

IN THE HIGH COURT OF TRIPURA
AGARTALA

CRP NO.96 OF 2010

- 1. Sri Dulal Chandra Acharjee,
son of late Gouranga Acharjee
- 2. Smt. Pratima Acharjee,
wife of Sri Dulal Chandra Acharjee
- both residents of Madhuban (Ramkrishna Colony),
P.O. Ranirkhamar, P.S. Amtali, District West Tripura.

..... Petitioner

- Vs -

- 1. Sri Priya Lal Ghosh,
son Anil Chandra Ghosh
- 2. Smt. Uma Ghosh,
wife of Sri Priya Lal Ghosh.
- both residents of Vill. Madhuban (Ramkrishna Colony),
P.O. Ranirkhamar, P.S. Amtali, District West Tripura.

.....Respondents

B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the petitioners : Mr. D.R. Choudhury, Advocate
Mr. D. Deb, Advocate

For the respondents : Mr. P. Datta, Advocate

Date of hearing & order : 02.02.2015

Whether fit for reporting :

Yes	No
	√

JUDGMENT & ORDER (ORAL)

Heard Mr. D.R. Choudhury and Mr. D. Deb, learned counsel appearing for the petitioners as well as Mr. P. Datta, learned counsel appearing for the respondents.

2. By this petition filed under Article 227 of the Constitution, the order dated 23.08.2010 passed by the Civil Judge, Junior Division, Bishalgarh, West Tripura, in Misc.37/2010, arising out of T.S.08/2008, has been challenged.

The petitioners herein, who are the plaintiffs in the suit, being Title Suit No.8/2008, filed a petition under order VI, rule 17 of the CPC seeking amendment of the plaint as per the schedule and also alteration in one boundary (north) in the Schedule of the suit land has been rejected by the impugned order. While rejecting such prayer, the Civil Judge has observed that if the amendment is allowed, it would change the nature and the character of the suit. Apart that, he had taken consideration of certain other peripheral elements.

3. Mr. D.R. Choudhury, learned counsel appearing for the petitioners, has succinctly submitted that such observation as returned by the impugned order is wholly unwarranted, inasmuch as, the issues have not been as yet framed, as by an interim order this court has stayed the further proceeding of the suit. He has submitted that in the plaint the petitioner has taken a categorical stand that he has been possessing the

Schedule-C land described in the plaint adversely against the right, title and interest of the true owner, but no specific date has been mentioned at the time of filing of the plaint. He has further submitted that while describing the north boundary, a mistake has cropped in instead of one Badal Das on the north boundary, it would be the land of the plaintiffs as described in the Schedule-A.

4. Mr. P. Datta, learned counsel appearing for the respondents has seriously resisted such prayer, contending that virtually a new case has been sought to be introduced in the plaint and that would definitely change the nature and the character of the suit and there would be multiplicity of the litigations, as already on certain premises the court has rejected the prayer for interim injunction.

5. Having regard to the rival contentions as advanced, this court has meticulously scrutinised the records and it is found that the plea of adverse possession has been taken by the plaintiff over the Schedule-C land, but there is no date of commencement of adverse possession. Since the suit has not reached as yet the stage of trial, this court would take a liberal approach. Accordingly, the prayer of amendment stands allowed. As consequence thereof, the impugned order is set aside. The petitioner shall file the amended plaint within a period of 15 (fifteen) days from today without delay, otherwise the consequence as described in the statute will follow.

Thereafter, the defendants (the respondents herein) shall be allowed to file the additional written statement. It is made clear that on the basis of the amendment, the plaintiffs will not be allowed to file fresh petition for any interim injunction as they have categorically claimed that they are in possession of the said Schedule-C land.

6. With this observation this petition stands allowed. After receipt of the records alongwith a copy of this order, the trial court shall commence the trial of the suit without further delay. For that purpose, no further notice would be issued to the parties. They shall appear before the trial court on 18.02.2015 without fail.

JUDGE

ROY