

**HIGH COURT OF TRIPURA  
AGARTALA**

**RSA No.06 of 2024**

- 1. Sri Purna Chandra Debnath,**  
DOB 30.10.1974  
S/o Late Amardhan Nath.
- 2. Sri Ajit Debnath,**  
S/o Late Amardhan Nath,  
Both are resident of Vill North Deocharra (near Ramnagar Bazar), P.S. Panisagar, District North Tripura.

**..... Principal Defendants/Appellant(s)**

**- V e r s u s -**

- 1. Sri Matilal Sinha,**  
S/o Late Gour Chand Sinha, of North Deocharra, P.S. Panisagar, Dist North Tripura.

**..... Principal Plaintiff/Respondent(s)**

- 2. Smt. Surjakala Sinha,**  
W/o Late Kalicharan Sinha.
- 3. Smt. Manashi Sinha,**  
D/o Late Kalicharan Sinha.
- 4. Sri Banobir Sinha,**  
S/o Late Kalicharan Sinha.  
  
All are resident of Vill North Deocharra (near Ramnagar Bazar), P.S. Panisagar, Dist North Tripura.
- 5. Smt. Manika Sinha,**  
D/o Late Kalicharan Sinha & W/o Sri Kiran Sinha, of Patharkandi, Rajargaon, P.S. Patharkandi, Dist. Karimganj Assam.
- 6. Smt. Sabita Sinha,**  
D/o Late Kalicharan Sinha & W/o Sri Monimay Sinha, Village West Masauli, P.O. Masauli, P.S. Kumarghat, Dist. Unakoti.
- 7. The State of Tripura,**  
Represented by the D.M. & Collector, Dharmanagar, North Tripura.

**..... Respondent(s)**

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|-------------------------------------------|---|---------------------------------------------------------------------|
| For Appellant(s)                          | : | Mr. B.N. Majumder, Senior Advocate.<br>Mr. K. Deb, Advocate.        |
| For Respondent(s)                         | : | Mr. S.M. Chakraborty, Senior Advocate.<br>Ms. Ankita Pal, Advocate. |
| Date of hearing &<br>delivery of judgment | : | <b>15<sup>th</sup> July, 2024.</b>                                  |
| Whether fit for reporting:                | : | YES                                                                 |

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**HON'BLE MR. JUSTICE S.D. PURKAYASTHA**  
**JUDGMENT & ORDER (ORAL)**

Heard Mr. B.N. Majumder, learned senior counsel assisted by Mr. K. Deb, learned counsel for the appellants. Also heard Mr. S.M. Chakraborty, learned senior counsel assisted by Ms. Ankita Pal, learned counsel for the plaintiff-respondent.

**[2]** The plaintiff-respondent (hereinafter referred as plaintiff) filed Title Suit No.26 of 2017 in the Court of learned Civil Judge (Senior Division), North Tripura, Dharmanagar against the present appellants (hereinafter referred as principal defendants) and other proforma respondents/defendants seeking mandatory injunction to remove obstruction by the principal defendants from a path mentioned in schedule 'B' of the plaint and also for perpetual injunction restraining them and their men from disturbing the peaceful use and enjoyment of said path by the plaintiff. It was stated in her plaint that the plaintiff and proforma defendants have their immovable property of 0.93 acre under different plot numbers wherein they had been residing after constructing respective houses and for the purpose of access to their said homestead land, they were required to use the path as mentioned in the 'B' schedule of the plaint which, according to the plaintiff, the principal defendants have gradually encroached and finally made construction in such encroached portion in the year 2014 whereby the access-way of the plaintiff through said path has been obstructed. Admittedly, said path is recorded in the

name of the Government in the related ROR with classification of the same as a path. According to the principal defendants, said 'B' schedule land actually is not a path and as per the demarcation report of the Revenue Authority, the defendant No.1 is residing in the said land with his family members by constructing dwelling house therein beyond the period of prescriptions and therefore, the plaintiff was not entitled to get any such relief in respect of 'B' schedule land.

