

**HIGH COURT OF TRIPURA
AGARTALA**

CRP No.48 of 2024

1. Smt. Jatila (Das) Marak, W/O Lt. Sachindra Marak @ Manindra Marak R/O Nandannagar, Marakpara, P.O- Nandannagar, P.S- N.C.C, Agartala, West Tripura

2. Sri Sumit Marak, S/o Lt. Sachindra Marak @ Manindra Marak, R/O Nandannagar, Marakpara, P.O- Nandannagar, P.S- N.C.C, Agartala, West Tripura

.....Petitioner(s);

Versus

1. Sri Manindra @ Manendra Marak of Nandannagar, Marak Para, P.S.- N.C.C, West Tripura, Agartala

2. Smt. Soma @ Kaushalaya Marak, W/o Shri Babul Chakraborty, Nandannagar, Marak Para, P.S-N.C.C, Agartala, West Tripura

.....Respondent(s).

For Petitioner(s): Mr. Debalay Bhattacharya, Sr. Advocate,
 Mr. A. Das, Advocate,
 Mr. Samar Das, Advocate.

For Respondent(s): Mr. P. Rathor, Advocate,
 Mr. D.C. Saha, Advocate,
 Ms. T. Rani Shil, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

03/10/2024

Heard Mr. Debalay Bhattacharya, learned senior counsel assisted by Mr. Samar Das, learned counsel for the petitioners and Mr. P. Rathor assisted by Ms. T. Rani Shil, learned counsel for the respondents.

2. Plaintiffs in T.S. 59 of 2017 are the petitioners herein aggrieved by the rejection of their amendment application under Order VI Rule 17 read with Section 151 of the Code of Civil Procedure, 1908 read with Order I Rule 10(2) of the CPC for addition of necessary parties as defendants No.2A to 2D by the impugned order dated 06.05.2024 passed by the learned Civil Judge (Sr. Div), West Tripura, Agartala, Court No.1. The suit was instituted by the plaintiffs for

declaration of right, title and interest over the suit land and recovery of possession by demolishing the construction at the cost of defendants. The schedule of the property is as under:

SCHEDULE OF THE PROPERTY

“1. Under the Khatian No.2570 of Mouja Debendrachandra Nagar, Tauji No.808(part) C.S. plot No.885, 7682(part), 5069 corresponding to R.S. plot No.7682/10156 within this 36 satak of land.

2. Under Mouja Debendrachandranagar, Tauji No.808 of Khatian No.2570 by north-Manindra Marak by south-self by east-local heirs of Kenaram Marak by west self and path within this 21 satak of land and by north- Binajan Marak and path by south Majendra Marak by east path and self by west Kabita Marak within this 15 satak of land in toto 36 satak of land.”

3. During the proceedings of the suit, on an injunction petition under Order XXXIX Rule 1 and 2 read with Section 151 of the CPC filed by the plaintiffs, the learned Trial Court vide order dated 28.08.2017 directed the parties to maintain *status quo* of the suit land till disposal of connected T.S. 59 of 2017.

4. In the amendment application, petitioners alleged that during pendency of the suit and while the order of *status quo* was in operation, the defendants No.1 & 2 have sold out certain lands allotted to the plaintiffs through registered Partition Deed No.I-1514 dated 07.02.2005. This fact has come to their knowledge at the stage of examination-in-chief of defendant No.1. The plaintiffs received information under RTI thereafter on 22.11.2022. On receiving information, they found that defendant No.1 had sold out a large portion of the suit land in favour of the proposed defendants No.2A & 2D knowingly. Therefore, such transfer is a fraudulent one liable to be cancelled. On these averments, the plaintiffs sought amendment in the averments of the plaint under different paragraphs and also in the prayer. During course of submission before this Court, learned senior counsel for the petitioners has

sought to confine the amendments to prayer 15B to 15G, 15I, 18(A)(vi) to 18(A)(ix), 18(A)(xv), at page 6 of the plaint after prayer (d) the following will be inserted i.e. (e), Schedule of the Property No.3 to 7 (defendants No.2A to 2D and defendant No.1 respectively).

