

**HIGH COURT OF TRIPURA
AGARTALA**

CRP No.17 of 2025

Sri Udhab Datta, S/O Late Keshabananda Datta, Resident of Sarasima, P.O.-Sarasima, P.S- Belonia, District - South Tripura, PIN-799155.

.....Petitioner(s);

Versus

1) Smt. Puspa Rani Goswami (Baishnab) @ Puspabala Goswami (Baishnab), W/O Binode Behari Baishnab, D/O Late Gopal Krishna Baishnab, Resident of Village Ramendra Nagar/Brajendra Nagar, P.O. & Police Station- Sabroom, District-South Tripura.

2) Sri Babul Debnath, S/O Late Jogendra Debnath, resident of Village Sarasima, P.O. Sarasima, Police Station- Belonia, District- South Tripura.

3) (a) Smt. Kajal Debnath, W/O Late Dhananjoy @ Dhana Debnath,

3) (b) Smt. Namita Debnath, W/O Radha Debnath, D/O late Dhananjoy @ Dhana Debnath,

3) (c) Sri Rabindra Debnath, S/O late Dhananjoy @ Dhana Debnath,

All are residents of Village Sripur, P.O.-Hrishyamukh, PIN-799156, Police Station- Belonia, District-South Tripura.

4) Sri Juna Debnath, S/O Late Jogendra Debnath, resident of Village Sarasima, P.O. Sarasima, Police Station- Belonia, District- South Tripura.

5) (a) Sri Goutam Debnath

5) (b) Sri Subrata Debnath

Both are S/O Late Sadhan Debnath, resident of Village Sarasima, P.O.-Sarasima, Police Station- Belonia, District- South Tripura.

6) Smt. Kajal Debnath, W/O Sri Nikhil Debnath, resident of Village Haripur, P.O. Hrishyamukh, PIN-799156, Police Station- Belonia, District-South Tripura.

7) Smt. Anjali Debnath, W/O Sri Dipak Debnath, Resident of Village- Kalma, P.O. Muhuripura, PIN-799142, Police Station- Baikhora, District-South Tripura.

8) Smt. Bijoli Debnath W/O Sri Ramu Debnath, a resident of Village- Shaltilla, P.O. Belonia, PIN-799155, Police Station- Belonia, District- South Tripura.

9) Smt. Putul Rani Datta, W/O Late Babul @ Babla Datta.

10) Sayantan Datta @ Baban, S/O Late Babul @ Babla Datta

11) Santanu Datta, S/O Late Babul @ Babla Datta.

All are residents of Village- Amlapara (West), Bilonia Municipal Council, Ward No-11 P.O. Belonia, PIN-799155, Police Station- Belonia, District- South Tripura

.....Respondent(s)

For Petitioner(s) : Mr. Ratan Datta, Advocate,
Mr. Aditya Baidya, Advocate,
Ms. Saswati Nag, Advocate,
Mr. Suraj Dhanuk, Advocate.

For Respondent(s) : Mr. Tapash Datta Majumdar, Sr. Advocate,

Mr. Dalit Kalai, Advocate,
Mr. Keneth L. Debbarma, Advocate.

HON'BLE THE CHIEF JUSTICE MR. M.S. RAMACHANDRA RAO

Order

08/08/2025

Heard both sides.

2. This revision is filed under Article 227 of the Constitution of India challenging the order dt. 06.09.2024 passed by the learned District Judge, South Tripura, Belonia in T.A. No.01 of 2020.

3. Petitioner before this Court is the plaintiff in the suit.

4. He filed the said suit against 11(eleven) defendants seeking declaration of his title to suit scheduled property, and also for a declaration that the defendants had no right, title, interest and possession of the same, for recording his name in the record of rights, and for a decree of permanent injunction restraining the defendants from disturbing the peaceful possession, user and enjoyment of the petitioner and/or from ousting or dispossessing him and/or from mutating their names before any authority concerned.

5. The first defendant in the suit was described as "Smt. Pusparani Goswami".

6. In the plaint, it was alleged that the first defendant executed a deed of conveyance in respect of the suit properties on 20.02.1997.

7. After contest, the suit was dismissed on 20.01.2020. One of the reasons for dismissal of the suit is that a conveyance deed referred to the executant as "Puspabala Goswami", but the suit is filed against "Pusparani Goswami", and that the petitioner/plaintiff did not attempt to prove that both persons are one and the same.

8. Challenging the said judgment on the said ground as well as other grounds, the petitioner filed T.A. No.01 of 2020 before the Court of the District Judge, South Tripura, Belonia.

9. In the appeal, the petitioner/plaintiff filed Civil Misc.02 of 2020 seeking amendment of the plaint in the suit for correction of the name of the defendant as “Puspabala Goswami” instead of “Pusparani Goswami” originally mentioned in the plaint.

