

THE HIGH COURT OF TRIPURA

A G A R T A L A

CRP No. 89 of 2015

Petitioners :

1. Sri Sudhir Chandra Adhikari,
S/o. Late Raiharan Adhikari.

2. Smt. Mina Adhikari,
Wife of Sri Sudhir Chandra Adhikari, Both are
residents of Laxmi Narayan Bari Road, P.S. East
Agartala, District-West Tripura-799001.

By Advocate :

Mr. R. Chakraborty, Adv.

Respondents :

1. Sri Satyabrata Roy,
Son of Late Kshirode Roy, resident of Shanitala,
Motor Stand East, P.S. East Agartala, District-
West Tripura 799001.

2. Agartala Municipal Corporation,
Represented by its Executive Officer, Paradise
Choumahani, P.S. West Agartala, District-West
Tripura-799001.

By Advocate :

Mr. P. Saha, Adv.

B E F O R E

THE HON'BLE CHIEF JUSTICE MR. DEEPAK GUPTA

Date of hearing &
Judgment & Order : **25th November, 2015.**

Whether fit for reporting :

Yes	No
√	

JUDGMENT & ORDER (ORAL)

This case is a stark example of how Courts should not deal with civil litigation. The manner in which the case has been dealt with by the Courts and the counsel clearly indicates that none was interested in quick disposal of

the case and, therefore, though more than 11(eleven) years have elapsed the case has still not been decided.

[2] The suit was filed on 23rd February, 2004 by the plaintiff seeking declaration of title and eviction of the defendant and consequential relief of perpetual injunction. Along with the suit an application for stay was filed and in this application stay order was granted in favour of the plaintiff. Notice was issued to the respondents on 23rd February, 2004. The defendants put in appearance on 3rd March 2004. The arguments on the application for grant of interim relief were heard on 5th March, 2004. On 16th March, 2004 the case was fixed for 26th March, 2004 for filing of written statement. The learned trial Court restrained the defendant from proceeding further with the construction being raised by him vide order dated 16th March, 2004. Thus effectively the construction being raised was halted on that date i.e. more than 11 years back. After taking adjournments the written statement was filed on 10th May, 2004. On 15th May, 2004 issues were framed. The case was fixed for ascertaining the option of the parties whether they wanted to get the matter settled by alternate dispute redressal mechanism in terms of Section 89 of the CPC. On 20th May, 2004 the plaintiff filed a petition for amendment of the plaint. This application was contested by the defendant. Thereafter the case was adjourned on 3(three) occasions on the ground that there is a possibility of amicable settlement between the parties. Finally, on 07.12.2004 the application for amendment filed by the plaintiff was allowed. The amended plaint was thereafter filed and then the defendants filed additional written statement on 19th February, 2005.

[3] No additional issues were framed but instead of fixing the case for evidence the Court ordered that the orders on the application filed under

Section Order XII Rule 8, Order XVI Rule 6 and Order XII Rule 2 CPC filed by the defendant would be considered. Orders on these applications were passed on 3rd May, 2005 and the case was listed for evidence of both the parties on 14th June, 2005. Till this date the case was moving at a reasonably decent pace. On 14th June, 2005 both the parties filed applications for grant of further time to file the affidavits of the witnesses. The case was adjourned to 19th July, 2005 when again further time was prayed and the case was adjourned to 25th August, 2005. On 25th August, 2005 the defendant No.1 filed his examination-in-chief by affidavit. The plaintiff instead of filing examination-in-chief of his witnesses filed a petition under Order XXVI Rule 9 CPC for issuance of commission to make local investigation. The Court held that the parties are first lead the evidence. Thereafter on 14th September, 2005 the plaintiff filed examination-in-chief of 5(five) witnesses. The plaintiff also filed 4(four) documents at this stage I do not understand how these documents which were filed after the issues had been framed could be taken on record without any application being filed in this behalf. However, that is now a closed chapter. On this date the counsel for defendant No.1 was absent and prayer was made for adjournment. On the next date i.e. 28th September, 2005 the defendant also submitted evidence of his two witnesses and filed a petition praying for allowing time for cross-examination of witnesses of the plaintiff.

