

**HIGH COURT OF TRIPURA
AGARTALA**

CRP No.65/2024

Smt. Basana Khatun alias Basana Begam, D/O. Late Abdul Gafur, W/O. Shri Khalilur Rahaman, Resident of Kamal Nagar, P.O. Kamalnagar, P.S. Sonamura, District-Sipahijala Tripura.

..... Petitioner(s).

V E R S U S

1. Shri Rabiul Hossain, S/O. Late Abdul Gafur, Village-Boxnagar (Mullamura), P.S.-Kalam Choura, Sub-Division-Sonamura, District-Sepahijala.

2. Shri Jamir Hossain, S/O. Late Abdul Gafur, Village-Boxnagar (Mullamura), P.S.-Kalamchoura, Sub-Division-Sonamura, District-Sepahijala.

3. Smti Ramuja Khatoon, D/O. Late Abdul Gafur, W/O. Shri Ful Miah, Village-Boxnagar (Mullamura), P.S.-Kalamchoura, Sub-Division-Sonamura, District-Sepahijala.

4. Smti Hasena Khatoon, D/O. Late Abdul Gafur, W/O. Shri Jalil Miah, Village-Nayanpur (Kandarpar), P.S.-Kasba, P.S.-Saldha Nadi, District-Brahmanbaria, Bangladesh.

5. Smti Khuseda Begum, D/O. Late Abdul Gafur, W/O. Shri Abdul Hossain, Village-Boxanagar (Mullamura), P.S.-Kalamchoura, Sub-Division-Sonamura, District-Sepahijala.

6. Md. Sadek Miah, S/O. Shri Tazul Islam, Village-Kadamtali, P.S.-Bishalgarh, Sub-Division-Bishalgarh, District-Sepahijala.

7. Smt. Papia Akter, D/O. Shri Tazul Islam, Village-Kadamtali, P.S.-Bishalgarh, Sub-Division-Bishalgarh, District-Sepahijala.

.....Respondent(s).

For Petitioner(s) : Mr. T.D. Majumder, Sr. Advocate,
Mr. Dalit Kalai, Advocate.

For Respondent(s) : None.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

01/08/2024

Heard Mr. T.D. Majumder, learned senior counsel assisted by Mr. Dalit Kalai, learned counsel for the plaintiff/petitioner.

2. The Title Suit(Partition) No.83 of 2009 instituted by the plaintiff was disposed of on 19.09.2015 and preliminary decree was drawn on

02.10.2015. Defendant No.6 Shyamala Khatoon died on 08.07.2016. Petitioner made an application on 09.08.2016 to strike out the name of the deceased defendant No.6 from the plaint, judgment and preliminary decree and for redistribution of 1/8th share of the defendant No.6 to her legal heirs, i.e. plaintiff and defendants/respondents No.3 and 4 equally. By order dated 26.08.2016 the name of the defendant No.6 was struck off from the plaint, judgment and preliminary decree and her share was redistributed amongst the plaintiff and defendant Nos.3 and 4 in addition to their separate 1/9th share as declared in the judgment. On 13.06.2017 final decree was prepared retaining the name of the defendant No.6 in the cause title of the final decree inadvertently due to ministerial lapse but the final decree was prepared correctly by apportioning the share of the deceased defendant No.6 to the plaintiff and the defendant Nos.3 and 4. In the memo of appeal preferred by the aggrieved defendant No.1 being Title Appeal No.05 of 2019, therefore, the name of defendant No.6 again appeared. For correction of that, an application was filed by the plaintiff/petitioner before the learned trial Court on 11.10.2023 invoking Section 152 of the CPC. By the impugned order dated 26.06.2024 that Civil Misc.(J) No.13 of 2023 arising out of T.S.(P) No.83 of 2009 has been disposed of holding that deletion of the name of deceased defendant No.6 had already been carried out but redistribution of the shares of the deceased defendant No.6 in favour of her legal heirs could not be carried out as the subject matter of the suit was under challenge in T.A. No.05 of 2019 and one of the grounds raised therein also relates to the share of the deceased defendant No.6. Being aggrieved, the plaintiff/petitioner has preferred this revision petition under Article 227 of the Constitution of India.

3. Mr. T.D. Majumder, learned senior counsel for the petitioner, has pointed out from the final decree prepared on 13.06.2017 that though the name of the deceased defendant No.6 was inadvertently reflected therein but in the schedule of partition, the proportionate share of the deceased defendant No.6 has been duly apportioned to the legal heirs. Later on, the deletion of the name of defendant No.6 from the final decree has also been carried out as has been held by the learned trial Court in the impugned order. It is, however, submitted that the learned trial Court was of the opinion that on the principles of judicial discipline, propriety and doctrine of merger, it would not be proper for him to ensure appropriate order regarding the compliance of the second direction passed in the order dated 26.08.2016 by the learned Civil Judge (Sr. Division), Court No.1, West Tripura, Agartala in the original suit T.S.(P) No.83 of 2009 so long the appeal is pending before the learned District Judge, Sepahijala District. Learned senior counsel for the petitioner submits that this observation of the learned trial Court is not correct in law.

4. I have considered the submission of learned counsel for the petitioner and taken note of the relevant dates and events placed from the pleadings on record. I have also perused the impugned order.

5. It appears that the concern of the plaintiff/petitioner regarding carrying out of the order passed on 26.08.2016 by the learned trial Court for deletion of the name of the deceased defendant No.6 and redistribution of her share amongst her legal heirs seems to be duly carried out. As such, nothing was left for the learned Court to ensure compliance in the application made by

the plaintiff being Civil Misc.(J) No.13 of 2023. Since such correction has already been made in the array of parties in the final decree and as per learned counsel for the petitioner the schedule of partition also shows the correct distribution of the shares of the deceased defendant No.6, the challenge becomes academic. The judgment and final decree passed in T.S.(P) No.83 of 2009 is the subject matter of T.A. No.05 of 2019. The appellate Court is left to decide the issues raised in the appeal in accordance with law.

6. With the above observation and discussion, the instant revision petition is disposed of.

Pending application(s), if any, also stands disposed of.

(APARESH KUMAR SINGH), CJ

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