

**HIGH COURT OF TRIPURA
AGARTALA**

**IA No.01/2024 in CRP No.63 of 2024
CRP No.63 of 2024**

Mst. Mayarun Nessa, wife of Lt. Masuk Mia, D/O- Lt. Kanu Kha @ Kanu Sha,
Resident of Village & P.O.- Dhupirband, Ward No.5, Dharmanagar, North
Tripura.

.....Applicant/Plaintiff-Petitioner;

Versus

1. Md. Maklichur Rahaman, Son of Lt. Kanu Kha @ Kanu Sha, Resident of
Village & P.O.- Dhupirband, Ward No.5, Dharmanagar, North Tripura.

2. Md. Abdul Ali, Son of late Abdul Hannan and Late Khayrun Nessa @
Khoyrun Necha, Resident of Village & P.O.- Krishnapur, Ward No.3, P.S.-
Dharmanagar, District- North Tripura.

3. Mst. Rupia Begam, Wife of Ajmal Uddin, D/O- Abdul Hannan and Lt.
Khayrun Nessa @ Khoyrun Necha, Resident of village & P.O.-West
Kameswar, P.S.- Dharmanagar, District- North Tripura.

4. Md. Hussain Ahmed, Son of Lt. Mastakin Ali, Resident of Village & P.O.-
Dhupirband, Ward No.5, P.S.- Dharmanagar, District- North Tripura.

.....Principal Defendants-respondents

5. Md. Maynul Haque, Son of Lt. Kanu Kha @ Kanu Sha, Resident of Village
& P.O.- Dhupirband, Ward No.5, Dharmanagar, North Tripura.

6. Mst. Joyrun Bibi, Wife of Md. Hira Mia, Resident of Village & P.O.-
Dhupirband, Ward No.5, Dharmanagar, North Tripura.

.....Pro-Defendants-respondents

For Applicant/Plaintiff-Petitioner(s) : Mr. G.K. Nama, Advocate.

For Respondent(s) : Mr. P. Majumder, Advocate,
Mr. R. Nandi, Advocate,
Mr. Tejendra Das, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

06/09/2024

Heard Mr. G.K. Nama, learned counsel for the applicant/plaintiff-
petitioner and Mr. P. Majumder, learned counsel for the respondents.

2. Two amendment applications were preferred by the petitioner –
one on 02.03.2024 and the other on 20.05.2024 for amendment of the plaint in
original suit No. T.S. 10 of 2019 which has been declined by the impugned
order dated 12.06.2024 *inter alia* on the following grounds:

“Applying the aforesaid principles of law to the facts of this case, we find that here the original suit TS 10 of 2019 is presently pending at the stage of filing of examination-in-chief of PWs. Therefore, as per proviso to order VI rule 17 of CPC, in the instant case amendment of the plaint should not be allowed as a matter of rule.

Secondly, the amendments sought to be made by the petitioner (plaintiff) vide amendment application dated 02.03.2024, as stated above, attempt to change foundational facts of the case and they by no means give the impression that such facts could not be known by the petitioner (plaintiff) before commencement of trial despite application of due diligence.

Thirdly, the amendment application dated 20.05.2024, as stated above, also attempts to change some basic facts stated in the plaint. Moreover, Ld. Counsel for the petitioner miserably failed to satisfy the Court as to why he could not include in the previous amendment application dated 02.03.2024 the facts sought to be amended by the instant application. The ground of negligence of previous Engaged Counsel does not hold water with regard to the instant amendment application as it and the previous amendment application dated 02.03.2024 were both filed by one and same Ld. Counsel Smt. T. Ghosh.

As a conclusion to the above discussion, the applications dated 02.03.2024 and 20.05.2024 filed by the petitioner (plaintiff) for amendment of plaint stand rejected.

The instant Misc. Case stands disposed off on contest.
Make necessary entries.”

