

**HIGH COURT OF TRIPURA
AGARTALA**

CRP No.28 of 2025

Ashok Petroleum Agency, having its office at Durga Bari, Laxminarayan Bari Road, P.O.-Agartala, P.S.-West Agartala, Sub-Division- Agartala, District- West Tripura, Pin-799001, represented by Partner, SRI ANIL KUMAR SAHA, aged about 70, son of Late Chand Mohan Saha, resident of H.G.B. Road, near Kaman Chowmuhan, PS-West Agartala, PO & Sub-Division-Agartala, District-West Tripura, Pin-799002;

.....Petitioner(s);

Versus

1. The Indian Oil Corporation Ltd., A Central Government undertaking and a body Corporate constituted under the Indian Companies Act, 1956, having its registered office at G-9, Ali Yaburjang Marg, Bandra East, Mumbai-400051, with various Divisions if its business activities throughout India including one such Division situated in the State of Assam under the name and style "Indian Oil Corporation Ltd., (Assam Oil Division)" having its Head Office at Digboi, Assam;

2(a) Smt. Bithika Roy Chowdhury, W/o- Lt. Amit Roy Chowdhury @ Debu

2(b) Sri Bikram Roy Chowdhury, S/o-Lt. Amit Roy Chowdhury @Debu

2(c) Sri Akash Roy Chowdhury, S/o- Lt. Amit Roy Chowdhury @ Debu

all the residents of Gandhigram adjacent to M/S Gandhigram Indane Gramin Vitrak, P.O. Gandhigram, P.S. Airport, Dist- West Tripura.

3(a) Smt. Sutapa Roy Chowdhury, W/O. Lt. Gopal Roy Chowdhury

3(b) Gargmani Roy Chowdhury, S/O-Lt. Gopal Roy Chowdhury

3(c) Smt. Sayantini Roy Chowdhury, D/O-Lt. Gopal Roy Chowdhury

all are residing under the C/O- Bharat Machinery and Hardware, 11 Central Road, (Near Jackson Gate), P.S. East Agartala, Dist- West Tripura

4. Shri Ashoke Roy Chowdhury, S/O- Lt. Akshoy Kr. Roy Chowdhury, resident of Motor Stand Road, Agartala, West Tripura, presently residing at Ramdhenu Stores, Motor Stand Road, Agartala, P.S. East Agartala, Dist- West Tripura

5. Shri Madhav Roy Chowdhury, S/O- Lt. Akshoy Kr. Roy Chowdhury, resident of Motor Stand Road, Agartala, West Tripura, presently residing at Saint Dominic's International School, Estrada Principal De Quteire De Polima 2789-506, S. Domingos De Rana, Portugal.

6. Smt. Mitra Roy Chowdhury, W/O-Lt. Arjun Roy Chowdhury.

7. Master Argha Roy Chowdhury (Minor), S/O-Lt. Arjun Roy Chowdhury

8. Kumari Gargi Roy Chowdhury, D/o Lt. Arjun Roy Chowdhury

all are under C/O- Lt. Akshoy Kr. Roy Chowdhury, Motor Stand Road, Agartala, West Tripura;

Defendants No. 10 & 11 being minor are represented by their mother and natural guardian Smti. Mitra Roy Chowdhury, defendant No.9.

9. Shri Swapan Dey, S/O Lt. Birendra Chandra Dey, resident of Old Kalibari Lane, (near Magnat Club), Krishnanagar, Agartala, P.S. West Agartala, District- West Tripura.

10. U.C.O. Bank, Agartala Branch, Agartala.

11. M/S ASREC (INDIA) Ltd, Regd. Office: Unit No: 2018202 Ground Floor, Building No.2 Solitare Corporate Park, Andheri Ghatakopar link Road, Chakla, Andheri (East), Mumbai-400093

12. Tripur India Pvt. Ltd., East Thana Road, Madhya Banamalipur, Agartala, West Tripura

.....Respondent(s).

For Petitioner(s) : Mr. Sankar Lodh, Advocate.

For Respondent(s) : Mr. Bibhal Nandi Majumder, Sr. Advocate,
Mr. Rajib Saha, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

14/05/2025

Heard Mr. Sankar Lodh, learned counsel for the petitioner.

2. Title Suit 59 of 2003 is being prosecuted by the plaintiff-Indian Oil Corporation Limited with a prayer for specific performance of an agreement. During pendency of the suit, the property was auction sold in a SARFAESI proceeding. Finally it has been purchased by defendant No.11. Petitioner is a stranger to the suit in the sense that he is neither the plaintiff, nor anyone of the defendants. But he is an agent of the plaintiff who has been running the agency of the petroleum outlet since 1976 as stated by them. Petitioner sought to be impleaded as defendant No.12 in the instant suit by making an application under Order I Rule 10(2) of the CPC. This was opposed by defendant No.11 specifically. The learned Trial Court, after hearing the parties, rejected the prayer holding *inter alia* as under:

“I have meticulously gone through the aforesaid application filed by the petitioner and the written objection filed by the defendant No.11.

The learned counsel of the petitioner regurgitated what is asserted there in the application filed by the present petitioner. Similarly, the learned counsel for defendant No.11 regurgitated what is asserted there in the written objection filed.

Now, let us see in the light of submissions made by learned counsels of the said parties, whether the present petitioner is a necessary party to this suit or not.

