

THE HIGH COURT OF TRIPURA
AGARTALA

CRP 65 of 2009

1. Shri Biswanath Sarkar

AND

2. Sri Narendra Chandra Sarkar,

Both are sons of Late Fakir Chand Sarkar,
Residents of Vill. Rajeswaripur,
P.O. Shekerkote, P.S. Amtali,
West Tripura District.

3. Shri Sunil Sarkar,
S/O. Late Adhar Sarkar,
Resident of Vill. Belabar,
P.O. Sarbadharma Mission, P.S. Amtali,
West Tripura District.

..... *Petitioners*

- Vs. -

Shri Sunil Das,
S/O. Late Jaladhar Das,
Resident of Vill. Belabar,
P.O. Sarbadharma Mission,
P.S. Amtali, West Tripura Dist.

..... *Respondent*

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the Petitioners : None.

For the respondent : Mr. P. Roy Barman, Advocate.
Mr. K. Nath, Advocate.

Date of hearing & delivery of Judgment & order : 07.01.2015.

Whether fit for Reporting : NO.

JUDGMENT & ORDER (ORAL)

This petition under Article 227 of the Constitution of India is directed against the order dated 4th July, 2009 passed by the learned Civil Judge (Junior Division), Court No.II, Sadar, Agartala, West Tripura rejecting the prayer of the petitioners (hereinafter referred to as 'the plaintiffs') for permission to withdraw the suit with liberty to file fresh suit.

2. The learned Trial Court rejected the application filed for withdrawal of suit with liberty to file a fresh one on the ground that there was no formal defect in the suit and the ground for withdrawal was that certain documents which were available had not been filed.

3. I am in total agreement with the Trial Court that this is not a ground falling within the ambit of Order 23 Rule 3 CPC. Withdrawal of the suit with permission to file fresh one can only be granted when there is a formal defect. Non filing of documents is not a formal defect and therefore, the order under challenge is upheld.

4. The proceedings in the Trial Court have remained stayed for a long time.

5. The record is send back to the Trial Court.

6. The defendant who is present is directed to appear before the Trial Court on 12th February, 2015. On the said date the Trial Court shall issue notice to the plaintiffs and shall proceed with the trial. In case the plaintiffs fail to appear before the Trial Court then necessary consequence will follow.

CHIEF JUSTICE

sima