5. Learned senior counsel for the petitioners submits that though a number of amendments were proposed and they have been rejected by the learned Trial Court, but it would suffice the interest of justice and complete adjudication of the issues in controversy if these proposed amendments referred to hereinabove are permitted to be incorporated in the plaint as they are subsequent developments related to the original cause of action raised by the plaintiffs and concerning schedule of the suit land described in the plaint. The defendants No.1 & 2 have surreptitiously proceeded to sale certain portion of the area allocated to the petitioners by registered Partition Deed of 2005 after the order of *status quo* which came to the notice of the plaintiffs in due course of time and only after obtaining information under RTI from the Public Information Officer. If these amendments are not allowed, the learned Trial Court would be unable to determine the real questions in controversy between the parties at the time of final adjudication of the case. Therefore, he does not intend to press the other proposed amendments relating to initiation of criminal case against defendant No.1 for defrauding the Court which may be pursued separately by the plaintiffs for violation of the order of *status quo* granted under Order XXXIX Rule 1 of the CPC vide order dated 28.08.2017. It is submitted that the learned Trial Court did not appreciate the true nature of the amendments being proposed. It did not apply its mind to the correlation

between the properties sold by the defendants No.1 & 2 through the registered sale deeds in favour of strangers though the description of the schedule of the registered sale deeds would go to show that they relate to the same original Khatian No.745 and the property partitioned among themselves vide registered Partition Deed of 2005. Written objection was filed by the defendants to the amendment application. Learned senior counsel for the petitioners submits that in T.S. 23 of 2018 instituted by the same defendants against the present plaintiffs for a declaration that the defendants are not the legal heirs of Lieutenant Sachindra Marak @ Manindra Marak and for cancellation of the title deeds executed by defendants No.1 & 2 along with a decree of declaration of their right, title and interest and recovery of possession, the same amendments have been allowed by the same court of learned Civil Judge (Sr. Div), West Tripura, Agartala in the written statement filed by the defendants therein, who are the plaintiffs/petitioners herein, vide order dated 06.12.2023. The amendments allowed by the learned Trial Court in T.S. 23 of 2018 have not been assailed by the defendants No.1 & 2 in T.S. 59 of 2017. Therefore, there is no reason why the same nature of amendments be not allowed in a cause being fought between the same parties and in relation to the same properties which have been partitioned amongst them.

6. Mr. P. Rathor, learned counsel for the respondents, has taken the Court to the averments made in their objection application. It is submitted that the defendants have denied and disputed the allegations made in relation to fraudulent transfer of suit land. Defendants have further stated that by virtue of a gift deed dated 02.07.1999 executed by father of defendants No.1 & 2 in

favour of defendant No.1, defendant No.1 became owner in title and possession of a plot of land measuring 1.07 acres recorded in Khatian No.745, Sabek Dag No.5069, Hal dag No.7682 subsequently recorded in Khatian No.745, Sabek Dag No.PB-209, 781/5069, Hal Dag No.7682, land classified as Bagan (Tilla). By virtue of the gift deed, defendant No.1 became the owner and possessor in the year 1999. He has rightly denied his signature in the alleged partition deed dated 07.02.2005. The proposed amendments, therefore, have no footing. Plaintiff never received 1.06 acres recorded under Khatian No.795 as his share in terms of the alleged partition deed; whereas defendants No.1 and 2 state that they received 1.07 acres recorded in Khatian No.745 by virtue of Gift Deed executed by his father Majindra Marak in the year 1999. The defendants further stated that by amendment, the plaintiff seeks to incorporate additional description of suit land which is actually the gifted land of the defendant No.1. Further, it would also change the relief of the instant suit and add additional defendants who are in nowhere related to the land as given in the original plaint. Allowing such amendment to the plaint would change the nature of the suit and it would be in contravention in the spirit of Order VI Rule 17 of the CPC.

7. Learned counsel for the respondents further submits that gift deeds amongst tribals are not required to be instituted in view of the memorandum issued by the Revenue Department, Government of Tripura bearing No.F.4(26)-RCC/87. Learned counsel for the respondents has also endeavoured to compare the description of the land sold by defendant No.1 as described in the schedule of the registered sale deeds, which have been brought on record

