

**HIGH COURT OF TRIPURA
AGARTALA**

RSA 29 OF 2008

- 1. The Executive Engineer,**
Public Health Engineering Division No.VII,
At present renamed as Drinking Water & Sanitation
Division, Govt. of Tripura, Belonia, South Tripura.
- 2. The State of Tripura,**
Represented by the Secretary,
Public Works Department,
Government of Tripura,
Agartala.

.. Defendants No.1 & 2- appellants.

- Vrs -

- 1. Shri Power Dasgupta,**
S/o Shri Madhusudhan Dasgupta,
Resident of Kunjaban,
Police Station- East Agartala,
District- West Tripura.

.. Plaintiff-respondent.

- 2. M/s. Jibandweep Engineering,**
Represented by the Proprietor
Shri Amiya Chakraborty alias
Amiya Lal Chakraborty,
South Bank of Mahadev Dighi,
Udaipur, Police Station – R.K. Pur,
District- South Tripura.

...Proforma-defendant No.3-respondent.

RSA 64 OF 2008

Shri Sitangshu Chakraborty,
S/o. Late Sachinandan Chakraborty,
Residing at Government Quarters,
Malanchanibas, Kunjaban,
West Tripura, Agartala.

..Appellant.

- Vrs -

- 1. Shri Power Dasgupta,**
S/o Shri Madhusudhan Dasgupta,
Resident of Kunjaban, Agartala,
Police Station- East Agartala,
District- West Tripura.
- 2. The Executive Engineer,**
Public Works Department,
Division No.VII, Govt. of Tripura,
Belonia, South Tripura.
- 3. The State of Tripura,**
Represented by the
Secretary to the
Government of Tripura,
Public Works Department,
Agartala.
- 4. M/s. Jiban Dweep Engineering,**
Represented by the Proprietor
Shri Amiya Chakraborty alias
Amiyalal Chakraborty,
South Bank of Mahadev Dighi,
Udaipur, Police Station – R.K. Pur,
District- South Tripura.

... Respondents.

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

RSA 29 OF 2008

For the appellants	: None
For the respondent	: Mr. G.S. Bhattacharjee, Advocate.

RSA 64 OF 2008

For the appellant	: Mr. D. Bhattacharjee, Advocate.
For the respondent No.1	: Mr. G.S.Bhattacharjee, Advocate.

Date of hearing & date of : **27.05.2015**
 Delivery of judgment &
 Order
 Whether fit for reporting : **No.**

JUDGMENT & ORDER (ORAL)

Both the appeals are taken up together for hearing and disposal since those were preferred by different appellants challenging a common judgment dated 08.04.2008 passed by Learned District Judge , South Tripura Udaipur in Money appeal No. 3 of 2006 and Money appeal No.2 of 2007 arising out of Money suit No.1 of 2005.

2. Money suit No. 1 of 2005 was filed by Sri Power Dasgupta, the respondent No.1 in RSA 29 of 2008 and the respondent No.1 in RSA No. 64 of 2008 against the appellants and pro-respondent No. 2 of RSA 29 of 2008 seeking a decree of Rupees 2 lakh as compensation for the damages caused to him due to the act of the defendants.

3. Hereinafter, Shri Power Dasgupta, the respondent No.1 of RSA 29 of 2008 and RSA 64 of 2008 has been mentioned as the plaintiff and the appellants of RSA No. 29 of 2008 and pro-respondent No. 2 of RSA No. 29 of 2008 hereinafter has been mentioned as the defendants.

4. RSA No. 29 of 2008 has been admitted for hearing on the following substantial questions of law:

- (i) "Whether the impugned decree is based on no evidence?
- (ii) Whether the original suit is maintainable in the absence of prayer for declaration as to the right of the plaintiff/respondents to claim damages."

RSA No. 64 of 2008 has been admitted for hearing on the following substantial questions of law:

- (1) Whether a suit can be decreed against a person who was not made party and against whom malice has been alleged.
- (2) Whether a decree of damage can be passed in a money suit simplicitor, which does not carry any prayer for decree of declaration for ascertaining the extent of damage.
- (3) Whether a Civil Court has got the jurisdiction to substitute the assessment and tendering authority for determining a tender by its judgment.

5. In RSA 29 of 2008 none appeared for the appellant. learned Counsel Mr. G.S. Bhattacharji for the respondent No. 1 appeared and heard.

6. In RSA 64 of 2008, learned Counsel Mr. D. Bhattacharji for the appellant is present and learned Counsel Mr. G.S. Bhattacharji for the respondent No.1 is also present and I have heard both the learned Counsel. Since nobody appeared in RSA 29 of 2008 for the appellant to argue the matter, the appeal stands dismissed.