Now, this suit has been filed by the Indian Oil Corporation Ltd. for Specific Performance of Contract relating to the suit land. Admittedly, the present petitioner is running his business as agent of the plaintiff in the suit land. The plaintiff has categorically stated the said fact in the plaint. The defendants have also not disputed the said fact. Therefore, from the plaint itself it is clear that the status of the present petitioner relating to the suit land is purely that of an agent of the plaintiff. Hence, if the plaintiff succeeds in this suit, then the interest of the present petitioner is well protected. There is no room for doubt in this regard.

On the other hand, if the plaintiff fails to succeed in this suit i.e. if the suit is dismissed then also there is no scope for the other defendants including the defendant No. 11 to evict the present petitioner from the suit land without filing a separate suit for recovery of possession of the suit land from the present petitioner as the petitioner is in possession of the suit land. In other words, if the suit is dismissed, then also there is no scope for the other defendants to evict the petitioner from the suit land without following the due process of law. Only two things can happen in this case i.e. granting decree in favour of the plaintiff in which case, as noted above, the interest of the petitioner is well protected and the other thing which can happen is the dismissal of this suit. In that case also, the present petitioner cannot be evicted without instituting a separate suit. Further, the plaintiff did not seek any relief in this case against the present petitioner. The plaintiff has filed a simple suit for Specific Performance of Contract against the original defendant Nos. 1 to 7 and if succeed to prove the said Agreement, then all subsequent transactions goes away. Neither the defendant Nos. 1 to 7 nor other defendants have filed any counter-case relating to the present suit. Further, the present petitioner is also not a party to the Agreement for enforcement of which the present plaintiff has filed this suit. It is also not claimed by the present petitioner that he made an agreement prior to the agreement of the plaintiff or that he has acquired title over the suit land. Therefore, in no way the present petitioner is a necessary party to this suit.

Hence, in view of the above discussions, I find no justification for allowing the present application.

Thus, the present application filed by the Ashok Petroleum Agency under Order I Rule 10(2) of the CPC for adding as defendant No. 12 stands rejected.

Case record speaks that the present suit was at the stage of further cross-examination of PW1 namely Sri Alok Datta.

Hence, next date be fixed for further cross-examination of PW1 namely Sri Alok Datta.

Fix **02.05.2025** for further cross-examination of PW1 namely Sri Alok Datta.”

The suit is at the stage of cross-examination of plaintiff witness. Being aggrieved, petitioner has approached this Court under Article 227 of the Constitution of India.

3. Learned counsel for the petitioner submits that plaintiff does not have any objection to the impleadment of the petitioner as defendant No.12. If the suit fails, it is the petitioner who is going to be affected as he is running the agency since last several years on behalf of the plaintiff-IOCL. Since the trial is only at the stage of evidence, petitioner if added as defendant would waste no time in filing his written statement and participating in the proceedings. The trial won't be delayed. Learned counsel for the

petitioner has referred to paragraph 5 of a decision of the Apex Court rendered in the case of ***Sudhamayee Pattnaik & others v. Bibhu Prasad Sahoo & others*** reported in ***AIR 2022 SC 4304*** and submitted that impleadment of the petitioner as defendant No.12 may be allowed since the plaintiff who is the *dominus litis* does not have any objection to it.

4. I have taken into consideration the submission of learned counsel for the petitioner and the relevant materials necessary to be taken into account while dealing with the challenge.

Order I Rule 10 of the CPC reads as under:

“10. Suit in name of wrong plaintiff.-(1) Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the Court thinks just.

(2) **Court may strike out or add parties.** The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

(3) No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent.

(4) **Where defendant added, plaint to be amended.** Where a defendant is added, the plaint shall, unless the Court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the Court thinks fit, on the original defendant.

(5) Subject to the provisions of the 303 Indian Limitation Act, 1877 (15 of 1877), Section 22, the proceedings as against any person added as defendant shall be deemed to have begun only on the service of the summons.”

A reading of the provisions of Order I Rule 10(2) CPC indicates that the Court has the discretion to strike out or add parties either on its own or upon application of either party and on such terms which appears to be just, order any party improperly joined, whether as plaintiff or defendant, to be struck out, and any person who ought to have been joined, whether as plaintiff or

defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added. Petitioner evidently is not a party in the suit. The decision relied upon by learned counsel for the petitioner is not on the point that a stranger to a suit can seek impleadment under Order I Rule 10(2) CPC. The learned Trial Court has, taking note of the stand of the petitioner and the objection of defendant No.11, observed that even if the suit fails, the petitioner can be evicted by the successful defendant only through a separate suit for recovery of possession as petitioner is in possession of the suit land. There is no scope for other defendants to evict the petitioner from the suit land without following the due process of law. On the other hand, if the suit is decreed in favour of the plaintiff, the interest of the petitioner is well protected. Petitioner is also not a party to the agreement for enforcement of which the present plaintiff has filed the suit. It is also not claimed by the petitioner that he had made an agreement prior to the agreement of the plaintiff or that he has acquired title over the suit land. Therefore, the learned Trial Court found that the present petitioner is not a necessary party to the suit.

5. The suit is pending for 22 years and is now at the stage of evidence of the plaintiff. Plaintiff, being the *dominus litus*, has not thought it necessary to seek impleadment of the petitioner though it is stated that petitioner is running the petroleum outlet as an agent of the plaintiff. In such circumstances, the prayer for impleadment of the petitioner, who is a stranger to the suit, has rightly been rejected by the learned Trial Court.

6. This Court, therefore, doesn't find any reason to interfere in the impugned order. The instant revision petition is accordingly dismissed.

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

(APARESH KUMAR SINGH), CJ



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