

IN THE HIGH COURT OF TRIPURA
AGARTALA

CRP No.31 of 2009

Shri Subodh Chandra Bhowmik,
son of late Jamini Mohan Bhowmik,
resident of village – Sonatala, P.S.
Khowai, District – West Tripura.

..... Petitioner

- V e r s u s -

Shri Nirode Bhowmik,
son of Sri Ambika Charan Bhowmik,
resident of village – Sonatala, P.S.
Khowai, District – West Tripura.

..... Respondent

BEFORE
THE HON'BLE MR.JUSTICE S. TALAPATRA

For the petitioner : Mr. N. Das, Advocate.

For the respondent : Mr. S. Chakraborty, Advocate

Date of hearing and : **09.01.2015**
delivery of judgment & order

Whether it is fit for reporting :

Yes	No
	√

JUDGMENT & ORDER (ORAL)

Heard Mr. N. Das, learned counsel appearing for the petitioner as well as Mr. S. Chakraborty, learned legal aid counsel appearing for the respondent, who despite the notice from this Court, has preferred not to participate in the proceeding but for ends of justice, by the order dated 16.07.2010, Mr. Chakraborty, learned legal aid counsel has been engaged for presenting the case of the respondent based on the records.

[2] This is a petition filed under Article 227 of the Constitution of India challenging the order dated 10.02.2009 passed in Civil Misc. No.11 of 2009 arisen from Title Suit No.08 2008, whereby the prayer for amendment was partly allowed. The prayer by way of amendment for adding one Bela Rani Deb, wife of Upendra Chandra Deb of Bagan Bazar, P.S. Kalyanpur, District – Khowai, Tripura has been rejected observing that no reason has been assigned showing the necessity of adding the said person as the proforma defendant.

[3] Mr. N. Das, learned counsel appearing for the petitioner has submitted that against the said order, the petitioner had filed one petition under Order XLVII Rule 1 read with Section 114 of the C.P.C. for review of the said order dated 10.02.2009. However, by the said order dated 16.04.2009 the review petition was dismissed holding that there was no error or mistake on the face of the record nor was there discovery of any new and important fact on the part of the petitioner.

[4] Mr. S. Chakraborty, learned legal aid counsel appearing for the respondent has submitted that from bare reading of the application filed by the petitioner under Order VI Rule 17 of the CPC for amending the plaint and for adding the said person under Order I Rule 10(2) of the C.P.C, it would be apparent that no reason whatsoever has been assigned showing the necessity of adding the person as the proforma respondent.

[5] Having perused the said application, this Court has no hesitation to hold that no reason has been assigned projecting the necessity of such addition. Apparently, there is no infirmity in the impugned order. But Mr. N. Das, learned counsel appearing for the petitioner has submitted that this is a typical instance of 'mafussil drafting' and the relevant pleadings have been omitted even though on record such necessity is apparent. He has referred to the Para-13 of the written statement filed the respondent as the sole defendant in the suit being Title Suit No.08 of 2008 which reads as under:

That, with reference to paragraph No.10 of the plaint it is denied and disputed that the plaintiff was dispossessed from the land in question. The erstwhile co-owner Abani Mohan Bhowmik executed a registered will in favour of Upendra Chandra Deb in his lifetime and after his death Upendra Chandra Deb became the Co-owner of the land under Khatian No.25 on the strength of said registered will. Subsequently said Upendra Chandra Deb died leaving behind his wife as his only successor. Hence, the wife of Upendra Chandra Deb namely, Bela Rani Deb who resides presently at Bagan Bazar under Kalyanpur Police Station became the co-owner of the land by way of inheritance. Thereafter Bela Rani Deb allowed the plaintiff and the defendant to cultivate into the land of her share under the Khatian No.25 indicating separate boundary thereon since she is the co-owner of the said land. The defendant cultivated in the suit land after obtaining permission from the co-owner namely Bela Rani Deb and since then the defendant is possessing the suit land without obstruction from any corner. The plaintiff has fabricated a malicious story against the answering defendant to grave the property. There is no reasonable ground to believe the story of the plaintiff made in this suit. The object of the plaintiffs is to frame a suit against the answering defendant with an ulterior motive.

[6] After going through the pleadings at the Para-13 of the written statement, this Court, by exercising its power under

Article 227 of the Constitution of India for averting miscarriage of justice, is inclined to accept the contention of Mr. Das, learned counsel appearing for the petitioner that there is necessity of adding Bela Rani Deb, description of whom is available in the application for amendment and as such the impugned order is interfered to that extent.

It is directed that Smt Bela Rani Deb, wife of Upendra Chandra Deb of Baganbazar, P.S. Kalyanpur, District – Khowai, Tripura shall be added as the defendant No.2 in Title Suit No.08 of 2008. The petitioner is directed to file the amended plaint within a period of 15 (fifteen) days from today in the Court of the Civil Judge, Jr. Division, Khowai, West Tripura.

The Registry is directed to transmit a copy of this order to the Civil Judge, Jr. Division, Khowai as expeditiously as possible. Since the proceeding of the said suit was stayed by this Court by the order dated 05.06.2009 in CM. Appl. No. 46 of 2009 arising from this Civil Revision Petition (CRP No.46 of 2009) till the returnable date and even though no continuation was ever recorded by this Court, the suit has not proceeded thereafter, as contended by Mr. Das, learned counsel for the petitioner.

[7] Be that as it may, the Civil Judge, Jr. Division, Khowai, West Tripura is directed to recommence the proceeding by fixing a fresh date accordingly. It is made clear that if within 15(fifteen) days the amended plaint is not submitted by the

petitioner, the Civil Judge, Jr. Division, Khowai shall proceed with the un-amended plaint and the petitioner shall not be given any opportunity for filing the amended plaint.

Accordingly, this civil revision petition is allowed and disposed of.

Mr. Chakraborty, learned legal aid counsel has submitted that on posting of a fresh date, the defendant be given notice for appearance by the Civil Judge, Jr. Division, Khowai, West Tripura. Accordingly, the Civil Judge, Jr. Division, Khowai is further directed to issue a fresh notice to the defendant on posting a fresh day for the proceeding.

JUDGE

Sujay