7. Learned Counsel Mr. D. Bhattacharji appearing on behalf of the appellant of RSA 64 of 2008 submits that the appellant Shri Sitangshu Chakraborty was not a party in the

original money suit whereas the decree was passed affecting his interest. It is submitted by Mr. Bhattacharji that the Plaintiff Shri Power Dasgupta filled Money suit No 1 of 2005 against 3 defendants namely-

- 1) The Executive Engineer,
Public Health Engineering Division No-VII
Government of Tripura
Belonia, South Tripura.
- 2) State of Tripura,
Represented by Secretary P.W.D,
Secretariate Building,
Government of Tripura, Agartala,
Tripura West.....Defendents.
- 3) Jiban Deep Engineering
Proprietor Sri Amiya Chakraborty@
Amiya Lal Chakraborty
South Bank of Mahadeb Dighi,
P.O:- Radhakishorepur, Udaipur,
Tripura South.....Pro-Defendant

Plaintiff instituted the suit seeking compensation of Rupees 2 lakh for the damage caused to him due to action/inaction on the part of the defendants. The Defendants contested the suit by filing written statements. In course of trial, the trial Court framed 5 issues and after recording evidence all those material issues were decided in favour of the plaintiff and accordingly decreed the suit. It is submitted that while passing the decree the trial Court made an observation which affects the interest of the appellant Shri Sitangshu Chakraborty of RSA 64 of 2008 and therefore the said Shri Sitangshu Chakraborty challenged the judgment and decree dated 16.09.2006 and 21.09.2006 passed in M.S. 1 of 2005 by filing Money Appeal No. 2 of 2007. The defendants

No. 1 and 2 also preferred Money appeal No. 3 of 2006 and both the appeals were disposed of by impugned common judgment dated 08.04.2008 passed by Learned District Judge, South Tripura, Udaipur (now Gomati). It is submitted by Mr.D. Bhattacharjee, learned Counsel, that Sitangshu Chakraborty the appellant of RSA 64 of 2008, was not a party in the suit whereas the decree was passed against him and therefore he filed Money appeal No. 2 of 2007 challenging the decree, but that appeal was dismissed and hence this second appeal.

It is submitted that since Sitangshu Chakraborty was not a party in the suit the trial Court should not have passed a decree against him who was not arrayed in the suit and therefore the decree is not binding on him.

8. Learned Counsel Mr. G.S. Bhattacharji submitted that the trial Court's direction is to realise the damages from the responsible Executive Engineer and Sitangshu Charkraborty was never named in the judgment and decree and therefore Sitangshu Chakraborty has no right to challenge the decree.

9. The core question in this appeal is whether a person who was not a party in a Civil Suit can challenge a decree passed by a court of competent jurisdiction.

10. Admittedly in the present case Power Dasgupta is the plaintiff who instituted the suit seeking compensation for

the damages caused to him and the defendants were Executive Engineer, Public Health Engineering Department Division No. VII, the state of Tripura, represented by the Secretary, P.W.D and Pro-defendant No. 2, Jibandweep Engineering. The appellant Sitangshu Chakraborty was not a party in the suit. According to law a Civil Suit should be decided on the basis of the pleadings of the parties and the evidence adduced by the parties in the suit. A person who is not in the picture of the suit cannot challenge the decree by filing appeal. If a third party likes to challenge the decree on the ground that the decree affects his interest, he should prefer a separate suit challenging that a decree or any part thereof as not binding on him since he was not a party in the suit. The appellant Sitangshu chakraborty, as it appears, chosen a wrong forum preferring appeal in the first appellate Court and then preferring the second appeal. If he was aggrieved by the decree passed by the trial Court he would challenge the decree by bringing a separate suit on the ground that he was not made a party in that suit or in any other ground suitable to him.

11. Let us now turn to the decree passed by the trial Court. While deciding the issues, the trial Court decreed the suit with the following observation:-

"14) In the result, the plaintiff has proved his case and the plaintiff is entitled to get a compensation/damage amounting to Rs. 50,000/- (rupees fifty thousand) only from the

defendant Nos. 1 and 2. Defendant Nos.1 and 2 are hereby directed to pay the said compensation/damage to the plaintiff within 2 months from today, otherwise, they will have to pay interest @ 9% per annum on the said amount. The defendant No. 2 i.e. the Government of Tripura is directed to realise the said amount of compensation/damage along with the cost of this suit and interest, if any, from the pay and salary of the then Executive Engineer/Engineers, PHE Division No. VII, Belonia.

The Plaintiff is also entitled to get the cost of the suit from the defendant Nos.1 and 2.

A decree be prepared accordingly by the Sheristader within 15 days from today and the Bench Clerk is directed to put the case record before the Sheristadar within 2 days from today.

Return the documents to the parties as per firstly after observing all the formalities and as per provisions of order 13, Rule-9 of the CPC.

Every pages of the judgment is attested by my signature.

The suit is accordingly disposed of on contest.

Announced in the open Court."

12. It is submitted by Mr. D. Bhattacharji, learned counsel for the appellant Sitangshu Chakraborty that the direction that the Government of Tripura shall realise the compensation/damage along with costs from the salary of the then Executive Engineer, P.H.E Division VII, Belonia clearly affects the interest of appellant Sitangshu Chakraborty since he was the Executive Engineer at that relevant point of time

and it is submitted that the State has already issued a notice to him and that has prompted the appellant to prefer first appeal and the second appeal.

13. It is clear from the decree passed by the trial Court that the compensation/damage should be realised by the State from the then Executive Engineer. According to the appellant Sitangshu Chakraborty, he was the executive Engineer at that relevant point of time. So he has been affected by the decree. Since the decree affects the interest of Sitangshu Chakraborty, he would challenge the decree by filing a separate suit on the ground that he was not made a party in that suit or on any other suitable ground as he deems fit but he has preferred the appeal, whereas the appeal preferred by him is not maintainable simply on the ground that he was not a party in the suit.

14. The appeal preferred by Sitangshu Chakraborty i.e. RSA No.64 of 2008, therefore, stands dismissed. However, it is observed that if he so feels aggrieved, he may bring an appropriate suit challenging the decree before a court of competent jurisdiction seeking appropriate relief against the decree passed in his absence.

15. Send back the L.C. records along with a copy of this judgment.

JUDGE