

**HIGH COURT OF TRIPURA
AGARTALA**

CRP No.113 of 2024

Sri Priyalal Debnath, S/o Late Harendra Kr. Debnath, R/o Tebaria, P.O. Ekinpur, P.S. Puran Rajbari, District – South Tripura, Pin-799120.

..... Petitioner(s).

Versus

Sri Dhananjoy Debnath, S/o late Harendra Kr. Debnath, R/o Tebaria, P.O. Ekinpur, P.S. Puran Rajbari, District – South Tripura, Pin-799120.

..... Respondent(s).

For Petitioner(s)	:	Mr. Ratan Datta, Advocate,
For Respondent(s)	:	None.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

ORDER

18/12//2024

Heard Mr. Ratan Datta, learned counsel for the petitioner.

2. Petitioner is the defendant in Title Suit No.32/2016 instituted for a declaration of the right and interest of the plaintiff over the suit land. Written statement was filed by the defendant on 27.02.2017. Arguments in the case were concluded on 14.12.2023 but it appears that the case is still pending. The defendant after conclusion of arguments invoked Order VIII Rule 1-A(3) of C.P.C seeking leave to produce documents on the ground that they were not in custody and control at the time of submission of written statement. It was submitted that during pendency of the suit the defendant filed a petition for cancellation of the allotment order in favour of the plaintiff on the ground that he was not in possession of the land. The said land is under the possession of the defendant-petitioner herein by constructing a homestead land and transplanting rubber plantation and collecting rubber latex therefrom. The proceeding for cancellation of allotment was drawn up by the competent authority under the Rule 12 of the Tripura Land Revenue & Land Reforms (Allotment of Land) Rules, 1980. The field verification report

of the Tehsilder dated 27.12.2023 (Annexure-4) and the report of the Deputy Collector, Belonia, South Tripura dated 17.04.2024 (Annexure-5) show that the allottee was never in possession of the suit land. These public documents are, therefore, proposed to be adduced as additional evidence by seeking leave under Order VIII Rule 1A(3) of C.P.C.

3. Mr. Ratan Datta, learned counsel for the petitioner submits that the procedural rules are handmaid of justice. Procedural and technical hurdles should not be allowed to come in the way of the Court while doing substantial justice. If these documents are not allowed to be adduced by the defendant as additional evidence, it would cause serious prejudice to him. Mr. Ratan Datta, learned counsel for the petitioner has relied upon the judgment of the Apex Court in the case of *Sugandhi (Dead) by Legal Representatives and another Versus P. Rajkumar represented by his Power Agent* reported in (2020) 10 SCC 706.

4. Learned counsel for the petitioner, however, does not dispute that the written statement did have no mention of proceedings for cancellation of allotment or any reference to such document. No amendment to the written statement was prayed for during pendency of the suit, the argument of which got concluded on 14.12.2023. The application under Order VIII Rule 1-A(3) of C.P.C was filed on 09.02.2024. However, it is submitted that the impugned order may be set aside as it may entail grave miscarriage of justice if these documents are not allowed to be produced in support of the case.

5. I have considered the submission of the learned counsel for the petitioner and taken note of the relevant materials placed from record and also from the impugned order. Order VIII Rule 1-A of C.P.C reads as under:

“1-A. Duty of defendant to produce documents upon which relief is claimed or relied upon by him. (1) Where the defendant bases his defence upon a document or relies upon any document in his possession or power, in support of his defence or claim or set-off counter-claim, he shall enter such document in a list, and shall produce it in Court when the written statement is presented by him and shall, at the same time, deliver the document and a copy thereof, to be filed with the written statement.

(2) Where any such document is not in the possession or power of the defendant, he shall, wherever possible, state in whose possession or power it is.

(3) A document which ought to be produced in Court by the defendant under this rule, but, is not so produced shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.

(4) Nothing in this rule shall apply to documents-

(a) produced for the cross-examination of the plaintiff's witnesses, or

(b) handed over to a witness merely to refresh his memory.”

6. Sub-rule(3) of Order VIII Rule 1-A provides discretion to the Court to allow leave to produce documents which ought to have been produced by the defendant under Rule 1-A(1) at the time of filing of written statement in support of the defence or claim or set off counter claim and also to enter such documents in the list at the time of filing of written statement. Sub-rule (2) thereof provides that where any such document is not in the possession or power of the defendant, he shall, wherever possible, state in whose possession or power it is. In the present case the documents has come into existence on 27.12.2023 and 17.04.2024 in a proceeding for cancellation of allotment made earlier in favour of the plaintiff which were instituted by the defendant during pendency of the suit. It is not disputed that there was no reference of any such proceedings for cancellation of allotment in the written statement nor were any such amendment to the written statement prayed for and allowed. These documents were of course not such which were not produced at the time of filing of written statement despite due diligence or

were missing. These documents have for the first time come into existence at the end of the trial when arguments were concluded in December, 2023. It is trite law that in the absence of any pleadings evidence cannot be allowed to be adduced.

7. In the case of *Sugandhi (Dead) by Legal Representatives and another (supra)* it appears that defendants had filed an application assigning cogent reasons for not producing documents along with written statement since documents were missing and were only traced at a later stage. In those facts of the case, the Apex Court allowed the prayer and held that the Courts below ought to have granted leave to produce these documents. The facts of the present case are quite distinct and different from the case of *Sugandhi (Dead) by Legal Representatives and another (supra)*.

8. In those circumstances, upon due consideration of the submission of the learned counsel for the petitioner and taking note of the relevant materials placed from record and principles enshrined under Order VIII Rule 1-A(3) of C.P.C this Court finds no cogent reasons to allow these two documents dated 27.12.2023 (Annexure-4) and 17.04.2024 (Annexure-5) to be adduced as evidence after conclusion of arguments on 14.12.2023 itself. I, therefore, do not find any infirmity in the impugned order.

9. Accordingly, the instant petition is dismissed. Pending application(s), if any, shall stand disposed of.

(APARESH KUMAR SINGH), CJ