[4] This system of recording evidence is totally illegal. This Court has repeatedly held that after issues are framed first the party who is to lead evidence in the beginning, in most cases the plaintiff should be called upon to lead its evidence. If the evidence is led by way of affidavits a date should be fixed for supply of copy of the affidavits well in advance to the other side or if the affidavits are filed in Court itself then one date must be given to the other

side to go through the affidavits and prepare the cross-examination. No counsel can be expected to be read affidavits running into 20 to 30 pages in Court and also cross examine the witnesses. There is no question of asking the defendant or the opposite side of filing its affidavit till the examination and cross-examination of the plaintiff or the party leading the evidence first is completed. Only after the cross-examination is completed should the defendant or the opposite party should be asked to file its evidence.

[5] On 22nd November, 2005 the five witnesses whose affidavits were filed by the plaintiff were cross-examined in Court and documents were exhibited and the case was fixed for defendant's evidence on 12th December, 2005. The defendant along with his witnesses were present on 30th January, 2006 when unfortunately the Presiding Officer was out of station and the matter was adjourned. The case was adjourned to 15th February, 2006 when again the defendant was present along with his three witnesses but an application was filed on behalf of the plaintiff that his counsel is out of station and therefore, a date be granted. The case was then adjourned to 10th March, 2006. Again the defendant was present along with his three witnesses and they were cross-examined by the plaintiff. The defendant filed a petition praying for allowing time to examine another witness whose evidence by way of affidavit he had filed that day. This time was allowed and the case fixed for cross examination of the remaining witness of the defendant on 7th April, 2006. The evidence of this witness was also recorded on 7th April, 2006 and the evidence of both sides was concluded. At this stage the learned trial Court took up the application for appointment of Survey Commissioner and appointed one Sri Makhan Lal Debnath as the Survey Commissioner and the his fees was fixed at Rs.1000/- to be paid equally by both the parties. This is also improper. In case

the plaintiff files an application for appointment of Survey Commissioner, it is the plaintiff who should pay the fees of the Survey Commissioner. When the Survey Commissioner is appointed at the asking of any party then it is that party which should be burdened with the cost of the appointment of the Survey Commissioner and the other party should not be made to pay any amount though while finally deciding the case the Court can issue directions with regard to costs in any manner as it feels right.

[6] Though the Court held that the Survey Commissioner was to be appointed it also observed as follows:

"Now first of all let us appoint one Survey Commissioner. The plaintiff side and the defendant No. 1 shall file their respective points require to be determined by Survey Commissioner for local inspection on the next date."

This is like putting the cart before the horse. First the Court should have been determined what are the points to be referred to the Survey Commissioner and only thereafter a Survey Commissioner could be appointed. How can any Court come to the conclusion that a Survey Commissioner is to be appointed if it does not first formulate the issues which are to be determined by the Survey Commissioner. This clearly shows total non application of mind on behalf of the Presiding Officer. Thereafter the points were framed. On 15th May, 2006 the trial Court rightly observed that it would be necessary for the Survey Commissioner to have the benefit of the Cadastral Survey Map (for short C. S. Map) of the suit land before he could determine the issues and the plaintiff assured the Court that the C.S. Map would be filed on the next date.

[7] On the next date i.e. 31st May, 2006, the plaintiff filed a petition for adjournment stating that he had applied before the authority for obtaining the revisional C.S Map of the suit land but had not received the same. The

Court issued writ to the Survey Commissioner to submit his report on submission of the revisional C.S. Map by the plaintiff on the next date. On the next date another time petition was filed on behalf of the plaintiff on the ground that his counsel is unwell. On the next date i.e. 17th July, 2006 again an application for time was filed on the ground that the fees of the Survey Commissioner have not been paid and the C.S. Map is also not been available. On the next date i.e. 25th July, 2006 the plaintiff filed the C.S. Map but the Court found that the C.S. Map does not cover the suit land. In my view at this stage itself the request of the plaintiff for appointment of Survey Commissioner should have been rejected. A party who seeks appointment of a Survey Commissioner must produce before the Court all the documents with him at the time of seeking appointment of Survey Commissioner and also pay the fees of the Survey Commissioner immediately otherwise there is no point in appointing a Survey Commissioner. The Court was however, lenient and granted another date to the plaintiff to file C.S. Map and on the next date the plaintiff stated that the C.S. Map is not available and on this date the learned Court below ordered that the defendants are at liberty to file the C.S. Map covering the suit land if the same is in their custody. On 21st September, 2006 a very odd order was passed that the defendants are directed to comply with the earlier order dated 23.08.2006 failing which the suit shall be fixed for arguments. It is not the defendants who had sought appointment of the Survey Commissioner and if the matter was to be argued they would not suffer at all.

