

**HIGH COURT OF TRIPURA
AGARTALA**

CRP No.25/2018

Sri Rajarshi Datta and others

-----Petitioner(s)

Versus

Smt. Poulami Datta (Deb) and others

-----Respondent(s)

For Petitioner(s) : Mr. Somik Deb, Advocate.
Mr. Anujit Dey, Advocate.
Mr. Koomar Chakraborty, Advocate.

For Respondent(s) : Ms. Rajashree Purkayastha, Advocate.

HON'BLE THE CHIEF JUSTICE MR. SANJAY KAROL

Order

29/06/2019.

The petitioners have prayed for the following reliefs:

"i) Issue Notice, calling upon the respondents and each one of them, to show cause as to why the superintending powers of this Hon'ble High Court, under Article 227 of the Constitution of India, shall not be invoked, and further show cause as to why the impugned Order dated 15.11.2017 (Annexure-9 supra), passed by the Ld. Civil Judge, Senior Division, Gomati Tripura, Udaipur in Civil Misc.158 of 2017 arising out of T.S.(P) 04 of 2017, shall not be held to have suffered from jurisdictional defect, and also show cause as to why the said impugned Order dated 15.11.2017 (Annexure-9 supra), passed by the Ld. Trial court shall not be quashed/set aside;

ii) Issue Notice, calling upon the respondents and each one of them, to show cause as to why the operation of the impugned Order dated 15.11.2017 (Annexure-9 supra), passed by the Ld. Civil Judge, Senior Division, Gomati Tripura, Udaipur in Civil Misc. 158 of 2017 arising out of T.S.(P) 04 of 2017, shall not be stayed/suspended, in exercise of the

superintending powers of this Hon'ble High Court, conferred under Article 227 of the Constitution of India, till the final disposal of this Civil Revision Petition;

iii) In the Ad-Interim, and thereafter, on hearing the parties, in the Interim, an Order, in terms of Prayer (ii) above;

iv) Call for the records appertaining to this petition;

v) After hearing the parties, be pleased to make the Order Absolute in terms of Prayers i. to iii. above;

vi) Costs of and incidental to this proceeding;

vii) Any other Relief(s) as to this Hon'ble High Court may deem fit and proper;"

Plaintiffs Smt. Poulami Datta (Deb) and Smt. Poushali Datta (Paul) being legal heirs of Late Nripendra Ch. Datta filed a suit for partition against their brother Sri Nirmalendu Datta, impleading proforma-defendant Nos.1 to 10 as tenants over the joint property of their deceased father. The said proforma defendants filed a written statement disputing the factum of tenancy but claiming to have perfected their title by way of adverse possession.

The plaintiffs filed an application under Order VI Rule 17 seeking amendment of the plaint claiming possession from the said proforma-defendants.

Significantly, the plea of tenancy is not sought to be withdrawn.

This Court finds the plaintiffs to have taken mutually inconsistent, contradictory and destructive pleas. On one hand plaintiffs claim the defendants to be their tenant. Whereas on the other hand, they seek recovery of possession as owners, and not from the tenants, by advancing the plea of having perfected their title by way of adverse possession.

In support of this contention, Mr. Somik Deb, learned counsel for the petitioners rightly invites attention of this Court to the following decisions rendered by the Apex Court:-

- (i) 2006 6 SCC 498 (Baldev Singh and others vs. Manohar Singh and another);
- (ii) 2009 5 SCC 713 (Vimal Chand Ghevarchand Jain and others vs. Ramakant Eknath Jadoo) (Para 25);
- (iii) 2011 12 SCC 268 (State of Madhya Pradesh vs. Union of India and another) (Para 10, 16,23) and
- (iv) 2009 14 SCC 38 (Sushil Kumar Jain vs. Manoj Kumar and another) (Para 12 – 16).

In view of the settled principle of law, it would not be open for the plaintiffs to take such mutually, contradictory and destructive pleas. As such, it is in this backdrop, the order allowing the application for amendment, impugned herein, is set aside being perverse.

Noticeably, the trial Court failed to take note of the mutually contradictory pleas and the factum of the plaintiffs having given up, the plea of tenancy on the basis of which the possession was sought to be recovered thus changing the nature and character of the suit.

As such, impugned order dated 15.11.2017 passed by the Ld. Civil Judge (Senior Division), Gomati Tripura, Udaipur in Civil Misc. 158 of 2017 arising out of T.S(P) No.04 of 2017 titled as *Smti. Poulami Datta vs. Sri Nirmalendu Datta*, is quashed and set aside and the application for amendment having been rejected.

The suit was filed in the year 2017. Parties undertake to fully cooperate and appear before the trial Court on 29.07.2019.

LCR, if any, be send back.

The petition stands disposed of.

(SANJAY KAROL, CJ)

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