

**THE HIGH COURT OF TRIPURA
AGARTALA**

CRP 59 of 2015

1. Sri Prasanta Acharjee,
S/o. Late Braja Gopal Acharjee,
resident of North Banamalipur,
P.O.Banamalipur, P.S. East Agartala,
District- West Tripura. Pin. 799001.
2. Sri. Raju Ghosh,
S/o. Late Runu Ghosh @ Ranu,
Resident of Dhaleswar, Near Harijan Colony,
Agartala, P.O. Dhaleswar, P.S. East Agartala,
District- West Tripura. Pin- 799007.

.....Petitioners.

VERSUS

1. Sri Nitai bebbarma
S/o. Late Hari Kumar Debbarma.
2. Smt. Manorama Debbarma,
W/o. Sri Nitai Debbarma
Both are resident of North Banamalipur,
P.O.Banamalipur, P.S. East Agartala,
District: West Tripura, PIN- 799001.

.....Respondents.

3. The State of Tripura
Represented by the Commissioner-Cum-Secretary,
Govt. of Tripura, Urban Development Department,
PIN- 799006.
4. Agartala Municipal Corporation,
Head Office at City Centre,
Paradise Chowmuhani,
P.O. Agartala, P.S. West Agartala,
Dist: West Tripura, PIN- 799001.
5. The Municipal Commissioner,
Agartala Municipal Corporation,
Agartala, District- West Tripura.
PIN.799001.
6. The Sub-Divisional Magistrate,
Sadar, Agartala,
District: West Tripura,
PIN- 799001.

7. The Executive Officer,
Central Zone,
Agartala Municipal Corporation,
Agartala, District: West Tripura.
PIN- 799001.

....Pro-forma Respondents.

**BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA**

For the petitioner : Mr. D. Saha, Advocate.
For the Respondent 1 & 2 : Mr. D.R. Chowdhury, Advocate.
Mr. D. Deb, Advocate.
Date of judgment : **15.7.2015.**
Whether fit for reporting : **No.**

JUDGMENT AND ORDER (ORAL)

This petition is directed against the order dated 05.05.2015 passed by the learned Civil Judge, (Jr. Div), Court No.8, Agartala, West Tripura in Title Suit No. 85 of 2015 whereby she has ordered that the application filed for dropping the proceedings challenging the maintainability of the "Writ Petition" filed by the plaintiff shall be decided at the stage of framing of issues in the suit.

2. Briefly stated, the facts are that the respondents ***(hereinafter referred to as "the plaintiffs")*** Nitai Debbarma and Manorama Debbarma, filed a suit for declaration and perpetual injunction, praying that they had the easementary right of enjoyment of light and air in their homestead land and also praying that the defendants be directed to move the obstruction to their easementary rights.

3. The contesting defendant Nos. 1 and 2 filed an application for dropping the proceedings on the ground that in terms of Section 91 (1) (b) of the Code of Civil Procedure (CPC) no suit with regard to public nuisance or other wrongful act affecting the public could be instituted except by the Advocate General or by two or more persons after they had obtained leave of the Court. On 07.04.2015 the Court passed an order on this application, relevant portion of which reads as follows:

"A petition is filed on behalf of the defendant no. 1 and 2 for dropping the proceeding under Sec. 91(1)(b) of CPC challenging the maintainability of the writ petition filed by the plaintiff."

4. First of all, the trial Judge should realize that the proceedings filed before it are not a writ petition but a civil suit. Writ petitions are filed only in the High Court and not in the Courts of Civil Judges. The trial Court was dealing with a civil suit and not with a writ petition as stated by the trial Judge in the order.

5. On 05.05.2015, the Court passed the following order on this application, relevant portion of which reads as follows:

"It is seen that on 07-04-2015 a petition was filed on behalf of the defendant no. 1 and 2 for dropping the instant proceeding challenging the maintainability of the writ petition filed by the plaintiff."

The above mentioned is rejected at this stage since the same would be decided after framing of issue."

6. This order is totally illegal. No application can be rejected in this manner. Even if the Court felt that this application should be decided at the time of framing of the issues, the application could not have been rejected. At best, the order which could have been passed was that the application would remain pending and would be decided at the stage of framing of issues.

7. In this view of the matter, the order dated 05.05.2015 is set aside. The application shall now be decided by the trial Court. It is made clear that this Court has expressed no opinion on the merits of the application one way or the other but the learned trial Court shall decide this application.

8. It has been stated at the Bar that the next date is fixed for filing written statement on 25th July, 2015. On the said date itself or on any other date convenient to the Court, the trial Court shall decide this application filed wherein it has been alleged that the suit is not maintainable under Section 91 of the CPC. It shall only frame issues after this application is disposed of.

9. The revision petition stands disposed of.

CHIEF JUSTICE