[8] Thereafter there was no Presiding Officer in the Court for almost two years and on 19th June, 2008 the District Judge withdrew the case from the Court where it was pending and transferred it to another Court for disposal in accordance with law. The learned District Judge while transferring the case

fixed it for 25th June, 2008. On that date the plaintiff did not appear but the defendants put in appearance. The case was listed on 22nd August, 2008 for arguments. Again on 22nd August, 2008 the plaintiff filed a petition for adjournment. The learned Court observed that the case is pending for arguments since 2007 and the plaintiff was given last chance to place their arguments and the case was adjourned to 6th November, 2008 for argument. At this stage the learned counsel for the parties did not point out to the Court that there was an order to appoint a Survey Commissioner. This was the duty of the counsel for both the parties but shows the totally callous manner in which the case has been dealt with by the counsel and the Presiding Officer.

[9] The next effective date was 16th December, 2008 when the plaintiff filed a petition stating that Survey Commissioner had been appointed on 25th August, 2005. Counsel for the defendant stated that he had paid Rs.500/- to the Survey Commissioner directly and therefore, the Court ordered notice to the Survey Commissioner to appear before the Court. The case was then adjourned time and again only for this purpose.

[10] On 13th February, 2009 counsel for the defendant No.1 submitted the points on which Survey Commissioner's report was required. Again the counsel for the plaintiff sought for an adjournment and the case was adjourned to 28th March, 2009 and again counsel for the plaintiff sought for an adjournment. On the next date i.e. 8th May, 2009 again counsel for the plaintiff asked for an adjournment and these adjournments were granted by the Court merely for the asking. Thereafter on 1st July, 2009 the learned Court framed the points on which the Survey Commissioner was to submit his report. Thus, though the appointment of the Survey Commissioner was made vide order dated 07.04.2006 the points for determination by the Survey Commissioner

were determined more than three years later on 1st July, 2009. God alone can help the litigants if this is the way the cases are to be dealt with in civil Courts.

[11] The matter does not end here. The Survey Commissioner did not submit his report. It appears that the order of the Court was not sent to the Survey Commissioner. The order of the Court was not complied with by the Sheristedar for many dates and the Survey Commissioner finally submitted his report on 7th May, 2010. Thereafter objection to the report was filed by the defendant on 19th June, 2010. The case was then adjourned due to the absence of the counsel for the defendant. The case was fixed for orders after hearing arguments and on 8th July, 2010 when order was to be announced the Court held that it was necessary to examine the Survey Commissioner and no order could be passed without examining the Survey Commissioner. Thereafter notice was issued to the Survey Commission but no summons were issued to the Survey Commissioner by the office of the Court on many occasions.

[12] On 4th December, 2010 the Survey Commissioner appeared and again a request for adjournment was made on behalf of the plaintiff and this request was allowed subject to payment of Rs.500/- as costs to the Survey Commissioner. On the next date i.e. 22nd December, 2010 the Survey Commissioner was again present but costs were not paid to him. The Presiding Officer was on leave and the matter was adjourned to 12th January, 2011 for payment of cost to the Survey Commissioner. Again on 12th January, 2011 an application for adjournment was moved on behalf of the plaintiff. This application was rejected and suit of the plaintiff was dismissed for default. It appears that thereafter another application was moved for restoration of the suit and the suit was restored on 12th May, 2011. Thereafter matter was adjourned to 27th May, 2011 for appearance of the parties. On 27th May, 2011

the plaintiff filed an application that he should not have been burdened to pay the costs which were imposed on 4th December, 2010. For more than six months the plaintiff had kept silent, not paid the costs and after his suit which was dismissed in default was restored the plaintiff raised the plea that he was not liable to pay costs. In my view this request should have been rejected at that very stage itself, but the trial Court in its magnanimity granted an adjournment to the plaintiff to file an application in this regard. This application was filed on 9th June, 2011 and thereafter the order for payment of costs was vacated on 8th August, 2011.

