

THE HIGH COURT OF TRIPURA
A G A R T A L A

CRP NO.57 OF 2013

Petitioner :

Shri Biman Talukdar,
Son of Late Brajendra Kumar Talukdar,
Now residing at Pragati Road, Krishnanagar,
P.O. Agartala, Tripura West.

By Advocates :

Mr. D.K. Biswas, Advocate.
Mr. G.K. Nama, Advocate.

Respondent :

Shri Jayanta Talukdar,
Son of Late Brajendra Kumar Talukdar,
Resident of Old Kalibari Lane, Krishnanagar
P.O. Agartala, Tripura West.

By Advocates :

Mr. S.M. Chakraborty, Sr. Advocate.
Ms. P. Sen, Advocate.

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

Date of hearing &
Judgment & Order : **27.8.2015**

Whether fit for reporting : **YES**

JUDGMENT & ORDER(ORAL)

This petition under Article 227 of the constitution of India is directed against the order dated 12.6.2013 in T.S. 31 of 2007 whereby the learned Civil Judge (Sr. Divn.), Court No.1, West Tripura, Agartala allowed the application filed by the defendant

under Order VIII Rule 1A(3) of CPC filed by the defendant praying for leave to take on record and admit certain documents.

(2) The facts of the case are that the petitioner (herein after referred to as 'the plaintiff') filed a suit for partition declaration against his brother, the defendant. This suit was filed on 02.6.2007. The defendant appeared in Court on 06.10.2007 and written statement was filed in the suit on 30.1.2008. On that date, the regular PO was not on duty. On the next day i.e. 04.3.2008, the plaintiff prayed for an adjournment and the defendant filed certain documents which were taken on record. The case was then adjourned to 22.4.2008 for framing of issues and filing of documents. The case was again adjourned on 22.4.2008 to 03.6.2008 for filing documents and framing of issues. On 03.6.2008 counsel for both sides were present and on that date in the Court order it is recorded that the defendant filed an application praying that the documents which were filed earlier be returned to him since he needs the original documents. The said documents were accordingly returned to him and the case was adjourned to 15.7.2008 for filing original documents. On that date, the plaintiff had prayed for time to file documents. The defendant filed the documents as per the list of documents and these were taken on record. This order was passed in the presence of the counsel for the plaintiff. It would also be pertinent to mention that in the written statement filed by the defendant there is a specific reference to these documents in paras 12 and 13 of the written statement where there is specific reference to the gift deed as well as the Will

giving the number of the dates, the date of registration and complete details thereof.

(3) It appears that the plaintiffs first filed some application for amendment of the plaint on 16.8.2008 i.e. immediately after the documents were filed on 15.7.2008. This application was allowed on 26.11.2008. Though normally documents are first filed by the plaintiff in this case the plaintiff was permitted to file documents at a later stage. Issues were framed on 01.2.2010 and the plaintiff took number of adjournments and finally the evidence was closed on 26.3.2011. Thereafter, on 13.5.2011, the plaintiff filed a petition under Section 151 CPC praying that the plaintiff be allowed to adduce their evidence by recalling the order dated 26.3.2011. This application was also allowed and the plaintiff was allowed to lead evidence even after the evidence had been closed by the order of this Court. Thereafter, the defendant led evidence and during the course of the evidence this application was filed which has been allowed.

(4) In the meantime, it appears that the plaintiff also filed another application for amendment challenging the validity of the Will set up by the defendant but this application was rejected. Thereafter, the application under order VIII rule IA(3) was filed by the defendant seeking formal permission under Order VIII rule IA(3) for leave to take the documents on record. This application has been granted by a well reasoned and detailed order which is the

subject matter of challenge in this Court.

(5) Mr. D.K. Biswas, learned counsel for the petitioner has drawn my attention to the provisions of order VIII rule 1A which reads as follows:

“1A. Duty of defendant to produce documents upon which relief is claimed or relied upon by him.-(1) Where the defendant bases his defence upon a document or relies upon any document in his possession or power, in support of his defence or claim for set-off or counter-claim, he shall enter such document in a list, and shall produce it in Court when the written statement is presented by him and shall, at the same time, deliver the document and a copy thereof, to be filed with the written statement.

(2) Where any such document is not in the possession or power of the defendant, he shall, wherever possible, state in whose possession or power it is.

(3) A document which ought to be produced in Court by the defendant under this rule, but, is not so produced shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.

(4) Nothing in this rule shall apply to documents -

(a) produced for the cross-examination of the plaintiff's witnesses, or

(b) handed over to a witness merely to refresh his memory.”

(6) It is submitted by Mr. Biswas that the defendant was required to file the documents along with his written statement and was also required to handover copies of the documents to the plaintiff. It is submitted that these documents were filed behind the back of the plaintiff and the plaintiff was not aware of these documents. It is further submitted that when the plaintiff became aware of these documents he moved an application for amendment of the plaint to challenge these documents and when that challenge was rejected the plaintiff kept quiet because he thought that those documents are not on record. He is now aggrieved by the order permitting those

documents to be taken on record and being executed. Another point raised by Mr. D.K. Biswas is that even assuming that the documents are referred to in the written statement the plaintiff was not aware of what are the contents of the documents since the copy of the document was not supplied to him as required under Order VIII Rule 1A of the CPC.