by way of an application under Section 151 of the CPC by the petitioners herein, with that of the description of the suit land contained in the plaint. Learned counsel for the respondents submits that a mere perusal of the schedule of the land described in the registered sale deed would show that they are in relation to Khatian No.745 with different plot numbers whereas in the schedule of the plaint the Khatian No. is 2570 of Mouja Debendra Chandranagar. Therefore, since the C.S. Plot No.5069 or R.S. Plot No.7682 are in relation to different pieces of land, the property sold by the defendants No.1 & 2 through registered sale deeds spread over two years on the basis of the gift deed executed by their father in 1999 is nowhere related to the subject matter of T.S. 59 of 2017. Therefore, the learned Trial Court has, on due consideration of the submission of the parties, rejected the prayer on the ground that the amendments have been proposed at the stage of cross-examination of DWs. The trial had commenced on 19.11.2017 whereas the principal defendant was examined on 20.01.2021. No reasonable explanation had been given behind this delay in filing the amendment application. Moreover, the learned Court has rightly held that the amendment sought for by the plaintiff shall totally change the nature and character of the suit and shall give rise to a completely new suit. Therefore, it should not be allowed as it may cause grave injustice to the defendants and amount to commencement of a fresh trial. He has thus supported the impugned order whereby the proposed amendments were rejected. Learned counsel for the respondents however does not dispute that the same nature of amendments have been allowed in T.S. 23 of 2018 instituted by them in which the present petitioners are defendants by way of addition to their

written statement by the same learned Court of Civil Judge (Sr. Div), West Tripura, Agartala, Court No.1 vide order dated 06.12.2023. That order has not been assailed by the plaintiffs/respondents herein.

8. I have considered the submission of learned counsel for the parties at length. I have also taken note of the amendments proposed by the plaintiffs and the objections raised by the defendants thereto. I have also gone through the impugned order.

On the previous date, learned senior counsel for the petitioners was allowed time to bring on record the documents i.e. registered sale deeds which have been executed by the defendants No.1 & 2/respondents herein and allegedly relate to the suit land. The same have been brought on record by way of IA No.02/2024. The additional documents are taken on record. As observed hereinabove during course of submission, learned senior counsel for the petitioners has sought to confine the amendments which are developments that have taken place after institution of the suit by way of sale of certain lands by the defendants No.1 & 2 which the petitioners alleges to be part of the suit property. Related averments and prayer thereto are now being pressed while other proposed amendments including averments in relation to institution of criminal case and inquiry against the respondents are not being pressed. Petitioners have also sought impleadment of the purchasers of the property sold by the defendants No.1 & 2 during pendency of the suit in which an order of *status quo* was passed by the learned Trial Court on 28.08.2017 after hearing the parties. The plaintiffs/petitioners herein have instituted T.S. 59 of 2017 under Section 34 of the Specific Relief Act, 1963 read with Section 16 of the

CPC for declaration of right, title and interest and recovery of possession with consequential reliefs in respect of the property described in the schedule of the plaint. They have made averments at para 9 of the plaint in the following manner:

“9. That, the husband of the Plaintiff was a warrior in the Kargil War of 1998 and he received some injuries during that war. Consequent upon of this injuries, he died. The suit land left in the Debendra Chandra Nagar, Mouja under Khatian No.745 of Tauji No.808, C.S. Plot No.5069 corresponding to R.S Plot No.7682 comprising 21 satak and 15 satak of land. The said suit land is now presently in the Khatian No.2570 of Tauji No.808(part) under C.S. Plot No.885, 7682(part), 5069 corresponding to R.S. Plot No.7682/10156 comprising 36 satak of land.”

9. It further appears that the same plaintiffs are defendants in T.S. 23 of 2018 instituted by the respondents herein seeking a declaration that the defendants therein are not the legal heirs of Lieutenant Sachindra Marak @ Manindra Marak. They have sought cancellation of title deeds executed by the defendants No.1 & 2 along with a decree of declaration of their right, title and interest and recovery of possession as is apparent from the copy of the order dated 06.12.2023 passed in CM (J) 107 of 2022 arising out of T.S. 23 of 2018. Whereas, the same proposed amendments in T.S. 23 of 2018 have been allowed by the same learned Court of Civil Judge (Sr. Div), West Tripura, Agartala, Court No.1 by order dated 06.12.2023, by the impugned order dated 06.05.2024, the same amendments have been rejected *inter alia* on the ground that the amendments were made after two years since the cross examination of defendant No.1 and the amendments would totally change the nature and character of the suit and give rise to a completely new suit.