[13] The main case was again taken up on 18th August, 2011. On this date the counsel for the defendant was not present and summons were issued to the Surveyor, Sri Makhan Lal Debnath. On the next date i.e. 5th September, 2011 the Surveyor was partly cross-examined but the counsel for the defendant complained of illness and the case was adjourned subject to payment of Rs.200/- as cost by the defendant. Thereafter the examination and cross-examination of the Survey Commissioner were completed on 13th September, 2011. On 10th November, 2011 when the matter was fixed for hearing on the report of the Survey Commissioner counsel for the plaintiff moved an application that the case be adjourned on the ground that copy of the deposition of the Survey Commissioner had not been supplied to him. Thereafter vide order dated 30th November, 2011 the report of the Survey Commissioner was set aside and the case was fixed on 20th December, 2011 for arguments.

[14] On 20th December, 2011 counsel for the plaintiff was not present but another application under Order XXVI Rule 9 for appointment of fresh Survey Commissioner was filed. Arguments on this application were heard and

completed on 13th February, 2012 and on 25th February, 2012 it was ordered that a fresh Survey Commissioner be appointed. Again both the sides were asked to deposit Rs.500/- each and the case was adjourned to 29th February, 2012 for appointment of Survey Commissioner. Neither party took steps and on 7th March, 2012 again request was made on behalf of the plaintiff for adjournment of the case. Since nobody was present on behalf of the plaintiff, the trial Court ordered that the chapter of appointing Survey Commissioner is hereby closed and the main case was fixed for arguments on 22nd March, 2012. On this date, the counsel for the plaintiff filed an application under Section 151 CPC for modification of the order and till then the proceedings in the main suit were stayed. This application under Section 151 CPC was treated as a separate case and the order was modified and the case was fixed for appointment of Survey Commissioner. Thereafter on 15th May, 2012, Sri Mihir Dey was appointed as Survey Commissioner and the points on which he had to submit his report were framed.

[15] The Survey Commissioner, Sri Mihir Dey filed a petition that he may be supplied a copy of the C.S. Map. Whereas earlier the parties had been directed to supply the C. S. Map to the Survey Commissioner, on this occasion the Court ordered that the Survey Commissioner should collect the relevant papers from the case record of the parties or from the parties and conduct the survey as early as possible. This is highly improper. Survey Commissioners are not subordinates of the Courts. They are expert witnesses and entitled to be treated with respect. The party who had sought appointment of the Survey Commissioner should have been directed to supply the C.S Map or its application should have been rejected forthwith. It is not the job of the Survey Commissioner to start collecting survey maps and revenue papers on behalf of

the parties. On 7th July, 2012 the case was fixed to get the copy of the Survey Commissioner. On 7th July, 2012 again nobody was present on behalf of the plaintiff but the Survey Commissioner was directed to submit his report. Again the Survey Commissioner prayed that copy of the C. S. Map be supplied to him because in the absence of the map he could not submit any survey report. The order passed was that the Survey Commissioner is directed to collect the required map from the parties of the suit or from the office and complete the survey as early as possible. This again was a highly improper order. The Court should have directed the plaintiff to submit the map or should have made it clear that if the map is not submitted within 15(fifteen) days than the order appointing the Survey Commissioner will automatically stand vacated.

[16] On 8th August, 2012 again none appeared on behalf of the plaintiff and the Survey Commissioner also did not file his report. The plaintiff kept absenting from the Court and the Survey Commissioner kept representing to the Court time and again praying that the copy of the C.S. Map be supplied to him. Finally, on 22nd September, 2012 the plaintiff was directed to supply the C.S. Map to the Survey Commissioner for the purpose of survey as last chance. This is the order which should have been passed even before appointment of Surveyor or at least at the time when Survey Commissioner was appointed. By this time, more than 6(six) years had elapsed since the original order appointing Survey Commissioner was passed and the plaintiff was still taking adjournments and not supplying map to the Survey Commissioner.

