92 of 2022

Shri Ashutosh Shil Sharma, son of late Baikuntha Kumar Shil Sharma,
resident of Vill. & P.O. South Sonaichari, P.S. Belonia, District- South
Tripura.

.....Petitioner-Defendant(s)

V E R S U S

(1) Smti. Subhashi Shil, wife of late Kamini Shil @ Kamini Kumar Shil Sharma.

(2) Shri Ranjit Shil, son of late Kamini Shil @ Kamini Kumar Shil Sharma.

(3) Shri Sanjit Shil, son of Kamini Shil @ Kamini Kumar Shil Sharma.

(4) Shri Sankar Shil, son of Kamini Shil @ Kamini Kumar Shil Sharma.

All are resident of Vill & P.O. South Sonaichari, P.S. Belonia, District-
South Tripura.

.....Plaintiff-Respondent(s)

For Petitioner(s) : Mr. P.K Pal, Advocate.

For Respondent(s) : Mr. Kawsik Nath, Advocate.

HON'BLE THE CHIEF JUSTICE (ACTING)

JUDGMENT & ORDER

Date of hearing & judgment : 6th January, 2023

Heard Mr. P.K. Pal, learned counsel appearing for the
petitioner and also heard Mr. Kawsik Nath, learned counsel appearing for
the respondents.

[2] The present petition has been filed by the petitioner under
Article 227 of the Constitution of India for quashing the order dated

27.09.2022 in T.S 30 of 2018 passed by the learned Civil Judge, Jr. Division, South Tripura, Belonia.

[3] Brief facts are as under :

The plaintiff No.1 filed the examination in chief of PW1 and P.W.2. The cross-examination of the plaintiff witness side had already been completed and thereafter the cross-examination of DWs by the plaintiff side remain pending. The date on 27.09.2022 was fixed for cross-examination of DWs by the plaintiff, as a last chance, the defendant i.e. the petitioner defendant herein as DW could not appear before the learned Civil Judge, Jr. Division, South Tripura, Belonia accompanying his witnesses who were out of station on account of sudden illness of old aged alimants. Having informed over mobile phone the counselor of the petitioner defendant filed a time petition praying adjournment of the proceeding of that date by allowing further time. The learned trial Judge did not entertain the time petition and hereby rejected and closed the evidence and fixed next date for proceeding on 03.12.2022 for argument by passing an order dated 27.09.2022. Being aggrieved and dissatisfied with the order dated 27.09.2022 the petitioner-defendant herein preferred this petition.

[4] The petitioner has prayed for the following relief :

“(i) Issue writ in the nature of certiorari calling upon the Plaintiff-respondents to show cause as to why a writ of certiorari will not

be issued for rendering justice by setting aside the order dated 27.09.2022 passed by the learned Civil Judge (Jr. Division), South Tripura, Belonia in T.S 30 of 2018 (Annexure-6).

(ii) Upon hearing the parties, rule may be made absolute in terms of the prayer at (i) above;

(iii) In the interim Your Lordship may be pleased enough to stay further proceeding of the case till disposal of the present petition.”

[5] Mr. P.K. Pal, learned counsel appearing for the petitioner contends that the learned court below failed to appreciate the necessity of cross-examination of DW (actual owner of the suit land) by the plaintiff-respondents and also the learned court below made a gross mistake in not allowing the time petition on exceptional reason. Accordingly, he prays for setting aside the order dated 27.09.2022 passed by the learned Civil Judge, Jr. Division, South Tripura, Belonia in T.S 30 of 2018.

[6] On the other hand, Mr. Kawsik, learned counsel appearing for the respondents fairly submits that the petition may be allowed subject to payment of cost.

[7] After hearing learned counsel for the respective parties, the present petition is allowed. The order dated 27.09.2022 passed by the learned Civil Judge, Jr. Division, South Tripura, Belonia in T.S 30 of 2018 is set aside. The matter is remanded back to the court below and the petitioner is given opportunity to lead his evidence. However, it is made clear that the petitioner shall cooperative with the court below without

dragging the matter for seeking further adjournments under any pretext. It is represented by both sides they would be ready on 04.02.2023 to lead evidence. Accordingly, dated is fixed on **04.02.2023** for leading evidence before the court below. However, the petitioner shall pay cost of Rs.10,000/- to the credit of High Court Employees Association. A copy of this order be furnished to the President of High Court Employees Association. When the matter is heard on 04.02.2023, the petitioner shall produce the payment of cost receipt before the court below.

[8] Petition is disposed of with the aforesaid terms. Pending application(s), if any, also stands disposed of.

CHIEF JUSTICE (ACTING)



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