

THE HIGH COURT OF TRIPURA

A G A R T A L A

CRP 94 of 2014

1. **Shri Malin Debbarma**
S/O Lt. Dhananjoy Debbarma
Vill & PO-KK Nagar
PS & Sub-Division-Bishalgarh
District-West Tripura.
2. **Smt. Arati Bala Debbarma**
W/O Lt. Phani bhusan Debbarma
3. **Shri Pinku @ Tinku Debbarma**
S/O Ltd. Phani bhushan Debbarma
Both are residents of vill & PO-Shibnagar,
PS & Sub-Division-Bishalgarh,
District-West Tripura
4. **Shri Rabindra Das**
S/O Lt. Chandra Kumar Das
5. **Smt. Ratna Das**
W/O Lt. Manta Das
Both are residents of Vill & PO-Veluarchar,
P.S. Boxanagar, Dist-West Tripura.
6. **Smt. Rita Debbarma**
W/O Lt. Hiralal Debbarma
Of Badharghat, near Keshab Sangha
P.S. Amtali, Dist-West Tripura.
7. **Smt. Depali Das**
W/O Sri Subhash Das
Of Veluarchar, P.S. Kalamchowra
District-West Tripura.
8. **Smt. Sefali Data**
W/O Sri Dwipen Datta
Of Kenania, P.O. Debipur
P.S. Bishalgarh,
District-West Tripura.
9. **Smt. Marani Sarkar**
W/O Sri Jishnu Sarkar of
Darogabari, Sekerkote,
P.S. Amtali,
District- West Tripura
10. **Sri Kshitish Chowdhury**
S/O Lt. Laxmi Kanta Chowdhury
Of Gakulnagar, PS Bishalgarh
District-West Tripura.
11. **Smt. Archana Laskar**
W/O Sri Nanda Lal Laskar
Of Veluarchar, P.S. Kalamchowra
District-West Tripura.

12.Smt. Khela Rani Saha

W/O Sri Santi Saha
Of vill-Gopinagar, Golaghati
PS Bishalgarh,
District-West Tripura.

13.Shri Samar Debbarma

14.Shri Prabir Debbarma

15.Sri Nihir Debbarma

16.Sri Badal Debbarma

All are sons of Lt. Kanu Debbarma,
Resident of vill-Purba Gakulnagar,
P.O Gakulnagar, PS & Sub-Division-
Bishalgarh, Dist-West Tripura.

17.Smt. Anita Dutta,

W/O Sri Dilip Dutta,
D/O Lt. Kanu Debbarma,

18.Smt. Namita Nandi

W/O Lt. Amal Nandi
Of Vill-Kenania, PO Debipur
PS Bishalgarh
District-West Tripura.

.....Petitioners

Versus

1. Sri Chandan Debbarma

S/O Lt. Hari Mohan Dbbarma
Of vill & PO Shibnagar
PS & Sub Division Bishalgarh
District- West Tripura.

2. Sri Sudhir Debbarma

S/O Lt. Hari Mohan Debbarma
Of Vill&PO Shibnagar
PS & Sub-Division Bishalgarh
District-West Tripura.

3. Sri Subodh Debbarma

S/O Lt. Hari Mohan Debbarma
Of Krishnanagar, near the residence
Of Lt. Dhiraj Guha, Advocate,
Pragati School, P.S. West Agartala
District-West Tripura.

4. Sri Prabodh Debbarma

S/O Lt. Hari Mohan Debbarma
Of Vill & PO Shibnagar,
P.S. & Sub-Division-Bishalgarh
Tripura.

.....Respondents

B E F O R E
THE HON'BLE MR. JUSTICE U.B. SAHA

For the Petitioners	: Mr. B Majumdar, Advocate
For the Respondents	: Mr. B Chakraborty, Advocate Mr. M Dey, Advocate
Date of hearing and delivery of Judgement & Order	: 09.06.2015.
Whether fit for reporting	: NO

JUDGMENT & ORDER (ORAL)

The instant civil revision petition is filed by the petitioners for setting aside the order dated 11.11.2014 passed by the learned Civil Judge, Sr. Div. Court No. 1., Agartala, West Tripura in Misc (Amend) 11 of 2014 arising out of TS 53/2012 and also for allowing the prayer for amendment.