[17] On the next date i.e. 12th October, 2012 the defendant complained and rightly so that the Survey Commissioner is not submitting his report because the plaintiff is not complying with the orders of the Court. Then the counsel for the plaintiff stated that they have applied for collecting new

map from the competent authority. This time the Court ordered that the chapter of appointing the Survey commissioner is again closed and the case was fixed on 30th November, 2012 for argument. Again the counsel for the plaintiff filed an application for modification of the earlier order. This application was objected to on the ground that it was not properly verified and the learned trial Court rejected the application. The plaintiff filed CRP No.2 of 2013 and learned Single Judge of this Court held that in a time petition it was not necessary to have verification or affidavit in support of the application and thereafter the matter was remanded to the Trial Court. The case record was called to this Court and the revision petition was disposed of on 6th May, 2013 and the records were sent back to the trial Court. It will be pertinent to mention that the learned Single Judge directed that since the case is old one the trial Court should take appropriate steps according to law for disposal of the case at the earliest.

[18] Thereafter on 1st July, 2013 the trial Court modified its earlier order and directed the Survey Commissioner to adduce report of the survey before the next date otherwise matter would be communicated to appropriate authority for appropriate action. The Survey Commissioner again requested for time. Thereafter, show cause was notice issued to the Survey Commissioner why disciplinary action should not be proposed against him. I do not understand what disciplinary action could have been taken by the Court against the witness. Furthermore, when the Court's order of supplying of map had not been complied with by the plaintiff where was the question of taking disciplinary action against the witness? It was the plaintiff who had not complied with the orders of the Court and instead of dismissing the suit of the plaintiff, the Court was threatening the Survey Commissioner that disciplinary

action would be taken against him. Thereafter, Sri Mihir Dey submitted his report on 7th September, 2013. It is more than obvious from the record that this survey report was prepared without the benefit of any C.S. Map. It is also obvious that this survey report was prepared by the Survey Commissioner without the help of any C. S. Map because he was threatened by the Presiding Officer of the Court that if he did not submit the report disciplinary action would be taken against him. After the survey report was filed the case was listed on 26th September, 2013 the counsel for the plaintiff was not present when the case was called even though Hazira had been filed. On the next date 7th November, 2013 the counsel for the defendant requested for adjournment on the ground that copy of the survey report had not been received by him. Thereafter the case was listed on 21st November, 2013 when again the counsel for the plaintiff was not present even though Hazira had been filed by him. On 13th December, 2013 written objections were filed to the Survey report. The case was then fixed on 25th January, 2014 for hearing on the report of the Survey Commissioner. Again on behalf of the plaintiff a request for adjournment was made and this request was granted. The next date i.e. the 4th March, 2014 arguments were heard on the report of the Survey Commissioner and the objections thereto filed by the defendant No.1.

[19] The Presiding Officer on this simple application reserved order, adjourned the matter to 5th April, 2014 did not pass orders on that date adjourned the case for 23rd April, 2014 and finally on 23rd April, 2014 ordered that an opportunity should be given to the defendant to cross examine the Survey Commissioner. The date fixed was 16th May, 2014 when again counsel for the plaintiff was not present though he had filed Hazira. The Survey Commissioner was also not present on the said date since no notice had been

issued to him. On the next date the Presiding Officer was on leave. Then the Survey Commissioner was cross-examined on 30th July, 2014 and arguments in the matter were heard again on 21st August, 2014. Orders on this application were reserved and the case fixed for orders on 10th September, 2014, 1st November, 2014, 21st November, 2014 and 17th December, 2014 but order was not announced and finally the Presiding Officer was transferred and a new Presiding Officer took charge of the Court.

[20] The newly appointed judge heard part of the case on 11th February, 2015. He held that the case record was very voluminous and then the case was taken up for hearing on 10th April, 2015 wherein he heard arguments. On 21st March 2015 counsel for the plaintiff was not found present though he had filed Hazira. On 10th April, 2015 counsel for the plaintiff was again not present but the Court still granted one more opportunity. The counsel for the plaintiff was heard at length. The counsel for the defendant had already been heard and the case was fixed for the orders on the report of the Survey Commissioner and finally the order was passed on 27th June, 2015 rejecting the report of the Survey Commissioner and fixing the case for arguments.

