

**THE HIGH COURT OF TRIPURA
AGARTALA**

RSA NO. 32 OF 2011

APPELLANTS :

1. Smti. Malabika Bhattacharjee,
D/O. Late Matindra Bhattacharjee,
W/O. Sri Jayanta Bhattacharjee,
Resident of College Tilla,
P.S. East Agartala,
P.O. College Tilla-799004.
West Tripura.

2. Smti. Mousumi Bhattacharjee,
D/O. Late Matindra Bhattacharjee,
W/O. Sri Siddhartha Haldar,
At present residing at Kailashahar,
All India Radio Quarters,
P.O. & P.S. Kailashahar,
North Tripura,

BY ADVOCATE :

Mr.A. De,

- Vs -

RESPONDENT :

The World at Large,

PROFORMA-RESPONDENTS :

1. The State of Tripura,
Represented by the Secretary to the
Government of Tripura,
Revenue Deptt.,
Civil Secretariat, Capital Complex,
P.S. East Agartala,
P.O. Kunjaban-799006,
West Tripura.

2. The District Magistrate & Collector,
West Tripura, Agartala,
P.S. West Agartala,
P.O. Agartala-799001,
West Tripura.

ADVOCATES:

Mr. S. Chakraborty,
Ms. P. Dhar,

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

Date of hearing & delivery of
Judgment & order : **28.09.2015.**

Whether Fit for Reporting :

Yes	No
	√

JUDGMENT & ORDER(ORAL)

Heard learned counsel, Mr. A. De for the appellants and learned Additional Government Advocate, Mr. S. Chakraborty for the respondent No.1-State of Tripura as well as learned counsel, Ms. P. Dhar for the respondent No.2-District Magistrate & Collector, West Tripura.

2. The second appeal has been filed challenging the judgment and decree dated 05.03.2011 passed by the learned Additional District Judge, West Tripura, Agartala(Court No.3) in Title Appeal No.09 of 2010, whereunder the learned Additional District Judge upheld the judgment and decree dated 11.02.2010 passed by learned Civil Judge(Junior Division), Court No.2, Agartala, West Tripura in Title Suit No.37 of 2007.

3. The second appeal has been admitted for hearing on the following substantial questions of law:-

"1. Whether there is any necessity, to seek leave from the Trial Court to treat the suit in the representative capacity under Order 1 Rule 8 of the C.P.C. for purpose of instituting the suit of the nature as the appellant has instituted?"

2. Whether service of notice upon the respondents under Section 80(1) of C.P.C. is

necessary for the purpose of instituting the suit of the nature as the appellant has instituted?

3. Whether the learned First Appellate Court has acted illegally by affirming the Judgment of the learned Trial Court?"

4. The appellants as plaintiffs instituted Title Suit No.37 of 2007 seeking declaration and consequential relief. The plaintiffs, *inter alia*, contended that they along with their two brothers, namely, Manabendra Bhattacharjee and Mrigendra Bhattacharjee inherited the properties mentioned in the schedule of the plaint. Manabendra Bhattacharjee died unmarried on 05.05.2000 leaving behind the plaintiffs as his legal heirs. Mrigendra Bhattacharjee was untraceable from 03.05.1999 and the plaintiffs made search for him in all probable places, but could not trace out. It is the case of the plaintiffs that Mrigendra Bhattacharjee should be treated as death in the eye of law since nobody could say whereabouts of him. The plaintiffs, therefore, sought for the following reliefs in the plaint :-

"a) a decree of declaration that Mrigendra Bhattacharjee, S/O. Late Matindra Ch. Bhattacharjee lastly resided at Hospital Road Extension, Town Bardowali, P.S. West Agartala, West Tripura be deemed dead,

b) a decree of declaration that the Plaintiffs are the absolute owner and possessor of the land described in the Schedule below,

c) a decree of perpetual injunction against every person in the world restraining him/her from interfering with the possession of the plaintiffs in respect of the land in the schedule hereinafter,

d) Any other relief or reliefs as would be entitled to the plaintiffs."

5. In the suit the plaintiffs arrayed the World at large as defendant No.1, the State of Tripura as defendant No.2 and District Magistrate & Collector as defendant No.3. Only defendant No.3 has submitted written statement, *inter alia*, stating that no notice was served before instituting the suit and that the suit was not maintainable.

6. The trial Court considering the pleadings of the parties, framed five issues, namely :-

"1) Whether the suit is maintainable in law and form?

2) Whether the plaintiff entitled to a decree declaring that Mrigendra Bhattacharjee S/O. Matindra Chandra Bhattacharjee lastly resided at Hospital Road Extension, Agartala, West Tripura is deemed to be dead?

3) Whether the plaintiffs are entitled to a decree declaring that to be the absolute owners and possessors of the land described in schedule of the plaint?

4) Whether the plaintiffs are entitled perpetual injunction restraining any person from entering with the possession of the plaintiffs over the land described in schedule of the plaint?

5) Whether the plaintiffs are entitled to any other relief or reliefs in this case?"

7. In course of trial, the plaintiffs examined themselves as PWs1 and 2 and also proved 5 items of documents. The defendants adduced no evidence. The trial Court decided all the issues against the plaintiffs and accordingly, dismissed the suit.

8. Aggrieved, the plaintiffs preferred Title Appeal No.09 of 2010 in the Court of learned District Judge, West Tripura, Agartala and the learned Additional District Judge,

Court No.3 by impugned judgment dated 05.03.2011 dismissed the appeal and hence, this second appeal.

9. The trial Court as well as the appellate Court, as it appears, has held that the plaintiffs instituted the suit against the World at large without taking any leave of the Court and no notice was served under Section 80(1) of CPC and so, the suit was not maintainable.

10. Learned counsel, Mr. De, has submitted that since Mrigendra Bhattacharjee, the brother of the plaintiff-appellants, is missing from 03.05.1999, the plaintiffs instituted the suit seeking declaration and there was no need for taking a leave of the Court. The trial Court and the appellate Court discussed the relevant provision of law in respect of taking leave of the Court for instituting the suit in such representative character and I find no infirmity in the Judgment passed by the trial Court and affirmed by the appellate Court.

11. Further, as I find in para-11 of the plaint the plaintiffs stated the cause of action of the suit thus:-

"11. That, the cause of action of the suit arose on 03.05.2006 when the 7(seven) years elapsed from 03.05.1999 when whereabouts of Mrigendra Bhattacharjee, S/O. Late Matindra Ch. Bhattacharjee was last known."

12. A reading of the entire plaint does not show any allegation against the defendants to bring about a cause of action for instituting the suit. There must be a specific cause of action for initiating a civil action against the defendants. The

plaintiffs nowhere stated as to what is the cause of action against the defendants for bringing the suit and on that count also the suit is not maintainable.

13. In view of the discussions made above, the appeal is found to be devoid of merit and accordingly, stands dismissed.

14. Send back the lower Court records along with a copy of this Judgment.

JUDGE