**[3]** Learned trial court as well as learned First Appellate Court both granted decree in favour of the plaintiff by issuing mandatory injunction to remove the obstruction from the said path coming to the conclusion that it was a public pathway and therefore, the plaintiff had his independent right to seek such redresses before the Court.

**[4]** It is submitted by Mr. B.N. Majumder, learned senior counsel for the principal defendants that in the trial court, the State of Tripura was made party at the instance of the plaintiff but no notice under Section 80 CPC was served upon the State rendering the suit not maintainable but both the Courts below lost sight of the same.

**[5]** It is also submitted by Mr. Majumder, learned senior counsel that before the First Appellate Court, the principal defendants filed petition for adducing additional evidence for taking some documents into evidence on their behalf which was illegally rejected by the learned First Appellate Court.

[6] Last point on which Mr. Nandi Majumder, learned senior counsel argues is that the impugned judgment of the trial court itself reflects that the appointed Survey Commissioner during field enquiry did not find any road or path existant in 'B' schedule land but ignoring said fact, the learned trial court granted decree in the suit which was affirmed by learned First Appellate Court. According to Mr. Nandi Majumder, learned senior counsel, all the above said three points constitute substantial questions of law to be formulated for admission of the second appeal.

[7] Mr. Nandi Majumder, learned senior counsel lastly relies on a decision of Apex Court in the case of **State of A.P. and others vs. Pioneer Builders, A.P., (2006) 12 SCC 119** wherein considering the factual foundation of that case, it was observed that Section 80 CPC imposes a statutory and unqualified obligation upon the court and in absence of compliance with Section 80, the suit is not maintainable. The Apex Court further observed that the service of notice under Section 80 is, thus, a condition precedent for institution of a suit against the Government or a public officer and the legislative intent of the section is to give the Government sufficient notice of the suit, which is proposed to be filed against it, so that it may reconsider the decision and decide for itself whether the claim made could be accepted or not. Learned senior counsel, however, admitted that in that case the Government was not a mere formal party against which no relief was sought for.

[8] Mr. S.M. Chakraborty, learned senior counsel for the plaintiff has contended that in the instant case, there is no

substantial question of law involved and therefore, the second appeal is not maintainable and cannot be admitted. Mr. Chakraborty, learned senior counsel further submitted that no relief was claimed by the plaintiff against the State of Tripura and as such the State Government was a mere formal party and therefore, there was no necessity to serve notice under Section 80 CPC to the proforma defendant No.9, the State.

**[9]** Mr. Chakraborty, learned senior counsel also relies on a decision of the then Gauhati High Court, Agartala Bench in case of ***Sri Ashim Chakraborty vs. Sri Ashok Chakraborty and others [RSA No.12 of 2009 decided on 18.01.2012]*** wherein the Court held that when no relief was sought against Agartala Municipal Council in relation to the involved cause of action, therefore, the trial court as well as the First Appellate Court committed no wrong by entertaining and deciding the issues in absence of service of notice under Section 271 of the Tripura Municipal Act, 1994 on the Municipal Authority.

**[10]** This Court has given due consideration to the submissions of both sides and the materials placed in the record.

**[11]** So far the question of non service of notice under Section 80 CPC is concerned, in the instant case, admittedly, no relief was sought for against the State of Tripura. It is a private dispute on Govt. land and allegation is of encroachment of public pathway by the principal defendants creating obstruction in the passage of the plaintiff for going out from his house. Section 80

CPC provides that no suit shall be instituted against the Government or against a public officer in respect of any **act purporting to be done by such public officer in his official capacity** (*emphasis laid*), until the expiration of two months next after notice in writing has been served. Here, in the instant suit, there is no cause of action against the State of Tripura alleged by the plaintiff in respect of any act purportedly done by any public officer or any illegal omission in terms of Section 3(2) of General Clauses Act, 1897, committed by any such officer acting in his official capacity.