[21] This order is under challenge. I have spent more than one and half hours dictating this judgment to highlight the totally negligent manner in which this case has been dealt with by various Presiding Officers for more than 11(eleven) years. The order appointing the Survey Commissioner was passed on 7th April, 2006 and it has taken more than nine years to obtain the report of the Survey Commissioner and to pass order thereto. As observed by me earlier as far as the main suit is concerned that moved at a proper pace for first two years and the evidence of the parties was recorded well within time but merely

for non filing of the report of the Survey Commissioner this matter has been delayed for nine long years.

[22] The main ground raised by Mr. R. Chakraborty is that since the report of the Survey Commissioner has been set aside a fresh Survey Commissioner should be appointed. I am not at all in agreement with this submission. The report of Sri Mihir Dey the second Survey Commissioner had to be set aside because that report is not based on any C.S. Map. It is the fault of the plaintiff that he had not supplied the map to the Surveyor despite repeated opportunities given by the Court to the plaintiff to supply this map to the Survey Commissioner. The plaintiff cannot take benefit of his own fault and now pray that fresh Survey Commissioner be appointed.

[23] The purpose of Order XXVI is not to fill in the lacuna in the cases of the parties nor is the Survey Commissioner to be a witness of the parties. An order under Order XXVI Rule 9 is to be passed only when the Court deems a local investigation requisite or proper for the purpose of elucidating any matter in the dispute or ascertaining the market value of any property or the amount of any mesne profits and damages or annual net profits.

[24] In a case like the present one where the plaintiff has appeared and disappeared in Court as and when the plaintiff felt like and has not complied with the orders of the Court to supply the C.S Map to the Surveyor. Counsel for the plaintiff has not been present in Court on 41(forty-one) number of occasions. I see no reason why I should accept the request of the plaintiff-petitioner to appoint a fresh Survey Commissioner.

[25] Therefore, I find no merit in the petition which is dismissed with costs assessed at Rs.5,000/-. Exemplary costs have been awarded because of the fact that the plaintiff has been delaying the case for more than 9(nine) years on one ground or the other. The parties are directed to appear before the trial Court on 15th December, 2015. He is directed to fix the case for arguments in the month of January, 2016 and shall ensure that the case is disposed of latest by 31st January, 2016. Costs to be paid on or before 15th January, 2016.

[26] Copy of this judgment be circulated to all the Members of the Tripura Judicial service. The Judicial Officers are directed to ensure that they strictly follow the time limits laid down in the CPC for adjournment of cases. Date should not be given merely at the asking of the counsels.

[27] The Judicial Officers are also specifically directed as follows:

[i] *That in future whenever any application for appointment of Survey Commissioner is filed it should be ensured that the party applying for appointment of Survey Commissioner submits all documents which are necessary for the Survey Commissioner or expert to give his report. No orders appointing a Survey Commissioner should be passed without first ensuring that all the relevant material is available with the Court.*

[ii] *Before issuing the writ to the Survey Commissioner the Court should determine the points on which the report of the Survey Commissioner is called for. The appointment of the Survey Commissioner should follow the determination of the issues and not vice-versa. No writ should be issued till points on which report is to seek are determined by the Court.*

[iii] *Normally, the party seeking appointment of the Survey Commissioner should be asked to pay the fees of the*

Survey Commissioner though at the final stage of adjudication the Court may decide who is to bear the costs.

[iv] *All Judicial Officers are also directed to ensure that in future, proceedings in the main suit or the case are not adjourned only because an application has been filed. To give an example, if the case is fixed for evidence of parties and witnesses are present and one of the parties moves an application for amendments of the pleadings it is not necessary that the witnesses have to be discharged. The witnesses who are present can be examined/cross-examined. In case the application for amendment is allowed then those witnesses whose further examination is necessary can be again called to Court. If the application is dismissed then there will be no occasion to recall the witnesses. It is made absolutely clear that the present practice of adjourning matters in the main case merely because an application has been filed should be avoided unless, the application goes to the root of the matter and if the proceedings in the main case are carried on further the application itself has become infructuous. The Judicial Officers may ensure that pleadings are carried on but may not finally decide the main case till all applications are disposed of.*

[28] Send down the LCRs forthwith.

CHIEF JUSTICE