10. It is true that a prayer for amendment of the plaint and a prayer for amendment of the written statement stand on different footings. The general principle for the amendment to pleadings cannot be allowed so as to alter

materially or substitute the cause of action or the nature of claim applies to amendments to plaint. It has no counterpart in the principles relating to amendment to the written statement. Therefore, addition of a new ground of defense or altering of defense or taking inconsistent plea in the written statement would not be objectionable; while adding, altering or substituting a new cause of action in the plaint may be objectionable [*see Usha Balashaheb Swami & others v. Kiran Appaso Swami & others* reported in (2007) 5 SCC 602]. It is now well settled by various decisions of the Apex Court as well as those by the High Court that the Courts should be liberal in granting of prayer for amendment of pleadings unless serious injustice or irreparable loss is caused to the other side or on the ground that the prayer for amendment was not a bona fide one. The observation of the Privy Council in *Ma Shwe Mya v. Maung Mo Hnaung* reported in AIR 1922 PC 249 has been taken note of at para 18 of the *Usha Balashaheb Swami* (supra) which is extracted hereunder:

“All rules of court are nothing but provisions intended to secure the proper administration of justice, and it is therefore essential that they should be made to serve and be subordinate to that purpose, so that full powers of amendment must be enjoyed *and should always be liberally exercised*, but nonetheless no power has yet been given to enable one distinct cause of action to be substituted for another, nor to change, by means of amendment, the subject-matter of the suit.”

Seen in this light, the proposed amendments in the instant T.S. 59 of 2017 by the plaintiffs are not such which would change the nature and character of the suit. On the other hand the proposed amendments relate to developments apparently in relation to the suit land which has occasioned during pendency of the suit and the order of *status quo* dated 28.08.2017. The proposed amendment if allowed would prevent multiplicity of suits.

11. On comparison of the description of land contained in the schedule to the registered sale deed with that of the plaint more particularly described in the schedule of the property read with para 9 of the plaint as quoted above, it would appear that the objection of the respondents herein that the Khatian numbers of the property conveyed through registered sale deeds do not match with that of the schedule of the property described in the plaint is not correct. In fact, the plaintiff at para 9 of the plaint had made clear averments that the suit land left in Debendra Chandra Nagar Mouja under Khatian No.745 of Tauji No.808, C.S. Plot No.5069 corresponding to R.S. Plot No.7682 comprising 21 satak and 15 satak of land is now presently in Khatian No.2570 of Tauji No.808(part) under C.S. Plot No.885, 7682(part), 5069 corresponding to R.S. Plot No.7682/10156 comprising 36 satak of land. In the schedule of the registered sale deed, both Khatian No.745 and C.S. Plot No. with 5069 and R.S. Plot No.7682 are also described as is stated in the schedule and para 9 of the plaint. During the proceedings of the title suit vide order dated 28.08.2017, the learned Trial Court had, on an injunction application filed by the plaintiffs, directed the parties to maintain *status quo* of the suit land till disposal of connected T.S. 59 of 2017. During pendency of the suit and the operation of the order of *status quo*, part of the property has allegedly been conveyed through certain registered sale deeds. Plaintiff after coming to know of it and after obtaining relevant information through RTI had rightfully approached the Trial Court for seeking amendment to incorporate the subsequent developments otherwise at the final adjudication of the suit, the trial Court

would be prevented from determining the real questions in controversy between the parties.

12. After the plaintiffs derived knowledge of the aforesaid conveyance, they applied under RTI to obtain relevant information which was supplied as late as November, 2022. Therefore, it cannot be said that the plaintiffs were lacking in due diligence in seeking the amendments at the fag end of the trial. Moreover, the same learned Court has allowed these amendments in the written statement of the defendants in T.S. 23 of 2018 (plaintiff/petitioners herein) instituted by the respondents herein, while rejected the same amendments in the suit instituted by the plaintiffs/petitioners herein. This Court is, therefore, of the considered view that the proposed amendments now being pressed were necessary for determining the real questions in controversy between the parties and would prevent multiplicity of suits. The amendments as referred to in the earlier paragraphs of this order which are now being pressed by the plaintiffs/petitioners herein deserve to be allowed. In that event, the defendants/respondents herein will have the opportunity to file additional written statement. The impugned order dated 06.05.2024 is accordingly set aside. The instant petition is allowed in the manner and to the extent indicated hereinabove.

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

(APARESH KUMAR SINGH), CJ

Pijush/

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