

**HIGH COURT OF TRIPURA  
AGARTALA**

**CRP No.43 of 2024**

Smt. Sandhya Roy & another

.....Petitioner(s);

Versus

Smt. Dipsikha Roy & others

.....Respondent(s)

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For Petitioner(s) : Mr. J. Majumder, Advocate.

For Respondent(s) : None.

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**HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH**

**Order**

**27/06/2024**

Heard Mr. J. Majumder, learned counsel for the petitioners.

2. Petitioners sought a number of amendments under Order VI Rule 17 read with Section 153 of the Code of Civil Procedure, 1908 after filing of the written statement by the defendants. The suit was instituted by the petitioners claiming themselves to be the legal heirs of one of the sons Biswajit Roy of the original ancestor Hari Prasad Roy. Biswajit Roy died in the year 1989 whereas Hari Prasad Roy died in the year 1995. Besides that, they have averred that the deceased Hari Prasad Roy had in total six sons and the lineage of each of the six sons have been referred to in the body of the plaint. Claim of the petitioners is for partition of the suit property in  $\frac{1}{8}$  share claiming to be the owner of the  $\frac{1}{8}$  share. In this background, plaintiffs also relied upon certain documents which are referred to in para 19 to substantiate their case. After filing of the written statement by defendants No.1 to 10, the plaintiffs filed an application for amendment under Order VI Rule 17 read with Section 153 of the CPC and also for addition of party by the applicant under Order I Rule 10 read with Section 153 of the CPC. The proposed amendments are starting from A to K which are referred to in the schedule of amendment. According to the petitioners, some of the amendments are formal in nature regarding correction

of the name of the parties, whereas the other amendments relate to addition of certain averments in the plaint and prayers to challenge the survival certificate dated 25.04.1998 and the mutual partition deed dated 27.02.2017 brought to their notice through the written statement.

3. After hearing learned counsel for the parties and the nature of the amendments proposed, the learned Trial Court was pleased to allow the proposed amendments at points No. B, C, D, F & G; but it came to the considered opinion that if points No. A, E, H, I, J & K of the schedule of the amendment are allowed, it would entirely change the nature and character of the suit. Therefore, they were rejected by the impugned order dated 28.03.2024.

4. Learned counsel for the petitioners submits that the original prayer of the plaintiffs/petitioners for partition of the suit property remains, but the facts which have been referred to by the defendants in their written statement necessitate a challenge to the survival certificate and the mutual partition deed between them since the survival certificate obtained on 25.04.1998 does not reflect the name of the plaintiffs though they were also the legal heirs of the original ancestor Hari Prasad Roy through his son Late Biswajit Roy. Similarly the mutual partition deed dated 27.02.2017 arrived at between the defendants would be illegal leaving aside the claim of one of the legal heirs of the original ancestor Hari Prasad Roy. Therefore, they proposed to incorporate the said averments and prayer in the original plaint. It would not change the nature and character of the suit. It would rather facilitate a proper adjudication of the issues between the parties. Moreover, consequent to the mutual partition deed, a part of the property has been purchased by a third party who also needs to be added. Therefore, the learned Trial Court fell in error.

5. I have considered the submission of learned counsel for the petitioner. It goes without saying that the plaintiffs have to establish their case on the basis of the pleadings and evidence on the cause of action which according to them arose in their favour. In the present case, plaintiffs claiming themselves to be the legal heirs of the ancestor through Biswajit Roy i.e. one of the sons of Hari Prasad Roy have sought partition of the suit property in  $\frac{1}{8}$  share with the defendants. Petitioners are therefore liable to establish their own case on the basis of the pleadings and evidence adduced during trial. Averments made in the written statement regarding issuance of survival certificate behind the back of the plaintiffs or a mutual partition deed amongst the defendants obviously has to be contested if the cause of action has to be established by the plaintiffs on the basis of the pleadings and evidence adduced during trial. The learned Trial Court, therefore, appears to be right in holding that allowing such averments and prayers to be incorporated in the main suit would entirely change the nature and character of the suit. The learned Trial Court however has allowed the other amendments proposed under points No. B, C, D, F & G which are either formal in nature or do not affect the character and nature of the suit.

6. In such circumstances, this Court does not find any error in the impugned order. Accordingly, the instant petition is dismissed.

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

**(APARESH KUMAR SINGH), CJ**