

THE HIGH COURT OF TRIPURA
A_G_A_R_T_A_L_A

CRP No.4 of 2015

Diocese of Agartala,
Registration No.2812/96
Represented by its President
Bishop Lumen Monteiro,
S/o Antony Monterio,
Bishop House Durjaynagar,
P.O. Durjaynagar, P.S. West Agartala,
District - West Tripura.

..... *Petitioner.*

– *Versus* –

1. Shri Jiban Ghosh,
S/o Lt. Arjun Ghosh
Resident of Lichubagan,
Near Youth Hostel,
P.S. Capital Complex,
West Tripura, Agartala.
2. Mr. Siraj Ali, Advocate,
Tripura Bar Association, Agartala
P.O. Agartala Court, P.S West Agartala,
District - West Tripura.

..... *Respondents.*

B_E_F_O_R_E
THE HON'BLE CHIEF JUSTICE MR. DEEPAK GUPTA

For the petitioner : Mr. P K Ghosh, Advocate.

For the respondents : None.

Date of hearing and : 09.01.2015.
delivery of judgment.

Whether fit for reporting : No.

JUDGMENT & ORDER (ORAL)

This petition under Article 227 of the Constitution of India is directed against the order, dated 10th November, 2014 passed by the learned trial Court whereby it has rejected the application

filed by the petitioner (*hereinafter referred to as the defendant*) to first decide the question of the maintainability of the suit.

2. The undisputed facts are that the petitioner herein was plaintiff in Title Suit 68 of 2013 filed against Sri Arjun Ghosh, father of the respondents herein and respondent no.1 is plaintiff in the new suit being Title Suit 51 of 2014 titled ***Sri Jiban Ghosh vs. Diocese of Agartala and others.***

3. It is alleged that in Title Suit 68 of 2013 an *ex-parte* decree was passed against the father of the plaintiff in Title Suit 51 of 2014. The issue raised by the defendant was that the suit was not maintainable because the *ex-parte* decree could have been got set-aside by the plaintiff Jiban Ghosh.

4. It is not disputed that in Title Suit 68 of 2013 Jiban Ghosh was never a party. The plaintiff had filed the suit only against his father and according to Jiban Ghosh, his father had died as far back as 1992 and, therefore, the decree is against a dead person and is not binding upon him. This issue does not fall within sub-rule 2 of Rule 2 of Order XIV since there is no bar to the jurisdiction of the Court nor there is any bar created under law for filing of the suit. In case Jiban Ghosh had been a party in the previous case then the position may have been different. However, since he was not a party, even assuming that he had knowledge of the suit and had filed an application therein, that would not make him a party to the suit.

Therefore, I find no merit in the petition which is accordingly dismissed.

CHIEF JUSTICE

Sukhiendu