

HIGH COURT OF TRIPURA

A_G_A_R_T_A_L_A_

Review Pet. No.68 of 2022

Shri Amal Sarkar and Others.

.....Petitioners

VERSUS

Smt. Shila Sarkar (Deb) alias Shila Sarkar and Others

.....Respondents

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

Ms. A. Pal, Advocate.

For Respondent(s) : Mr. A. Sengupta, Advocate.

**HON'BLE THE CHIEF JUSTICE (ACTING)
HON'BLE MR. JUSTICE ARINDAM LODH**

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23/02/2023

Heard Mr. S. M. Chakraborty, learned senior counsel assisted by Ms. A. Pal, learned counsel appearing for the petitioners. Also heard Mr. A. Sengupta, learned counsel appearing for the respondents.

This review petition has been filed under Section-114 read with Order-47 Rule-1 of the Civil Procedure Code, 1908 against the order dated 29.04.2022 passed by the Division Bench of this Court in connection RFA. No.41 of 2019.

The petitioners have prayed for the following reliefs:

- i. Admit the petition and issue notice upon the plaintiff-respondents and call for the records of RFA. No.41 of 2019 as well as the records of case No. T.S.(P) 42 of 2015 from the Court of learned Civil Judge (Senior Division), Court No.1, West Tripura, Agartala for proper adjudication of the review petition, and*
- ii. After hearing the petition be pleased to review of the judgment dated 29.04.2022 passed by this Hon'ble Court and set aside the judgment of the learned trial Court impugned in the appeal."*

The brief facts of the present case are that the plaintiff-respondent Ops filed a suit for partition and declaration of right, title interest and for perpetual injunction against the petitioners as defendants No.1 to 4 and 3 others who are made defendant-respondents No.4 to 6 in this petition. The said case

was registered as T.S.(P) 42 of 2015 before the learned Civil Judge, Sr. Division, Court No.1, Agartala, West Tripura.

The learned Court in its judgment dated 30.07.2019 did not pass any decree for partition but, found that the Will produced by the present petitioners is suspicious one and upon such finding the said Court held that the plaintiff-respondents are entitled to get a decree for cancellation of the Will though after such declaration Court did not pass any specific order by cancelling the Will.

Thereafter, the appellant-defendants No.1 to 4 petitioners filed a first appeal under section-96 of the Code of Civil Procedure, 1908, before this Court for challenging the legality and validity of the judgment and decree passed by the Court below. This Court by its judgment and order dated 29.04.2022 held that the learned Court below neither committed any error in interpreting the provisions of the Evidence Act nor in appreciating the evidence adduced on facts by parties to the *lis*, so dismissed the said appeal. Hence, the present petition has been filed.

The Hon'ble Division Bench of this Court vide its order dated 29.04.2022 has observed "*The offshoot of the aforesaid discussions is that the learned trial Judge neither has committed any error in interpreting the provisions of the Evidence Act nor in appreciating the evidence adduced on facts by the parties to the lis. Accordingly, having found no infirmity with the judgment and decree passed by the learned Civil Judge, Sr. Division, West Tripura, Agartala, as stated hereinabove, the instant appeal deserves to be dismissed and accordingly, the appeal stands dismissed.*"

In view of above and after hearing the learned counsel appearing for the parties, this Court is of the opinion that the defendants had introduced certified copy of the sale deed and it was not produced in original which was produced in the form of secondary evidence as contemplated under Section-65 of the Evidence Act. Before introducing such document as secondary evidence, it is the mandatory obligation to the parties introducing such secondary evidence so as to satisfy the foundational facts for which he is forced to

introduce the secondary evidence in place of primary evidence, i.e. in the instant case, the defendants have to satisfy the Court about the foundational facts for which he could not produce original copy of the sale deed in terms of Section-65 of the Evidence Act. Furthermore, under Section-65 of the Indian Evidence Act, a notice must be served to the opposite party in case of bringing secondary evidence in proof of a particular fact in issue. In the present case, the defendants failed to meet the requirements of Section-65 and Section-66 of the Evidence Act.

It is needless to observe that the scope of review is very limited, mere none consideration of the judgment or in view of the subsequent development in deciding the judgment, cannot be a ground for review. In view of same, the present review petition stands dismissed. As a sequel, miscellaneous applications pending, if any, shall stand closed.

JUDGE

CHIEF JUSTICE (ACTING)

A. Ghosh



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