

**THE HIGH COURT OF TRIPURA
AGARTALA**

RSA NO. 02 OF 2008

Tripura Employees Coordination Committee,
Udaipur Sub-Divisional Committee,
represented by its General Secretary,
Shri Matilal Bhattacharjee,
S/O. Late Sarada Charan Bhattacharjee,
residing at Town Sonamura, P.S. R.K.Pur,
Udaipur, South Tripura.

..... Appellant.

- Versus -

1. Shri Sukumar Chakraborty,
S/O. Lt. Dhirendra Ch. Chakraborty,
Election Officer, Office of the
Sub-Divisional Officer, Udaipur,
P.S. R.K.Pur, Udaipur, South Tripura.
2. Shri Jatra Mohan Mitra,
S/O. Lt. Kamini Kumar Mitra,
Upper Division Clerk,
Gumuti Cannel Division Office,
P.S. R.K.Pur, Udaipur,
District-South Tripura.
3. Shri Nripendra Kumar Roy,
S/O. Lt. Harkumar Roy,
Process Server,
Office of the Settlement Officer,
Udaipur, P.S.-R.K.Pur, South Tripura,
4. Shri Naresh Sarkar,
S/O. Lt. Manmohan Sarkar,
Lineman, Office of the
Sub-Divisional Officer(Electrical),
Udaipur, P.S.-R.K.Pur,
District- South Tripura.
5. Shri Shukhendu Bikash Choudhury,
S/O. Lt. Bagala Charan Choudhury,
Tahshildar of R.K.Pur Tahshil Kachari,
P.S.-R.K.Pur, Udaipur,
District-South Tripura,
6. Tripura Employees Coordination Committee
(H.G.B. Road) of Sakuntala Road Extension,
P.S. West Agartala, Agartala,
District-West Tripura, represented by its
General Secretary thereof.

7. Tripura Employees Coordination Committee
(H.G.B. Road), Udaipur Sub-Divisional
Committee of Jamtala P.S.-R.K.Pur,
Udaipur, District-South Tripura'
represented by its Secretary thereof.

..... Respondents.

**BEFORE
THE HON'BLE MR. JUSTICE S. C. DAS**

For the appellant : Mr. D. Bhattacharji,
Advocate,

For the respondents : Mr. D. Chakraborty,
Sr. Advocate,
Mr. H. Laskar,
Advocate,

Date of hearing & delivery of
Judgment and Order : **19.03.2015.**

Whether fit for reporting : **No.**

JUDGEMENT AND ORDER(ORAL)

This second appeal under Section 100 of the Code of Civil Procedure, 1908 is directed against the judgment and decree dated 22.09.2007 passed by the learned Additional District Judge, South Tripura, Udaipur in Title Appeal No. 07 of 2006, whereunder the learned Additional District Judge upheld the judgment and decree of dismissal of suit passed by learned Civil Judge, Senior Division, South Tripura, Udaipur dated 25.01.2000 passed in Title Suit No.07 of 1998.

2. Heard learned counsel, Mr. D. Bhattacharji for the appellant and learned senior counsel, Mr. D. Chakraborty, assisted by learned counsel, Mr. H. Laskar for the respondents.

3. The appellant as plaintiff (hereinafter mentioned as 'plaintiff') instituted Title Suit No. 07 of 1998 in the Court of Civil Judge, Senior Division, Udaipur, South Tripura against the respondents (hereinafter mentioned as 'defendants') seeking declaration of possessory right of the plaintiff in the suit land described in schedule of the plaint and for recovery of possession and perpetual injunction etc.

4. The case of the plaintiff, in short, is that Tripura Employees Coordination Committee (for short 'TECC') is an apex body of several employees organizations in the public sector and semi public sector of the Government of Tripura and the said organization has its sub-Divisional Committee at Udaipur and the office of the Sub-Divisional Committee of TECC was housed in the suit land. The TECC was formed in the year 1968 and in the year 1993 (05.12.1993) the organization was divided and some members of the organization formed Tripura Employees Coordination Committee (HGB Road), Agartala. It is the case of the plaintiff that on 05.12.1993 the respondents having claimed to be members of TECC (HGB Road) dispossessed the plaintiff-organization from the suit land and hence, the plaintiff instituted the suit for declaration of its possessory right and recovery of possession.

5. Respondents, *inter alia*, contended that the Sub-Divisional Committee of TECC was consisting of 31 members and out of which the plaintiff along with seven others (total eight),

remained with the TECC and the rest 23 members joined with TECC (HGB Road) and they occupied the Udaipur Sub-Divisional Committee Office and the plaintiff and other supporters of TECC vacated the office. They were never forcefully dispossessed from the suit premises.