2. As agreed to by the learned counsel for the parties, the instant petition is taken up for final disposal at this admission stage.

3. Brief facts of the case needed to be discussed for disposal of the instant revision petition are as follows:

The petitioners, being the plaintiffs filed a title suit being TS 53/2012 for declaration of title and recovery of possession. The subject matter of the suit is the land measuring 82 sataks under CS Plot No. 4998, recorded in Khatian No. 2355/1 and also the land measuring 13 sataks under CS plot No. 5000 under the same Mouja and Khatian under Sub-Division Bishalgarh, Mouja KK Nagar, Tehsil-Ganiamara

4. The respondent-defendants filed written statement wherein they have denied the contention of the petitioners in the plaint.

5. Learned trial court upon consideration of the pleadings of the parties framed issues and the suit was proceeded for trial.

6. On 07.07.2014 The plaintiff-petitioners filed an application under Order VI Rule 17 read with Section 151 of the Civil Procedure Code for amendment of their plaint as inadvertently they could not mention in their plaint that in the sale deed being No. 271 dated 23.07.1333 Tring (Tripura Era) the name of Dhananjoy Debbarma had been written as Dhananjoy Das as because the predecessor of the plaintiffs originally belonged to 'Das' Community and thereafter the Maharaja of Tripura having highly pleased given the title "Debbarma" and thereafter they added the title as 'Debbarma' instead of 'Das' but it is admitted fact that earlier their original title was Das and they belonged to Das community and the plaintiffs did not belong to scheduled tribe. Thus, Dhanajoy Das as written in the sale deed dated 23.07.1333 TS vide No. 271 and Dhananjoy Debbarma was the same and identical person.

7. Defendant-respondents by way of filing their objection objected the prayer for amendment.

8. The learned trial court vide impugned order dated 11.11.2014 in the aforesaid Misc. (Amend) 11/2014 rejected the prayer for amendment. Hence, the instant petition under Article 227 of the Constitution of India.

9. Mr. Majumdar, learned counsel for the petitioners while questioning the impugned order would contend that the learned trial court failed to consider the true perspective of the amendment provisions i.e. Order VI Rule 17 of the Civil Procedure Code which would be evident from the impugned order itself, wherein the trial court stated that, *"moreover, the plaintiff also did not produce any paper showing that they are using the title of Debbarma since long as given by the then Maharaja of Tripura and the plaintiffs also have the knowledge about such fact at the time of institution of this suit. Therefore, from the aforesaid facts it is clear that the petition for amendment filed by the petitioner is not bona fide omission and as such it cannot be said that in spite of due diligence the plaintiff has failed to mention such fact at the time of filing the instant suit. It also appears that the plaintiffs have already filed their examination-in-chief and as such if the proposed amendment is allowed at this stage it will certainly change the character of the suit. Moreover, if the proposed amendment is allowed the defendants will be seriously prejudiced."*

10. He further submits that the petitioners inadvertently did not mention that they had been using their surname as 'Das' before the conferment of the title 'Debbarma' by the then Maharaja and such fact required to be stated in the plaint but inadvertently such fact could not be mentioned. He also submits that the proposed amendment would neither change the nature and character of the suit nor contrary to the object of Order VI Rule 17 of the Civil Procedure Code. He further submits that by way of insertion of the proviso in the amended provision the legislature nowhere prohibits a

justice seeker to come with an amendment petition even after trial is initiated subject to the justice seeker can satisfy the court that such proposed amendment is required for deciding the issue before the court and even on due diligence he was not aware about the facts which need amendment in the plaint or in the written statement.

11. In the instant case, the present petitioners though belong to 'Das' community and in the sale deed in question, the surname of the deceased father of the plaintiff's is mentioned as 'Das' the said fact could not be mentioned due to inadvertence. He further submits that in various decisions, the Apex Court has held that it is not a complete bar nor shuts out entertaining of any later application for amendment. As stated earlier, the reason for adding proviso is to curtail delay and expedite the hearing of cases. In the instant case, it cannot be said that the plaintiff-petitioners filed the proposed amendment for delaying the trial of the suit.

