

**HIGH COURT OF TRIPURA  
AGARTALA**

RSA No.50 of 2022

**Sri Haradhan Nama and Anr.**

**---Appellants**

**Versus**

**Smti Anima Dey (Saha)**

**---Respondent**

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For Appellant(s)	:	Mr. Pradip Chakraborty, Advocate
For respondent(s)	:	None

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**HON'BLE MR. JUSTICE ARINDAM LODH**

**Order**

**31/01/2023**

Heard Mr. Pradip Chakraborty, learned counsel appearing for the appellants, who were the original defendants.

The plaintiff had instituted the suit for declaration of right title and interest and recovery of possession.

Despite receipt of notice, the defendants did not appear before the learned trial Court and the suit was proceeded *ex-parte*.

On consideration of evidence and materials on record, the learned trial Court below had passed the decree directing the defendants to vacate the suit land.

The defendants preferred first appeal before the court of learned District Judge, West Tripura, Agartala wherefrom it was transferred to the Court of learned Addl. District Judge, West Tripura Agartala.

The learned Addl. Dist Judge after hearing the learned counsels appearing for the parties upheld and affirmed the judgment and decree passed by the learned trial Court.

Hence this second appeal before this Court.

At the time of hearing of the appeal at the admission stage, this court has inquired from the learned counsel for the appellants whether any execution proceeding is pending before the executing court. Mr. Chakraborty, learned counsel for the appellants has submitted that an execution proceeding is going on and the appellants have submitted objection under Section 47 of the Code of Civil Procedure, 1908. However, Mr. Chakraborty in support of the present second appeal has proposed for formulating two substantial questions of law which are as under:-

1. The plaintiff has failed to prove his possession and subsequent dispossession from the suit land.
2. Another substantial question of law learned counsel has tried to propose is that learned Addl. District Judge while disposing of the first appeal has not complied with the essentialities as contemplated under Order-41 Rule-31 of the CPC.

I have considered the submissions of learned counsel for the appellants.

To deal with the first substantial question of law as proposed by the learned counsel for the appellants, I am of the considered view that the possession and dispossession is a true question of fact and when both the trial Court as well as the first appellate Court came to a conclusion over

the possession and dispossession, then, this Court will not interfere with such questions of fact, which have already been decided by both the learned courts below.

In view of the above, I find no merit in the first substantial question of law as tried to be proposed by the learned counsel for the appellants.

To deal with the second proposed substantial question of law, I have perused the judgment passed by learned Addl. District Judge, wherefrom I do not find any merit in the submission of learned counsel for the appellants that the essentialities as contemplated under Order 41 Rule 31 of the CPC have not been complied with.

In view of the above discussions, the proposed substantial questions of law as proposed to be formulated stand rejected. However, under Section-47 of CPC, the executing court has every right to decide all questions to be raised against the judgment and decree dated 23.09.2022.

The matter is decided accordingly.

In the light of above observations, the present second appeal stands disposed.

**JUDGE**