

**THE HIGH COURT OF TRIPURA
AGARTALA**

CRP. NO.25 OF 2015

1. Smt. Soma Ghosh,
D/o Late Haripada Ghosh,
W/o Sri Sanjit Ghosh,
Resident of Paul Para, Baldakhal,
P.S. Bodhjunnagar, District- West Tripura.

..... Petitioner

- Vs -

1. Shri Krishna Pada Ghosh,
S/o Late Ramani Mohan Ghosh.

2. Smt. Milan Ghosh,
W/o Late Brajendra Ghosh,
Both of Netaji Subhash Palli,
Aralia, P.S. East Agartala,
District – West Tripura at present
residing at Saradapalli, 79 Tilla,
Near GSI Quarter, P.O. Kunjaban,
P.S. East Agartala, District- West Tripura,
Pin – 799006.

3. Sri Kalipada Ghosh,
S/o Late Ramani Mohan Ghosh.

4. Smt. Asha Ghosh,
W/o Late Haripada Ghosh.

5. Sri Bikash Ghosh,
S/o Late Haripada Ghosh.

- SL. No. 3 to 5 are residents of
Netaji Subash Palli, Aralia, Agartala,
P.S. East Agartala, District – West Tripura,
Pin 799 001.

6. Smt, Ruma Ghosh,
D/o Late Haripada Ghosh,
W/o Sri Manilal Ghosh,
of Lichubagan, Ghosh Para,
Kathalbagan, P.S. West Agartala,
District – West Tripura,
Pin – 799 001.

7(a) Sri Pradip Ghosh,

S/o Lt. Panchananda Ghosh and Lt. Jhulan Ghosh.

7(b) Sri Dipak Ghosh,
S/o Lt. Panchananda Ghosh and Lt. Jhulan Ghosh,
C/o Parijat Bastralaya Near Jiwanmal & Parashmal,
Suryachowmuhan, H.G.B. Road,
P.S:- West Agartala, Dist- West Tripura,
Pin- 799001.

8. Smt. Jharna Sarkar (Ghosh),
D/o Milan Ghosh, W/o Sri Ranjit Sarkar,
resident of Uttar Champamura,
P.S. East Agartala, District – West Tripura,
Pin – 799 001.

.....Respondents.

**BEFORE
THE HON'BLE MR. JUSTICE S.C. DAS**

For the petitioner : Mr. D. Saha, Advocate.

For the respondents : Mr. A.K. Bhowmik, Sr. Advocate
Mr. T.K. Choudhury, Advocate.

Date of hearing & delivery
of Judgment & order : 24.09.2015

Whether Fit for Reporting :

Yes	No
	√

JUDGMENT & ORDER(ORAL)

Heard learned counsel, Mr. D. Saha for the petitioner and learner senior counsel, Mr. A.K. Bhowmik for the respondent No.2 as well as learned counsel, Mr. T.K. Choudhury for respondent Nos.3 to 6. No representation on behalf of respondent No.1 and respondent Nos.7(a), 7(b) and 8.

2. The case of the petitioner is that she was arrayed as a defendant in a suit for partition vide T.S.(Partition) No.28 of 2007 in the Court of Civil Judge, Senior Division, Court No.2, Agartala. It is

the case of the petitioner that no summon was served on her and, therefore, she was in dark about institution of the partition suit and so, she could not appear and contest the suit. When she came to know about the case, she filed a petition seeking review of the Judgment and decree passed by the trial Court and that petition was registered as Misc.(Review) No.04 of 2014 in connection with T.S. (Partition) No.28 of 2007. By impugned order dated 28.02.2015, learned Civil Judge, Senior Division, Court No.2, Agartala dismissed the petition of review and, hence, this Revisional Application under Article 227 of Constitution of India.

3. Learned counsel, Mr. Saha appearing for the petitioner submits that a Review Petition is maintainable since there was an error apparent on the face of the record that the notice was not served on the petitioner.

4. The impugned order passed by learned Civil Judge Senior Division clearly shows that at the first attempt summon returned unserved on the defendant-petitioner, but on the second attempt summon was served on her and she received the summon.

5. Be that as it may, a preliminary decree has already been passed in the suit. So, the petitioner would challenge it under Order IX Rule 13 of CPC for setting it aside on the ground as alleged that summon was not served on her. Instead of resorting to filing a petition for setting aside the decree passed *ex-prate* against the petitioner, she has chosen to file a review petition, which the trial Court rightly rejected.

6. Since there is a specific provision for setting aside decree passed *ex-prate* under Order IX Rule 13 of CPC, the review petition was not maintainable and the trial Court rightly rejected the prayer.

7. The petitioner, if so advised, may approach the Court for setting aside *ex-prate* decree according to law.

8. The Revisional Application accordingly, stands disposed of.

JUDGE

Sohanjit