

IN THE HIGH COURT OF TRIPURA
AGARTALA

CRL. REV. P. No.81 of 2014

- 1. Sri Satyendra Kumar Bhattacharjee,**
son of late Harendra Kumar Bhattacharjee,
resident of Supari Bagan, Krishnanagar,
P.S. West Agartala, District – West Tripura.

..... Petitioner

- V e r s u s -

- 1. The State of Tripura,**
notice to be served upon the upon the
Public Prosecutor, High Court of Tripura.
- 2. Sri Nitya Lal Chakraborty,**
son of late Hari Mohan Chakraborty,
resident of Supari Bagan, Krishnanagar,
P.S. West Agartala, District – West Tripura.
- 3. Smt. Kana Chakraborty,**
wife of Sri Nitya Lal Chakraborty, resident
of Supari Bagan, Krishnanagar, P.S. West
Agartala, District – West Tripura.

..... Respondents

BEFORE
THE HON'BLE MR.JUSTICE S. TALAPATRA

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

For the respondents : Mr. R.C. Debnath, Addl. P.P.
Mr. P.K. Dhar & Mr. A. Gon
Choudhury, Advocates.

Date of hearing and : **17.01.2015**
delivery of judgment & order

Whether it is fit for reporting :

Yes	No
	√

JUDGMENT & ORDER (ORAL)

Heard Mr. A. Nandi, learned counsel appearing for the petitioner as well as Mr. R.C. Debnath, learned Addl. P.P. appearing for the State and Mr. P.K. Dhar and Mr. A. Gon Choudhury, learned counsel appearing for the respondents No.2 and 3.

[2] This is a petition filed under Section 397 read with Section 401 of the Code of Criminal Procedure against the final order dated 28.10.2014 delivered in case No. Misc. 06 of 2014 by the Addl. Sub-Divisional Magistrate, Sadar, West Tripura.

[3] By the said order, the Executive Magistrate has observed as under:

"So this court finds no right of Sri Satyendra Kr. Bhattacharjee to obstruct the laying of Gas Pipe Line of Smt. Kana Chakraborty as the land belongs to Smt. Chakraborty only.

So the court disposes the case by rejecting the prayer of 1st party with an observation that the prayer does not bear any merit. The 1st party is also instructed not to disturb the 2nd party in the peaceful possession and use of the land in their favours"

[4] Mr. A. Nandi, learned counsel appearing for the petitioner has submitted that the dispute has arisen from the possession and use of the pathway in question. By the impugned order, the Executive Magistrate has most irregularly omitted to recognize the right of the petitioner to use that pathway which has been used for about 25 years for egress and ingress from

his residential plot, having no other alternative easement. As such, this order has implied a serious negation of the right of the petitioner to use the said pathway and hence, the petitioner has challenged this order.

[5] Mr. P.K. Dhar, learned counsel appearing for the respondents No.2 and 3 raised no objection as to the claim of the peaceful use of the pathway by the petitioner for egress and ingress from his residential land but at the same breadth, Mr. Dhar, learned counsel has submitted that the use of the pathway must be peaceful and non- encumbrancing or disturbing in any manner.

[6] Having regard to the submissions made by the learned counsel for the parties, this Court finds a consensus between the parties to the fact that the petitioner may use the pathway situated over the land owned by the respondents No.2 and 3 peacefully and without disturbing their possession in any manner or without obstructing the use of the pathway by the respondents in any manner whatsoever.

[7] Accordingly, this petition is disposed of with the direction that the petitioner may use the pathway for his easement but shall not disturb the peaceful possession of the respondents No.2 and 3 over that pathway, part and parcel of their jote land or use of it by them in the manner they decide to

use the same. However, the respondents No.2 and 3 shall not disturb the petitioner's use of the pathway for easement as stated, unless the petitioner abandoned such right expressly.

The impugned order stands clarified and modified to the extent as indicated above. No interference warrants beyond that.

In the result, this petition stands allowed.

JUDGE

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