6. The trial Court considering the pleadings of the parties framed eight issues, namely –

- 1) Is the suit maintainable in its present form and nature?**
- 2) Is there any cause of action?**
- 3) Is the suit barred by estoppel, waiver and acquiescence general and constructive?**
- 4) Whether the plaintiff organization was in possession over the suit land with effect from 1978 till the date of dispossession, i.e. on 5.12.93?**
- 5) Is the suit bad for misjoinder and non-joinder of necessary parties?**
- 6) Is the suit barred by limitation?**
- 7) Whether the plaintiff is entitled to a decree of possessory right as prayed for?**
- 8) What other relief/reliefs the parties are entitled to?"**

7. Evidences of both sides were recorded in course of trial and by impugned judgment and decree dated 25.01.2000, the learned trial Judge decided Issue Nos. 1 and 2 against the plaintiff and accordingly, dismissed the suit.

8. Aggrieved, the plaintiff preferred Title Appeal No.07 of 2006 and by impugned judgment dated 22.09.2007 the learned Additional District Judge decided issue No.2 in favour of the

plaintiff, but upheld the finding of the trial Judge in respect of Issue No.1 and so, dismissed the appeal.

9. Having felt aggrieved, the present second appeal is filed by the plaintiff, which has been admitted for hearing on the following substantial question of law :-

"1. Whether the suit of the plaintiff in the absence of leave of the court under Order 1 Rule 8 of the Code of Civil Procedure is maintainable, when the plaintiff was recognized by the Govt. of Tripura under the provision of the Tripura Government Service (Recognition of Service Association) Guidelines 1995 and whether because of such recognition the plaintiff association becomes a juristic person?"

10. Learned counsel, Mr. Bhattacharji for the appellant with all his fairness has submitted that the plaintiff-organization, i.e., TECC, is an association of the employees recognized by the State of Tripura. He has fairly submitted that it is not an organization registered under the Societies' Registration Act, but it represents the interest of the employees working in the Government and semi Government organizations. He has also contended that the trial Court and the appellate Court arrived at a finding that the suit is bad for not complying the provision of Order 1 Rule 8 and 8A of CPC and that finding was not correct in view of the fact that it was a recognized organization of the Government of Tripura.

11. Learned senior counsel, Mr. Chakraborty, on the other hand, has submitted that the trial Court and the appellate Court arrived at a definite finding that the plaintiff was not authorized to

file the suit in a representative character since no leave was sought under Order 1 Rule 8 or 8A of CPC.

12. The trial Court arrived at a definite finding that since the plaintiff-organization is not a registered organization under the Societies' Registration Act, the plaintiff was bound by the provision of Order 1 Rule 8 and 8A of CPC and since the leave was not taken the issue was decided against the plaintiff. The appellate Court in para 17 of the judgment observed as follows :-

"17. Admittedly, the plaintiff-Association is not a registered association. It has been recognized by the State Government as service association in exercise of the powers conferred upon him under Article 309 read with 162 of the Constitution of India. I agree with the argument advanced by the learned counsel for the Respondents that for giving recognition to plaintiff-Association by the Government itself does not acquire the status of juristic person. The State Government recognized the existence of the Plaintiff-Association as the bargaining agent on behalf of its members to represent them before the Government for the interest of the employees. In AIR 1963 SC 1227 at paragraph 14 the term 'recognition' has been explained which denotes that "recognition signifies an admission or an acknowledgement of something existing before. To recognize is to take cognizance of a fact. It implies an overt act on the part of the person taking such recognition of the State Government as to its existence as service association". There is no dispute that the Plaintiff-Association was granted recognition by the State Government. But this cannot outweigh the statutory provisions as laid down in the Code of Civil Procedure. In my considered opinion, the Plaintiff-Association being an unregistered association ought to have filed the suit complying with the provisions of order 1 rule 8 CPC. There is also nothing on record to suggest that PW.1 Sri Mati Lal Bhattacharjee, the General Secretary, TECC, Udaipur Sub-Divisional Committee was authorized by the members of the Sub-Divisional Committee to file suit on behalf of the Plaintiff-Association. In this view of the matter, I opine that the learned Civil Judge (Sr.Div.), South Tripura, Udaipur committed no wrong in deciding the Issue No.(i) against the plaintiff holding that the suit is not

maintainable for non-compliance with the mandatory provisions of order 1 rule 8 and 8-A C.P.C.”

13. While it is an admitted position that the plaintiff-organization is not a registered organization under the Societies' Registration Act or under any other law, it was supposed to take leave under Order 1 Rule 8 and 8A of CPC. Admittedly, no such leave was taken and so, simply because the plaintiff-organization was a recognized organization of the State Government, the plaintiff has no right to file the suit in a representative character. I find nothing wrong in the judgment and decree passed by the Courts below and the second appeal, therefore, stands dismissed, but in the facts and circumstances without costs.

JUDGE