10. This application was opposed by the respondents.

11. The learned District Judge held that Order VI Rule 17 of CPC provides for the general power for amendment of pleadings by the Trial Court, and by Section 107(2) of the CPC, the Appellate Court has the same power like that of the Court of original jurisdiction in respect of the suits instituted therein, but the power of the Appellate Court to amend the pleadings is also governed by the same principles governing Order VI Rule 17 CPC.

12. He held that the petitioner had filed a similar amendment petition before the Trial Court which was also rejected, and such rejection order is dt. 20.01.2020, but the same was not challenged by him before any higher forum.

13. He also held that the petitioner filed his evidence on affidavit before the Trial Court on 22.08.2017, and on 30.05.2018 he faced cross examination, and the documents submitted by him were also admitted as evidence and marked as exhibits. In the documents adduced by the petitioner himself, one such document Exbt.3, which is the conveyance deed, describe the executant as “Puspabala Goswami”; there was no assertion from the side of the petitioner that the matter sought to be incorporated by way of amendment, was not within his knowledge before the trial has commenced, and no mention was

made as to when the petitioner got knowledge of the same, and so it has to be held that he always had knowledge of the same. Therefore, the application for amendment filed at the appellate stage cannot be permitted.

14. Challenging the same, this revision is filed.

15. Counsel for the petitioner contended that it was an inadvertent mistake on the part of the counsel appearing for the plaintiff in the Trial Court in describing the first defendant as “Pusparani Goswami” instead of “Puspabala Goswami”. Such inadvertent mistake on the part of the counsel who drafted the plaint can be corrected because rules of procedure are handmaid of justice and cannot defeat the substantive rights of the parties.

16. He relied on the judgment of the Supreme Court in **Varun Pahwa v. Mrs. Renu Chaudhary**¹.

In that case, a suit was filed for recovery of money though advanced by a company, by a Director in his personal capacity, and later it was sought to be corrected after the evidence of the plaintiff commenced. The Supreme Court allowed the said amendment stating that a party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of the rules of procedure.

Unfortunately, there is no reference to the proviso to Order VI Rule 17 CPC in the said judgment.

17. The said proviso places a bar on the power of the Court to permit amendments after the trial commenced unless due diligence is shown by the party seeking amendment that he could not have raised the matter before the commencement of trial.

¹ AIR 2019 SC 1186

18. In the instant case in the written statement, there was a specific plea raised by the first defendant that she did not execute any document in favour of the plaintiff at para 7.

19. In view of the said pleading, at least the petitioner should have sought correction of the plaint before the trial commenced to reflect correctly the name of the first defendant as mentioned in the conveyance deed, but he did not choose to do so and proceeded to the trial. The final judgment in the case went against him on the question of identity of the executant of the conveyance deed.

20. At a belated stage, at the stage of appeal from the judgment and decree of the Trial Court, application for amendment was moved seeking correction of the description of the first defendant as “Puspabala Goswami” in place of “Pusparani Goswami” originally mentioned in the plaint.

21. Had he chosen to seek such amendment before the trial commenced, he would have undoubtedly got the plaint amended since the bar under the proviso to Order VI Rule 17 CPC would not apply.

22. In ***Dinesh Goyal alias Pappu v. Suman Agarwal (Bindal) and others***², amendment of the plaint was sought before the trial commenced. But when it was wrongly refused, the Supreme Court intervened and allowed the amendment. This judgment cited by the counsel for the petitioner is thus distinguishable since the amendment was sought in that case before the trial started.

23. Counsel for the respondents cited the judgment in the case of ***Rajkumar Gurawara (dead) through LRS. v. S.K. Sarwagi and Company***

² 2024 SCC OnLine SC 2615

Private Limited and Another³ where the Supreme Court referred to the proviso to Order VI Rule 17, and held that if the parties to the proceedings are able to satisfy the Court that in spite of due diligence, they could not raise the issue before the commencement of trial, and the Court is satisfied with their explanation, then only amendment can be allowed even after commencement of the trial. It held that pre-trial amendments are to be allowed liberally than those which are sought to be made after the commencement of the trial. It also observed that after commencement of trial, particularly after completion of evidence if amendment of pleadings is sought, it causes prejudice to the opposite party, and in such event it is incumbent on the part of the Court to satisfy the conditions prescribed in the proviso.

24. In the instant case, there is no explanation on the part of the petitioner as regards the due diligence on his part or any explanation offered as to why the amendment could not have been sought before the trial commenced, particularly in view of the averment taken by the first defendant in the suit in para 7 of the written statement.

25. I, therefore, do not find any error in the judgment of the Trial Court requiring interference by this Court under Article 227 of the Constitution of India.

26. The revision fails and is accordingly dismissed. No costs.

(M.S. RAMACHANDRA RAO, CJ)

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³ (2008) 14 SCC 364