

**HIGH COURT OF TRIPURA
AGARTALA**

CRP No.24/2024

Sri Samar Dey

..... Petitioner(s).

V E R S U S

Md. Abdul Karim & others

.....Respondent(s).

For Petitioner(s) : Mr. Raju Datta, Advocate.

For Respondent(s) : None.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

15/04/2024

Heard Mr. Raju Datta, learned counsel for the petitioner.

2. The plaintiff-petitioner's request for appointment of a survey commissioner for identification of a pathway said to be a common pathway of both the plaintiff and the defendants has been rejected by the impugned order dated 24.11.2023.

3. Plaintiff claims to be the owner of 0.60 acres of land described in Schedule-A of the plaint to which there is a pathway adjacent measuring 45 feet in length and 6 feet in breadth described in Schedule-B, i.e. the subject matter of the suit. Defendants No.1, 2 and 5 in their written statement have claimed the pathway to be a part of the Hal plot No.2809 of Khatian No.2318 belonging to the predecessor of the defendants. They have denied it to be a common pathway. Petitioner at the stage of conclusion of his evidence sought appointment of the survey commissioner to which an objection was filed by the defendants No.1, 2 and 5. The learned Court after consideration of the pleadings of the plaintiff/petitioner and the objection of the defendants and the

nature of dispute held that appointment of a survey commissioner for local investigation of the suit land will not be necessary as the issue has to be determined on the basis of oral and documentary evidence on record. The learned Court was also of the opinion that the appointment of a survey commissioner at this stage would amount to allowing the plaintiff to collect evidence in support of its case.

4. Learned counsel for the petitioner submits that the appointment of a pleader commissioner is necessary in terms of Order XXVI Rule 9 of CPC for local investigation and for elucidating the matter in controversy which is the common pathway. In the absence of a pleader commissioner's report, the learned Court could be precluded from deciding the issue whether the pathway is common to the parties or not.

5. On perusal of the materials on record and after going through the impugned order and upon hearing learned counsel for the petitioner, it appears that the boundaries of the Schedule-B to the suit land claimed to be the common pathway is not the main controversy between the parties. It is basically the claim of title over the land which is said to be a pathway allegedly used both by the plaintiff and the defendants which has to be determined by the learned Court on the basis of the oral and documentary evidence since the defendants claim that Schedule-B land devolved upon them through their predecessors. The suit is at the stage of arguments.

As such, this Court does not find any reason to interfere in the impugned order. Accordingly, the instant petition is dismissed.

6. However, in case, the learned trial Court during the proceedings of the case deems it necessary, it is open for it to appoint pleader commissioner to undertake local investigation on the issue and submit a report.

With this observation, the revision petition is disposed of.

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

(APARESH KUMAR SINGH), CJ

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