

**HIGH COURT OF TRIPURA
AGARTALA**

CRP No.36/2023

Shri Rakesh Chaudhury & another

..... Petitioner(s).

V E R S U S

Smt. Kutika Das (Saha) & others

.....Respondent(s).

For Petitioner(s)	: Mr. S.M. Chakraborty, Sr. Advocate, Mrs. P. Chakraborty, Advocate.
For Respondent(s)	: Mr. P.K. Dhar, Sr. Advocate, Mr. Koomar Chakraborty, Advocate, Mr. Kaushik Paul, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

04/01/2024

Heard Mr. S.M. Chakraborty, learned senior counsel assisted by Mrs. P. Chakraborty appearing for the petitioners and Mr. P.K. Dhar, learned senior counsel assisted by Mr. Kaushik Paul, learned counsel appearing for respondent No.1 and Mr. Koomar Chakraborty, learned counsel for the respondents No.2 & 3.

Petitioner's case is captured in the order dated 02.08.2023 which reads as under:

"Mr. S.M. Chakraborty, learned senior counsel for the petitioner submits that the prayer to examine a plaintiff witness who was the scribe of the sale deed bearing No.1-6195 dated 29.06.2016, has been declined by the impugned order dated 08.06.2023 by the learned Court of the Civil Judge, (Sr. Div.), West Tripura, Agartala, Court No.1 in Case No. TS 58 of 2017 on the ground that the examination of plaintiff witnesses has concluded on 16.07.2022 and the evidence in chief of DWs have been filed. It is submitted that they have not been cross-examined. It is submitted that the defendants would not be prejudiced if a formal witness of the plaintiff is allowed to be examined, as DWs have not been cross-examined as yet so as to disclose their case.

Petitioners are ready to pay any suitable costs as may be imposed. However, if the prayer is refused, the plaintiffs may suffer irreparably, given the nature of the relief prayed for under Specific

Relief Act, 1963, for declaration of title, confirmation of possession and perpetual injunction.

Issue notice upon the respondents under ordinary process. Additionally, notice be served through the learned counsel representing the defendants in the title suit bearing No. TS 58 of 2017 pending before the learned Civil Judge, (Sr. Division), West Tripura, Agartala, Court No. 1. Requisites for both the purposes be filed by Friday (04.08.2023).

Notice is made returnable on 30.08.2023.

In the meantime, learned Trial Court would not proceed with the further examination of the DWs."

Respondents have appeared on notice. During proceedings of the case, pursuant to the order dated 27.09.2023 the photocopy of the records of T.S. No.58 of 2017 were summoned to verify whether the plaintiff had submitted the list of witnesses as indicated in the order dated 01.02.2020 passed in T.S. No.58 of 2017.

Learned counsel for the parties do not dispute that the records reveal that the list of plaintiff witnesses were submitted though the name of the present witness who was the scribe of the sale deed bearing No.1-6195 dated 29.06.2016 was not there. However, after hearing learned counsel for the parties, it appears that there is a consensus on the point that since the defendant witnesses have not yet been cross-examined, the formal witness Sanjit Sarkar who was the scribe of the sale deed bearing No.1-6195 dated 29.06.2016 be allowed to be adduced to prove his handwriting in the sale deed on any particular date. Learned counsel for the parties submit that the proposed plaintiff witness should appear on 03.02.2023 before the learned trial Court for his examination-in-chief and also cross-examination.

Having regard to the aforesaid facts and circumstances and that the proposed witness is only a formal witness being the scribe of the sale deed bearing No.1-6195 dated 29.06.2016, this Court is also of the opinion that no

prejudice would be caused to the defendants if he is allowed to be adduced at this stage when the defendant witnesses are yet to be cross-examined.

Accordingly, plaintiff/petitioner shall produce their witness on 03.02.2023 before the concerned Court of learned Civil Judge (Sr. Division), West Tripura, Agartala, Court No.1 in connection with T.S. No.58 of 2017 without fail. On that date, the said witness would be examined, cross-examined by the parties and discharged. Thereafter, the Court will proceed to allow the plaintiff to cross-examine the defendant witnesses and conclude the trial within a reasonable time.

Learned counsel for the respondents submits that an application for adducing further defence witness has also been made by the defendants which is pending before the learned trial Court. The learned trial Court is directed to consider the same in accordance with law.

Learned counsel for the petitioners submits that he has no objection to adducing of additional witness on the part of the defendants. However, such decision is to be taken by the concerned trial Court on being moved by the parties.

The instant petition is disposed of in the manner indicated above.

Interim order stands vacated.

Let the order be communicated to the learned trial Court.

(APARESH KUMAR SINGH), CJ

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