3. The proposed amendments are incorporated in the Schedule to the amendment application. The learned Trial Court was of the view that the amendments are those which would change foundational facts of the case and by no means it can be inferred that such facts could not be in the knowledge of the plaintiff before commencement of the trial despite due diligence. Apart from that the contention of the plaintiff that the second amendment application dated 20.05.2024 was necessitated to change some basic facts of the plaint as learned counsel appearing for the plaintiff earlier who had filed the amendment application dated 02.03.2024, failed to include such amendments, was rejected as the previous amendment application and the second one both were filed by the same learned counsel. Therefore, the prayer through both the amendment applications was rejected.

4. Learned counsel for the petitioner submits that petitioner is willing to abandon the other proposed amendments in para-6, para-8 and para-11 of the

plaint which relate to the marital status of Hawarun Nessa and that of Md. Hussen Ahmed. However, he insists that the proposed amendment at para-19(a) and para-19(bb) as per the Schedule to the amendment application [Annexure-4] may be allowed as the proposed amendment in para-19(a) relates to service of summons upon the plaintiff and one person not being the legal heir of late Kanu Kha @ Kanu Sa which is supported by documentary proof. He submits that apart from that, the proposed amendment in the prayer portion at para-19(bb) only seeks a declaration that Exbt.5 (death certificate of deceased Khayrun Nessa @ Khaoyrun Nessa @ Khoyrun Necha dated 12.06.1995) document of the partition suit No. T.S. 03 of 2016 is a fake/manufactured document. However, he does not press any amendment to the averments in the plaint in relation to that. He further submits that these two amendments are necessary which would enable the learned Trial Court to decide the real questions in controversy between the parties. T.S. 10 of 2019 has been filed for annulment of the judgment and decree in T.S.(P) 03 of 2016 on the ground of fraud being practised upon the Court. Learned counsel for the petitioner, therefore, submits that these two proposed amendments may be allowed by interfering with the impugned order.

5. Learned counsel for the defendants/respondents have appeared and strongly opposed the prayer for amendment in the averments of the plaint as according to them, it would change the very foundational facts of the case. Learned counsel for the defendants/respondents submits that the learned Trial Court was right in observing that such facts were not which could not be in the knowledge of the plaintiff despite exercise of due diligence before

commencement of the trial. However, he does not have serious opposition to the remaining two amendments being proposed to be incorporated in para-19(a) and 19(bb) of the plaint on behalf of the plaintiff.

6. I have considered the submission of learned counsel for the parties and taken note of the relevant pleadings on record including the amendment application and also perused the impugned order. This Court is in agreement with the observations of the learned Trial Court that the proposed amendments relating to the status of Hawarun Nessa and that of one Md. Hussen Ahmed and other related averments in different paragraphs of the plaint as per the Schedule of amendment in the amendment application are such which would in fact amount to changing the foundational facts of the case. These facts are not such which could not be known to the plaintiff despite due diligence at the time of filing of the plaint. In fact, the plaintiff has proposed an amendment to the effect that Hawarun Nessa was never married to Md. Mastakin Ali and Md. Hussen Ahmed was not her son; whereas at para-6 of the plaint, it was written that Hawarun Nessa died on 02.06.2010 leaving behind her legal heir Md. Hussen Ahmed. These are such facts which if allowed to be incorporated by way of an amendment, would definitely change the foundational facts on which the cause of action has been built up. As such, the learned Trial Court has rightly refused to allow those amendments.

7. However, on consideration of the remaining plea raised by learned counsel for the petitioner for incorporation of the proposed amendment under para-19(a) and 19(bb) which is in the nature of a prayer in the relief portion, and upon hearing learned counsel for the respondents as well, this Court is

satisfied that these amendments do not essentially change the nature of the suit and may be necessary to decide the real questions in controversy between the parties and can be incorporated even at this stage of the trial. Moreover apart from the amendment in para-19(bb), learned counsel for the petitioner has not pressed any averment in the plaint. As such, it is up to the plaintiff to substantiate the prayer proposed to be added under para-19(bb) upon conclusion of the trial. Therefore, this Court is inclined to allow these two amendments to be incorporated in the plaint in the appropriate paragraphs.

8. With the aforesaid modification in the impugned order dated 12.06.2024, both the instant IA No.01 of 2024 and the revision petition [CRP No.63/2024] are disposed of.

(APARESH KUMAR SINGH), CJ

Pijush/

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