12. He has also placed reliance on a decision of the Gauhati High Court, in **Smt. Bharati Das (Modak) and Ors. V. Ranjit Kumar Das and Ors., AIR 2009 Gau 23**, wherein the Gauhati High Court held that "In the instant case, there was no other alternative to the respondents except to file application for amendment of the plaint to meet the plea of the petitioners. In similar situation, the Delhi High Court in the case of *Mrs. Suneel Sodhi and Others v. ML Sodhi and Others*, AIR 2004 Del 99 allowed the prayer for amendment. In that case, the suit was filed for partition and mesne profit and the plaintiffs prayed for amendment seeking to profound Wills by defendant and the said application for amendment was filed before commencement of the trial. The Delhi High Court, in the aforesaid case, held

that as the Wills in question were claimed to have been discovered upon death of testator and the onus of proving said Wills rested on defendants and the plaintiffs had the opportunity of questioning Wills and raising objection as to their genuineness, as effect of Wills was that it sought to deprive the plaintiffs of their share and the said plea was not inconsistent with the plea of property being self-acquired property of testators.” In the instant case also, the petitioners being plaintiffs filed the suit for declaration of title and recovery of possession on the basis of the sale deed executed in favour of the deceased father of the plaintiffs.

13. Mr. Chakraborty while countering the contention of Mr. Majumdar submits that the learned trial court rightly rejected the prayer for amendment of the plaint as the petitioners being the plaintiffs did not mention the proposed facts of amendment in their plaint. He further submits that the petitioners, being the plaintiffs, were very much aware about their surname at the time of filing of the plaint but they did not mention the same. He also submits that such non-mentioning of the surname in their plaint is not a bona fide omission. Therefore, the learned trial court rightly rejected the prayer for amendment.

14. In **Chander Kanta Bansal V. Rajinder Singh Anand, (2008) 5 SCC 117**, the Apex Court while considering the provisions of Order VI Rule 17 held as follows:

“13. The entire object of the said amendment is to stall filing of applications for amending a pleading subsequent to the commencement of trial, to avoid surprises and the parties had sufficient knowledge of the other’s case. It also helps in checking the delays in filing the applications. Once, the trial commences on the known pleas, it will be very difficult for any side to reconcile. In

spite of the same, an exception is made in the newly inserted proviso where it is shown that in spite of due diligence, he could not raise a plea, it is for the court to consider the same. Therefore, it is not a complete bar nor shuts out entertaining of any later application. As stated earlier, the reason for adding proviso is to curtail delay and expedite hearing of cases.”

(emphasis supplied)

15. In the instant case, it also appears that the learned trial court did not discuss regarding the object of the provisions of Order VI Rule 17 rather discussed about the merit of the proposed amendment. There is no doubt that the Court should not allow each and every prayer for amendment as a routine manner without considering the contents in the petition as to whether the proposed amendment is necessary for deciding the controversy between the parties or not. The Court is to see that if the prayer for amendment is rejected only on the basis of an objection raised by the parties, whether the real controversy between the parties can be adjudicated in real terms of justice or not and if not, then the Court should allow the prayer for amendment. In the instant case, the plaintiff-petitioners specifically stated that inadvertently they could not mention the fact regarding their surname 'Das' and in absence of such facts the issue involved in the suit cannot be decided. Thus, the amendment sought for is necessary for determination of the real question of controversy. Accordingly, the order dated 11.11.2014 passed by the learned Civil Judge, Sr. Div. Court No. 1., Agartala, West Tripura in Misc (Amend) 11 of 2014 arising out of TS 53/2012 is hereby set aside and the prayer for amendment is allowed subject to payment of Rs. 2,000/- only to the contesting respondent herein within a period of one month from the

date of this order. The petitioners are also directed to file the amended petition within a period of one month from today in the trial court without fail.

16. The trial court shall proceed with the suit in accordance with law after filing of the amended plaint. It is needless to say that after filing of the amended petition the defendant-respondents shall be at liberty to file their additional written statement.

17. The instant revision petition is allowed and accordingly disposed of.

JUDGE

lodh