

THE HIGH COURT OF TRIPURA
AGARTALA

CRP 41 OF 2010

Sri Subhas Ch. Roy,
S/O. Late Ramesh Ch. Roy,
Vill-Chhinaihani,
P.S.-Airport, P.O.-Agartala Airport,
West Tripura.

..... **Petitioner.**

- V e r s u s -

1. The State of Tripura,
Represented by Principal Secretary-
Cum-Commissioner,
Revenue Department,
Govt. of Tripura.
2. The Director of School Education,
Govt. of Tripura, Agartala,
West Tripura.
3. The Panchayet Pradhan,
Singerbill Gaon Panchayet,
P.S.-Airport, West Tripura.

(Notice to be served through
Director of Panchayet),
Govt. of Tripura, (Gurkha Basti),
Agartala.

..... **Respondents.**

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the petitioner : Mr. A. Bhowmik, Advocate.

For the respondents : Mr. S.M. Chakraborty,
Sr. Advocate,
Mr. A. Pal, Advocate.

Date of hearing & judgment : 09.01.2015.

Whether fit for reporting : **NO.**

JUDGMENT & ORDER (ORAL)

This petition under Article 227 of the Constitution of
India is directed against the order dated 05-06-2010 passed by the

learned Civil Judge (Junior Division), Court No.1, Agartala, West Tripura whereby the application filed by the petitioner (hereinafter referred to as the plaintiff) for permission to withdraw the suit with liberty to file a fresh one was rejected.

2. Briefly stated, the facts of the case are that the plaintiff filed a suit against the defendants-respondents seeking a declaration that he is owner-in-possession of the suit land and had also prayed for a decree for injunction restraining the defendants and their agents from interfering in his possession over the suit land. Later, the plaintiff filed an application in which he claimed that he had been dispossessed from the suit land during the pendency of the suit and, therefore, he may be permitted to withdraw the suit with permission to file a fresh one. The learned trial Court rejected this application only on the ground that there was no formal defect in the suit.

3. In my view, withdrawal of the suit can also be permitted where a fresh cause of action has arisen. According to the plaintiff, he had been dispossessed during the pendency of the suit and, therefore, a fresh cause of action had arisen. The choice was with the plaintiff whether to file a fresh suit or seek amendment of the old suit.

4. From the record of the trial Court, I find that the suit was at the initial stage and even issues had not been framed. Therefore, the defendants would not be prejudiced by filing of a fresh suit. The suit is being withdrawn not on account of a defect

but because of a development which is subsequent to the filing of the suit. The situation may be different where issues have been framed and parties have led evidence because in such a situation if some vital evidence has come in favour of one party or the other, the party who is benefited can claim that the suit should only be permitted to be amended and should not be permitted to be withdrawn. In the present case, since no evidence has been recorded, no prejudice should be caused to either side.

5. In view of the above discussion, the petition is allowed. The order of the learned trial Court is set aside and the petitioner-plaintiff is granted leave to withdraw civil suit being No. ***T.S. 23 of 2010 titled as Subhas Ch. Roy vs. State of Tripura and others*** with liberty to file a fresh suit on the same cause of action. It is made clear that both the parties shall have the right to raise all grounds which may be available to them under law.

6. With these observations, the petition is disposed of.

7. The record of the trial Court be sent along with a copy of this judgment to the learned Civil Judge (Junior Division), Court No.1, Agartala, West Tripura so that he can pass formal orders for consignment of the suit in accordance with the rules.

CHIEF JUSTICE