[12] Gauhati High Court in ***Gauri Shankar Agarwalla vs. Madanlal Agarwalla and others, 2010 Legal Eagle (GAU) 557***, held that when the plaintiff did not seek any relief against the State or the Municipality, there is no requirement of issuing statutory notice upon them. Full Bench of Bombay High Court in ***Chandrakant Govind Deshmukh vs. The State of Maharashtra through Collector Amravati and another, 1966 SCC Online Bom 04***, also expressed similar view. **Bombay High Court** in that case gained support of another decision of Privy Council in case of ***Revati Mohan vs. Jatindra Mohan, AIR 1934 PC 96***.

[13] This Court also expresses similar view that when there is no cause of action against the Government or any of its public officer in relation to any act or illegal omission in terms of Section 3 of General Clauses Act, 1897, purporting to be done or omitted by any such public officer and when no relief is claimed against

the State or any such officer, there is no requirement to serve notice under Section 80(1) CPC. This matter therefore does not require further deliberation.

**[14]** Regarding the grievance of the principal defendants, it is submitted that their petition for adducing evidence was illegally rejected by the learned First Appellate Court vide order dated 01.04.2023. Copy of said order is also placed on record wherein descriptions of some documents are found to be given by the learned First Appellate Court, in respect of which petition for adducing additional evidence was submitted. On query by this Court, Mr. Nandi Majumder, learned senior counsel fairly admitted that there was no reference of any facts in the written statement of the principal defendants in relation to those documents and no petition was also submitted by the principal defendants for amendment of their written statement, before they had pressed for adducing additional evidence. It is well settled that no evidence can be permitted to be adduced by any party going beyond the pleading. The order of First Appellate Court in this regard is also well discussed. Therefore, said point as raised in this appeal does not bear much force.

**[15]** So far the matter of challenge regarding Survey Commissioner's report is concerned, it is also reflected in the judgment of the learned trial court that the last report of Survey Commissioner was accepted by both the parties without raising any objection in this regard. Therefore, neither of the party can now be permitted to question said document. Even, in this second

appeal also, no specific ground of challenge has been made in the memo of appeal on this issue. Learned trial court observed that though the survey commissioner did not find any road in the practical field (*emphasis laid by learned senior counsel Mr. Nandi Majumder on that portion of the sentence*) but the witness categorically stated that it was a Govt. road and the principal defendants were possessing the same. Any way, it is purely a question of re-appreciation of facts and the second appeal cannot be made bedrock for third court of trial on facts. In ***Gurdev Kaur and others vs. Kaki and others, (2007) 1 SCC 546***, it has been categorically observed by the Apex Court that after the 1976 amendment, the scope of Section 100 CPC has been drastically curtailed and narrowed down and the High Courts would have jurisdiction of interfering under Section 100 CPC only in a case where substantial questions of law are involved and those questions are clearly formulated in the memorandum of appeal.

**[16]** In ***Kondiba Dagadu Kadam vs. Savitribai Sopan Gujar and others, (1999) 3 SCC 722***, it has also been held by the Apex Court that the High Court cannot substitute its opinion for the opinion of the First Appellate Court unless it is found that the conclusions drawn by the lower Appellate Court were erroneous being contrary to the mandatory provisions of law applicable or its settled position on the basis of pronouncements made by the Apex Court, or was based upon inadmissible evidence or arrived at without evidence. In the instant appeal, the

appellants could not satisfy the Court that any such ground exists in this case to warrant its admission.

**[17]** In view of above discussions, this Court does not find any substantial question of law involved in this second appeal requiring its admission for final hearing. Consequently, the second appeal is not admitted.

Registry is to communicate copy of this order to both learned trial court and learned First Appellate Court.

Appeal is accordingly disposed of.

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

**JUDGE**