

HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_
CRP No.27 of 2024

Sri Nirmalendu Datta

..... *Petitioner(s)*

V E R S U S

Smt. Poulami Datta (Deb) and others

..... *Respondent(s)*

For Petitioner(s) : Mr. B. Banerjee, Advocate,
Ms. R. Majumder, Advocate.

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

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

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05/07/2024

Heard Mr. B. Banerjee, learned counsel assisted by Ms. R. Majumder, learned counsel for the petitioner and also heard Mr. A. Sengupta, learned counsel for the respondents.

[2] Petitioner is the defendant No.1 in T.S.(Partition) No.04 of 2017 while rests are proforma-defendants impleaded by the plaintiffs on the plea that the defendant No.1 has given the suit property under tenancy to the proforma-respondents. Plaintiffs have sought partition of the immovable ancestral property mentioned in the schedule claiming themselves to be the co-sharers with defendant No.1 on the basis of averments made at paragraph 7 of the plaint. Petitioner also sought production of tenancy related documents from the defendant No.1 in respect of part of the suit property allegedly given on rent to proforma-defendant Nos.1, 2 to 6 & 8 respectively.

[3] Written statement was filed by the defendant No.1 whereby the description of the landed property mentioned in Schedules A, B and C were admitted. Succession of the plaintiffs and the defendant to the properties left by their father and mother in equal share was also admitted. Rest of the facts averred in those paragraphs No.1 to 6 were denied and made subject to proof. In respect of the specific statement made at paragraph 7 by the plaintiff, defendant No.1 in his written statement at paragraph 5 states that the averments are partially admitted so far as letting out the land and house premises to the proforma-defendants within land, building and construction described in Schedule A and B of the plaint is concerned. It is also admitted that the plaintiffs are equally entitled to rent to be realized from the tenants if at all paid by them. But, in fact, the answering defendant realized no rent from the proforma-defendants after death of their predecessors. The plaintiffs deliberately and purposely suppressed the fact that the proforma-defendants refused to pay any rent for the house premises let out to them and they claimed their ownership over the suit premises under their occupation within Schedule A and B land on the basis of adverse possession for more than statutory period.

[4] In reply to the statement made at paragraph 8 of the plaint, he further denied that he enjoyed the rent paid by the proforma-defendants. Prior to death of Nipendra Datta, father of the plaintiffs on 28.01.2014 and death of their mother Pratima Datta on 16.03.2015, the entire suit property was under management of Nipendra Datta. The answering defendant was not aware of the fact if the proforma-defendants paid any rent to their

predecessors. The answering defendants categorically denied receipt of any rent from the proforma-defendants. Therefore, there was no question of sharing the rent by the plaintiffs and the defendants. He also stated that he contacted the proforma-defendants demanding rent to deny title of the plaintiffs and answering defendant including their predecessors over the suit properties described in Schedule A and B to the extent of their possession.

[5] Written statement was filed by proforma-defendants No.3 to 5, 7 & 9 jointly. In reply to the statement made at paragraph 8 of the plaint, they stated that since before the death of Nipendra Datta and Pratima Datta the predecessors-in-interest of the plaintiffs and defendant, the answering proforma-defendants have been occupying the land and building as described in Schedule A & B adversely for more than the statutory period denying the title of their predecessors as well as the plaintiffs and the defendants. The answering proforma-defendants did not recognize the plaintiffs and the defendant as either their landlords or lessors. Neither to their predecessors nor to the defendant, the answering proforma-defendants ever paid any rent as averred in the plaint. They claimed to have exercised peaceful adverse possession for more than 12 years and as such, the right, title and interest of the answering proforma-defendants over the said land and building have perfected. Therefore, plaintiffs and defendants have no right to claim partition of the land under occupation of the answering proforma-defendants within A & B Schedule. They have no obligation to pay any rent to the plaintiffs and the defendant.

[6] In the background of these pleadings, the prayer of the plaintiffs to delete some of the proforma-respondents was disallowed on the ground that these proforma-respondents have been claiming possession of the suit land aversely and are not improperly joined in the suit as party. In their absence the suit would not proceed properly and the Court would not be in a position to settle all the issues of suit fair and justly. Therefore, the application under Order 1, Rule 10 read with Section 151 of CPC for striking out of proforma-defendants No.3, 5, 8, 9 and 10 was rejected. Thereafter, the learned Court took up the application under Section 151 of CPC filed by the plaintiffs for production of original death and survival certificate of the parents of the plaintiffs and the defendants, land related all documents and tenancy agreement before the Court in the suit as the same was under the possession of the sole defendant. On this plea, the defendant would not deny the fact that the original copy of death and survival certificate of their parents was not under his custody and verbally submitted that the said original copy of death and survival certificate shall be produced as and when required. However, in respect of the land related all documents and tenancy agreements, the sole defendant denied the fact that all those documents are under his custody.

[7] It appeared to the trial Court that the land related documents of instant suit and document of tenancy agreement appears to be in the custody of the sole defendant. The plaintiffs are the sisters of the sole defendant and were already married and settled with their respective families in their respective in-laws houses. It is the sole defendant who looked after and took

the responsibility of taking care of the parents of the parties of the instant suit prior to their death and after their death, the related and relevant documents of the property in question of the suit appears to be in the custody of the defendant. Therefore, it would be presumed and considered that the land related documents of the instant suit and the tenancy agreements, if any, either of the earlier or present day may be with under the custody of the sole defendant. Hence, the application filed under Section 151 of CPC for directing the sole defendant to produce the original death and survival certificates of their parents, all the land related documents of the instant suit and the tenancy agreements (earlier or present day) was allowed. Defendant No.1-petitioner is aggrieved by part of the order whereby he has been asked to produce the tenancy related agreements.

[8] I have considered the submissions of learned counsel for the parties. I have also taken note of the relevant pleadings from the plaint and the written statement of defendant No.1 and the proforma-respondents. I have also referred to the rejection of the prayer for deletion of proforma-respondents No.3, 5, 8, 9 & 10 from the array of party by the learned Court on an application made under Order I, Rule 10 read with 151 of CPC preferred by the plaintiff for the reasons that these proforma-respondents have been claiming adverse possession over the property. They denied being under tenancy of the defendant or his predecessors. The Trial Court held that their presence would be necessary for deciding all the issues of the suit fairly and properly. If that be so, in the absence of any specific description of any such tenancy agreement allegedly executed between the defendant or his predecessor with the proforma-respondents, the trial Court was not right in

directing the defendant No.1-petitioner to produce such tenancy documents. When the proforma-respondents have been denying existence of tenancy and even when the learned trial Court has refused to allow the inconsistent prayer of the plaintiffs for a share of the deposits of the tenancy in his favour by the same impugned order, the learned trial Court was not right in directing the defendant No.1-petitioner to produce all tenancy related documents. As such that part of the impugned order dated 26.02.2024 passed by the learned Civil Judge(Sr. Division), Court No.1, Gomati District, Udaipur whereby the defendant No.1-petitioner has been directed to produce all tenancy related documents concerning the proforma-respondents is set aside.

[9] The civil revision petition stands disposed of in the aforesaid manner.

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

(APARESH KUMAR SINGH) CJ

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PULAK BANIK

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