

HIGH COURT OF TRIPURA
A_G_A_R_T_A_L_A_
CRP No.99 of 2022

Shri Nani Goptal Datta

.....Petitioner(s)

V E R S U S

Smt. Anita Rani Datta(Choudhury) and another

.....Respondent(s)

For Petitioner(s) : Mr. Dipak Deb, Advocate,
Mr. S. Pal, Advocate.

For Respondent(s) : None.

HON'BLE THE CHIEF JUSTICE (ACTING)

ORDER

07.02.2023

Heard Mr. Dipak Deb, learned counsel appearing for the petitioner.

[2] The present petition has been filed by the petitioner under Article 227 of the Constitution of India for setting aside the judgment and order dated 01.12.2022 passed by the learned Civil Judge, Sr. Division, Court No.1, West Tripura, Agartala in T.S(P) 43 of 2018

[3] Brief facts are as under :

The petitioner and respondents are brother and sister. The plaintiff-respondents have filed the suit T.S(P) No.43 of 2018 for partition of land measuring 0.40 acres left by their father Narendra Chandra Datta. The defendant-petitioner had no knowledge about the

institution of the suit and through his counsel he came to know that the suit was at the stage of preparation of the final decree. The defendant-petitioner filed application under u/o IX Rule 13 of CPC for setting aside the *ex parte* judgment and preliminary decree dated 22.02.2019 for restoration of the suit in allowing the defendant-petitioner to defend the case out of which the case was registered and the same was disposed of on 28.01.2021. Subsequently, the defendant-petitioner submitted written statement *inter alia* alleging that alongside the land of the father, the mother Nihar Kana Datta(Choudhury) also left 1.77 acres of land classified as Nal, under Khatian No.1042. The defendant-petitioner with the put-up petition on 23.11.2022 filed an application u/o 1, Rule 10(2) of CPC for adding Sri Arun Kr. Choudhury as plaintiff No.3 as 0.99 acres out of the land measuring 1.77 acres of the mother was recorded in his name. The learned Trial Court after hearing the parties dismissed the said application. Hence, this petition.

[4] Mr. Dipak Deb, learned counsel appearing for the petitioner contends that the judgment and order dated 01.12.2022 passed by the learned Civil Judge suffers from gross irregularities as the learned Judge committed an error in dismissing the application of the defendant petitioner for adding Sri Arun Kr. Choudhury. He further submits that after submission of the written statement he came to know regarding the

Khatian in the name of Sri Arun Kr. Chowdhury recording the land measuring 0.99 acres out of the land measuring 1.77 acres of the mother Nihar Kana Datta (Choudhury) and as such filed the application under Order 1 Rule 10(2) of CPC for adding him as necessary party to the suit. No representation is made on behalf of the respondent.

[5] After hearing learned counsel for the petitioner, this Court finds no reason to interfere with the order passed by the trial Judge as the learned Judge has passed the order after appreciating the evidence on record. The learned Judge observed that the suit filed by the plaintiffs for partition of the properties was originally belonged to late Narendra Chandra Dutta, the father of the plaintiffs and defendants. He further observed that the plaintiffs were the *dominus litis* of the suit and could not be forced to add any party to the suit more so as a plaintiff.

[6] Accordingly, the petition is dismissed. Pending application(s), if any, also stands disposed of.

CHIEF JUSTICE (ACTING)