

**HIGH COURT OF TRIPURA
AGARTALA**

CRP No.55 of 2024

1. Sri Surajit Nath, S/O Late Daitya Ranjan Nath@ Babulal Nath.
 2. Sri Bikramjit Nath, S/O Late Daitya Ranjan Nath@ Babulal Nath.
- Both are resident of Netaji Subhas Sarani, Madhyanaya Para, P.O. and P.S. Dharmanagar, District-North Tripura

.....Petitioner(s);

Versus

1. Smt. Aruna Roy Choudhury (Dey), D/O Late Biresh Ranjan Roy Choudhury & Hemoprabha Roy Choudhury, W/O Late Rabindranath Dey.
2. Sri Binay Krishna Roy Choudhury, S/O Late Biresh Ranjan Roy Choudhury & Hemoprabha Roy Choudhury.

The opposite party No.1 is represented by her lawful attorney namely:

- i. Sri Anik Roy Choudhury, S/O Sri Binay Krishna Roy Choudhury, resident of Netaji Subhas Sarani Madhyanaya Para, P.O. and P.S. Dharmanagar, District- North Tripura.
 - ii. Sri Rajan Roy Choudhury, S/O Late Bijoy Krishna Roy Choudhury, resident of Netaji Subhas Sarani Madhyanaya Para, P.O. and P.S. Dharmanagar, District- North Tripura. At present residing at Flat No. 609, SAI Krupa Residency, Lohegaon Pune, 411047.
 - iii. Sri Gautam Roy Choudhury, S/O Late Bijoy Krishna Roy Choudhury, resident of Netaji Subhas Sarani Madhyanaya Para, P.O. and P.S. Dharmanagar, District- North Tripura. At present residing at Flat No. 103, Impact Enclave, T.Q. Haveli Porwal road, Pune 411047.
3. Smt. Bina Pani Roy Choudhury, W/O Late Bijoy Krishna Roy Choudhury, resident of Netaji Subhas Sarani Madhyanaya Para, P.O. and P.S. Dharmanagar, District- North Tripura.
 4. Sri Rajan Roy Choudhury, S/O Late Bijoy Krishna Roy Choudhury, resident of Netaji Subhas Sarani Madhyanaya Para, P.O. and P.S. Dharmanagar, District- North Tripura.
 5. Sri Gautam Roy Choudhury, S/O Late Bijoy Krishna Roy Choudhury, resident of Netaji Subhas Sarani Madhyanaya Para, P.O. and P.S. Dharmanagar, District-North Tripura.

.....Respondent(s).

6. Smt. Baruna Roy Choudhury (Pal), W/O Dipal Chandra Pal, D/O Late Biresh Ranjan Roy Choudhury and Hemoprabha Roy Choudhury, resident of Sarala ward no.1, P.S. Kadamtala, P.O. Sarala, District-North Tripura.
7. Smt. Jhrana Roy Choudhury(Das), W/O Late Nirod Das, D/O Late Biresh Ranjan Roy Choudhury and Hemoprabha Roy Choudhury, C/O Sri Ashim Das, resident of Chandrapur, near Chandrapur Bazar, P.S. & P.O. Dharmanagar, District- North Tripura.

.....Proforma Respondent(s).

For Petitioner(s) : Mr. Asutosh De, Advocate.

For Respondent(s) : Mr. N. Chowdhury, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

27/09/2024

By the impugned order dated 02.04.2024, an amendment to the plaint has been allowed under Order VI Rule 17 read with Section 151 of the CPC. Petitioners, who are the defendants being aggrieved, have preferred the instant petition.

The primary ground for laying the challenge on behalf of the petitioners is that the T.S. (Evic.) No.03 of 2023 was defective at the time of its institution since one of the plaintiffs namely Sri Bijoy Krishna Roy Choudhury, who had also executed a General Power of Attorney (GPA) in favour of the other plaintiff namely Smt. Aruna Roy Choudhury (Dey), was died on 03.06.2023. The GPA was executed on 09.05.2023 whereas the suit was instituted on 13.09.2023.

However, on perusal of the records and the impugned order, it is evident that the GPA was executed apart from the deceased Bijoy Krishna Roy Choudhury (who was not impleaded as a plaintiff in the original plaint), but also by Smt. Aruna Roy Choudhury (Dey) (plaintiff-petitioner No.1) in favour of their attorneys namely (i) Sri Anik Roy Choudhury, S/o Sri Binay Krishna Roy Choudhury, (ii) Sri Rajan Roy Choudhury and (iii) Sri Gautam Roy Choudhury – both sons of Sri Bijoy Krishna Roy Choudhury who have been impleaded as plaintiffs in the original plaint. Apart from other amendments sought for in the plaint, Smt. Aruna Roy Choudhury (Dey) realizing that Bijoy Krishna Roy Choudhury who had also executed the common power of attorney

on 09.05.2023, sought permission of the Court to prosecute the suit by herself. Apart from that, other reliefs were prayed for which include cancellation of deeds and record of rights based on materials revealed in the written statement and impleadment of a proforma defendant i.e. O.P. No.5 in the suit who was one of the executants of the deed in question in order to enable the Court to effectually adjudicate upon and settle all the questions involved in the suit. The learned Trial Court after hearing learned counsel for the parties and after taking note of the relevant provisions of the Civil Procedure Code, i.e. Section 153, Order I Rule 10 as also Order VI Rule 17 of the CPC allowed the amendment application as it would assist the court to determine the real questions in controversy between the parties. The issues have not yet been framed in the title suit.

I have considered the submission of learned counsel for the petitioners and also for the respondents. It is clear that at the time of the institution of the suit though one of the persons who executed the power of attorney namely Sri Bijoy Krishna Roy Choudhury had died, but his two sons who were the power of attorney holders were impleaded as plaintiffs as son of late Bijoy Krishna Roy Choudhury whereas Bijoy Krishna Roy Choudhury who had died by that time was not impleaded as a plaintiff. Therefore, the contention of petitioners that the plaint was instituted on the power of attorney of one of the deceased executors is not correct. The other plaintiff Smt. Aruna Roy Choudhury, realizing that Bijoy Krishna Roy Choudhury had died after institution of the suit, sought to prosecute the suit by her own instead of the power of attorney issued by her earlier which the learned Trial Court has

allowed by the impugned order. I, therefore, do not find any error in the impugned order. The instant petition is accordingly dismissed.

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

(APARESH KUMAR SINGH), CJ



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