

THE HIGH COURT OF TRIPURA
A_G_A_R_T_A_L_A

CRP No.84 of 2010

1. **Smt Sanghamitra Saha,**
Wife of Late Dilip Chandra Saha.
2. **Shri Debabrata Saha,**
Son of Late Dilip Chandra Saha.
3. **Miss. Anuradha Saha,**
Daughter of Late Dilip Chandra Saha.
4. **Shri Joydeep Saha,**
Son of Late Dilip Chandra Saha,

Sl. Nos.3 & 4 are minors and are represented by their natural guardian, the petitioner No.1 and all are residents of Mantribari Road, P.O - Agartala, P.S. - West Agartala, Agartala, District - West Tripura.

..... *Petitioners.*

– *Versus* –

1. **Smt Chhaya Rani Saha,**
Wife of Late Kshitish Chandra Saha,
16/1/H/19 Murari Pukur Road, Kolkata, West Bengal,
P.O - Deshbandhunagar, Pin - 700067.
2. **Smt. Sabita Saha,**
Daughter of Late Kshitish Chandra Saha,
Wife of Shri Rupak Saha,
35, Pally Shree, P.S. - Jadavpur, P.O - Bijoygarh,
Kolkata, West Bengal, Pin - 700092.
3. **Shri Sanjoy Saha,**
Son of Late Kshitish Chandra Saha,
16/1/H/19 Murari Pukur Road, Kolkata, West Bengal,
P.O - Deshbandhunagar, Pin - 700067.
4. **Smt Bani Saha,**
Daughter of Late Kshitish Chandra Saha,
Wife of Shri Amar Saha,
4, Kayastapara Main Road, Halto, P.O - Baligang,
Kolkata, West Bengal Pin - 700078.
5. **Smt Ranu Saha,**
Daughter of Late Kshitish Chandra Saha,
Wife of Shri Subrata Saha,
17, Bagrari Lane, B.R.S - 10, C.I.T., Flat - 33,
Block - J, Kolkata - 54, West Bengal, Pin - 700054.

6. **Smt Rita Saha,**
Daughter of Late Kshitish Chandra Saha,
Wife of Shri Tarak Saha,
of Subodh Pally, Middle Road, Baruipur,
Kolkata - 144, West Bengal, P.O - Baruipur.
7. **Smt Mitali Podder (Saha),**
Daughter of Late Kshitish Chandra Saha,
Wife of Shri Manabendra Podder,
10/A/1B Sailendra Halder Street, P.O Kalighat,
Kolkata - 26, West Bengal, PIN - 700026.
8. **Smt. Mina Saha,**
Daughter of Late Kshitish Chandra Saha,
Wife of Shri Swapan Kumar Saha,
Resident of Megh Roudra, 48, Telpukur,
P.O - Baghajatin Station Road, Kolkata 700086, West Bengal.
Earlier residing at Agartala, C/o Shri Pannalal Bhattacharjee of
Melarmath, Near P.W.D. Quarter, Agartala, West Tripura.

..... *Respondents.*

B E F O R E
THE HON'BLE CHIEF JUSTICE MR. DEEPAK GUPTA

For the petitioners	: Mr. S Deb, Sr. Advocate, Mr. P K Pal, Advocate.
For the respondents	: Mr. D Bhattacharji, Advocate, Mr. D Chakraborty, Advocate, Mr. H Laskar, Advocate.
Date of hearing and delivery of judgment.	: 17.01.2015.
Whether fit for reporting	: No.

JUDGMENT & ORDER (ORAL)

This is an unfortunate case which has been pending for almost 11 years and has still not been decided and is at the preliminary stage.

2. From the record I find that the suit for partition was filed on 7th January, 2004 and various dates were taken by the defendants for filing written statement. Thereafter, defendant no.1 expired and

his legal representatives had to be brought on record. The defendants took a large number of opportunities to file their written statement and then instead of filing the written statement they filed an application praying that the suit discloses no cause of action and may be rejected. The plaintiff had also prayed for an injunction and this injunction was granted in favour of the plaintiff. Against the order granting injunction the defendants filed an appeal and on 16.01.2006, the learned trial Court pursuant to the orders passed by the learned Additional District Judge, Court No.4 Agartala, Tripura sent the records to the lower appellate Court.

3. It appears that the appeal filed by the defendants against the order of grant of injunction was dismissed for non-prosecution and the matter went back to the trial Court. The file was received by the trial Court on 04.10.2007. The learned trial Court proceeded with the matter but no effort was ever made to issue notice to the defendants or its counsel about the date fixed by the trial Court. If the appellate Court disposes of a matter in presence of the parties and the matter is sent back to the lower Court for further proceedings then, normally the appellate Court should fix a date for the presence of the parties before the trial Court. Even if only one of the parties is present, such procedure should be followed and a direction should be given to the trial Court to send notice to the unrepresented party either in person or through its counsel with regard to the next date of hearing fixed in the case.

A party to the proceedings in the absence of any such notice will have no knowledge about the date fixed in a case and I fail to understand how it can be asked to be present in the Court when a party is not even aware of the date which has been fixed.

4. Under Order III of C.P.C notice to the counsel would be sufficient notice especially with regard to the proceedings which are pending in the trial Court and, therefore, notice of the next date given to the counsel would be sufficient notice of the date fixed and it is for the counsel to ensure that he remains present on the next date failing which the Court may proceed in absence of such party. However, without issuing any notice whatsoever, the Court cannot proceed against the party concerned. That would be a total violation of the rules of natural justice and also of the procedure prescribed under the C.P.C.

5. In the present case, the proceedings have been going on for a long time. One of the orders under challenge is the order dated 30.03.2010. This challenge cannot be accepted because the cause of action is only a bundle of facts and merely because the words '*cause of action*' are not written in the plaint it does not mean that there is no cause of action. If the facts stated in the plaint, disclose a cause of action, mere non-mention of the words '*cause of action*' would not mean that there is no cause of action.

6. Therefore, the revision petition is allowed to the limited extent that the proceedings after remand of the case by the appellate Court, except in so far as the order dated 30.03.2010 is concerned having been taken place in the absence of the defendants, are not binding on the defendants. The defendants have already filed their written statement and, therefore, with the assistance of the learned counsel for the parties the learned trial Court shall, if necessary, frame additional issues, if any, arising out of the pleadings. Thereafter the witnesses of the plaintiff who have already been examined shall be tendered for cross-examination by the defendants. In case the plaintiff so desires he will get an opportunity to lead any other evidence also because at the earlier stage the plaintiff was only leading *ex-parte* evidence.

7. The case is almost 11 years old. Therefore, this Court draws out a calendar for disposal of the case. There were only two defendants in the suit. The present petitioners are the legal heirs of the defendant no.1. Defendant no.2 was *ex parte* all along and therefore, the parties who are present in Court are directed to appear before the learned trial Court on **5th February, 2015**. In case any additional issue is to be framed, that shall be framed on that date itself. The learned trial Court shall fix a date in the third week of February, 2015 for filing of any additional affidavit by the plaintiff. Thereafter it shall fix a date on or before 15th March, 2015 for production of the plaintiff's witnesses for their cross-

examination. The plaintiff may be granted maximum two dates in the month of March, 2015 itself for production of its witnesses and the defendants shall be duty bound to cross-examine the witnesses on the said date. Thereafter, the defendants on or before 31st March, 2015 shall file their evidence by way of affidavits of their witnesses and the witnesses of the defendants shall be examined in Court in the month of April, 2015. Thereafter the matter shall be disposed of latest by **31st May, 2015**.

With these observations the petition is disposed of.

CHIEF JUSTICE

Sukhendu