(7) When a document is referred to in the written statement and especially when the documents were filed in the presence of the counsel for the plaintiff in case the counsel for the plaintiff wanted to a copy of any document he should have either prayed to the Court that the defendant be directed to supply the copy of the documents or he could have even issued notice to the counsel for the defendant that certain documents have been filed copies of which have not been supplied to him and those documents be supplied to him. In Order XI and XII of the CPC there are provisions for issuing notice for production of documents and interrogatories. These provisions come into play before framing of issues. It is also expected of any counsel that before framing of issues he would at least inspect the record to see what are the documents, if any, on record. Therefore, I am not willing to accept this argument that since the copy of the document was not supplied, the plaintiff was not in a position to challenge the correctness of the documents. Once a document was referred to and details of the documents were given it was either the plaintiff who should have served notice upon the defendant calling upon him to file the document or the plaintiff

could have complained to the Court that copy of the document has not been supplied to him but he could not keep quiet for 5 (five) years and then raise an objection that the document should not be read in evidence.

(8) On the other hand, it is contended by Mr. S.M. Chakraborty, learned senior counsel appearing for the defendant that these documents were specifically referred to in the written statement and they were filed immediately after the written statement was filed though not along with the written statement. He also submits that the plaintiff was aware of these documents since they have been referred to in the written statement and these documents were withdrawn and re-filed in the presence of the counsel of the plaintiff.

(9) At the outset, I may notice that sub-Rule 3 of Rule 1A of Order VIII empowers a Court to allow documents to be produced in Court at any stage of the hearing of the suit for reasons to be recorded in writing by him. As observed by me above, the learned trial Court has given very elaborate reasons. It is not necessary for me to give all the reasons but it would be sufficient to point out the salient features. The written statement was filed on 30.1.2008 and the documents should have been filed along with the written statement. They were, however, filed on 04.3.2008 i.e. the next date in the suit. The Court has ordered that these documents be placed on record. Not only that the Court thereafter gave various dates for filing

of documents/framing of issues. As noted above, these dates are 22.4.2008, 03.6.2008.

(10) On 03.6.2008 when presence of counsel for both side is marked it is specifically recorded that the defendant filed an application seeking an order of return of the documents and these documents were returned to the defendant with liberty to submit them again within 1(one) month. This order having been passed in the presence of the plaintiff. I fail to understand how the plaintiff can even submit that these documents were submitted behind his back. Thereafter, the documents were re-submitted on 15.7.2008. As per firsti, the counsel for the plaintiff was present when these documents were re-filed on 15.7.2008 and he has not raised any objection either to the re-filing of the documents nor has he prayed that the copy of the documents be handed over to him.

(11) As pointed out earlier, the plaintiff was fully aware of these documents because these documents have been referred to in the written statement. After the documents were referred to in the written statement and the documents were filed, withdrawn and re-filed, the plaintiff moved an application for amendment of the plaint but at that time he did not challenge the validity of these documents. That application for amendment was allowed and later, in the year 2012, another application was filed to challenge the validity of the will. This application has been rejected and that is not the subject matter of any challenge before this Court. The only reason why I am

referring to that application is because learned counsel for the plaintiff-petitioner has urged that as soon as the plaintiff came to know about the documents he filed the application for amendment. This, in my opinion, is not a correct reflection of the factual situation.

(12) It is expected that the plaintiff would have gone through the written statement and would have known that in paras 12 and 13 the defendant has specifically made reference to the documents. These documents have been filed, withdrawn and re-filed in the presence of the counsel of the plaintiff. The documents were first filed on 04.3.2008 and returned to learned counsel for the defendant on 04.6.2008. The plaintiff has been permitted to file documents even after the defendant filed documents and, therefore, I fail to understand what is the prejudice caused to the plaintiff if these documents which were placed on record of the case in original even prior to the amendment of the plaint at the first occasion are taken on record. I am not willing to accept the statement of the plaintiff that he was not aware of the documents having been filed because the Court orders which I have referred to above clearly indicate that the orders were passed in the presence of the counsel.

(13) In this case, the defendant may not have filed the documents along with the written statement but he definitely filed them much before framing of the issues. Even after these

documents were filed, the Court was giving dates for filing of documents and framing of issues. When the Court gives dates to the parties permitting them to file documents that is a clear cut indication that the Court is extending the time to file the documents and if the parties take advantage of that they cannot later turn around and say that the documents should not be taken on record.

(14) Another submission made by Mr. D.K. Biswas is that this Court has relied upon the orders in the order sheet and it is submitted that in Tripura the practice is that orders are not dictated in the presence of counsel. I cannot comment on the same but if this is the practice, then it is high time that this practice comes to an end. This Court in **CRP No.36 of 2015** has already made it absolutely clear that all orders should be passed in presence of the counsel unless the counsel are absent at the time of hearing. These orders should also reflect what has actually happened in Court and if the counsel is present his presence should be marked in the order sheet and not only in the Hazira. If the Court feels that the order is a long one which cannot be passed in presence of the counsel then after hearing arguments the Court should state that the order is reserved and fix a date for pronouncement of the order. But the order should be pronounced in the presence of the party or their counsel on the date fixed.

(15) It was lastly submitted by Mr. Biswas, learned counsel that liberties be given to the petitioner to file a fresh application for amendment of the plaint. It is not for this Court to grant such liberty.

(16) In this view of the matter I find no merit in the petition which is, accordingly, dismissed.

(17) Send down the LCRs forthwith.

CHIEF JUSTICE

Dipesh