

HIGH COURT OF TRIPURA

_A_G_A_R_T_A_L_A_

CRP NO.80 of 2024

CRP NO.81 of 2024

1(a) Smti Sanghamitra Saha, W/o.Late Dilip Chandra Saha.

1(b) Sri Debabrata Saha, S/o. Late Dilip Chandra Saha.

1(c) Miss Anuradha Saha, D/o. Late Dilip Chandra Saha.

1(d) Sri Joydeep Saha, S/o. Late Dilip Chandra Saha.

All are resident of Mantribari Road, West side of Mantripara Pukur, Agartala,
P.S. West Agartala, District - West Tripura.

2. Smti Sabita Saha, D/o.Late Kshitish Chandra Saha, 35 Pallyshree, P.S.
Jadabpur, Kolkata 700092.

.....*Defendant Petitioner(s)*

V E R S U S

1. Sri Sanjoy Saha, S/o.Late Kshitish Chandra Saha, 16/1/H/19 Murari Pukur
Road, Kolkata 700067.

2. Smti Bani Saha, D/o.Late Kshitish Chandra Saha, W/o.Sri Amar Saha, 4,
Kayasta Para Main Road, Halto, Kolkata 700078.

3. Smti Ranu Saha, D/o. Late Kshitish Chandra Saha, W/o.Sri Subrata Saha,
17, Bagmari Lane, B.R.S. 10, CIT Flat No.33m Block J, Kolkata 700054.

4. Smti Rita Saha, D/o.Late Kshitish Chandra Saha, W/o.Sri Tarak Saha,
Subudhu Pally, Main Road, Baruipur, Kolkata - 700067.

5. Smti Mitali Poddar, D/o. Late Kshitish Chandra Saha, W/o.Sri Manabendra
Saha, 10A/1B Sailendra Halder Street, Kolkata, 700026.

..... *Plaintiff-Respondent(s)*

For Petitioner(s) : Mr. Pradip Chakraborty, Advocate,
Ms. Sukriti Debnath, Advocate.

For Respondent(s) : Mr. Abhijit Sengupta, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

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27/09/2024

Heard Mr. P. Chakraborty, learned counsel appearing for the
defendant-petitioners and also heard Mr. Abhijit Sengupta, learned counsel
appearing for the plaintiff-respondents.

[2] Petitioners are defendant Nos.1(a) to 1(d) and 2 in Title Suit (Partition) No.98 of 2004. CRP No.80 of 2024 and CRP No.81 of 2024 both arise out of the orders dated 02.07.2024 passed by the learned Civil Judge (Jr. Division), Court No.1, Agartala, West Tripura in Civil Misc. No.15 of 2024 and Civil Misc. No.01 of 2024. The judgment was rendered in Title Suit (P) No.98 of 2004 on 12.05.2015 and the preliminary decree was prepared on 14.05.2015. The learned Civil Judge (Jr. Division), Court No.1, Agartala, West Tripura has on an application filed under Order VI Rule 17 of CPC read with Section 152 and 151 of CPC allowed amendment of the Schedule of the plaint i.e. Schedule 'B' land as it does not change the character of the suit but merely adds the recent plot number of the suit land. Similar is the order in CRP No. 81/2024 dated 02.07.2024 passed by the learned Civil Judge (Jr. Division), Court No.1, Agartala, West Tripura in Civil Misc. No.15/2024 arising out of T.S. (P) No.98 of 2004 on the application of the plaintiff strongly opposed by the defendant Nos.1(a) to 1(d) and 2 who are the petitioners herein. The plaintiffs instituted the suit for right and interest over schedule 'A' & 'B' suit land and for apportionment of their shares by way of partition. The learned trial Court framed the following issues:

- (i) Whether the suit is maintainable?
- (ii) Whether the plaintiffs have right and interest over the schedule A & B suit land and entitled to get 1/9th share each of the said property by way of partition?
- (iii) Whether the plaintiffs is entitled to decree as prayed for in this suit?
- (iv) Whether the parties are entitled to any other relief or reliefs in this suit?

Additional issue

- (v) Whether the suit is bad due to abatement on the expiry of the period of limitation for substitution of the added defendants?

The learned trial Court in answer to issue No.III held that since Schedule 'B' land is a pond, the same if partitioned would radically change the intrinsic nature and character of the property making it unusable as pond. Therefore, relief of partition of schedule 'B' land could not be granted to the plaintiffs. The findings of the learned trial Court in the operative part of the judgment is as under:

FINDINGS

From my decision on the above issues I find that the plaintiff Nos. 2, 3, 4, 5 and 6 are entitled to a decree of partition of the suit 'A' schedule land only having 1/9th share each. The defendant No. 1(a) is also entitled to 4/9th share in the suit land.

ORDER

In the result, the suit of the plaintiffs is decreed preliminary in part on contest against the defendant Nos. 1(a), 1(b), 1(c) and 1(d) and ex-parte against the defendant No.2. Order as to costs is not passed considering the fact that the suit is one for partition. It is hereby declared that the plaintiff Nos. 2, 3, 4, 5 and 6 are entitled to 1/9th (one-ninth) share each in the 'A' schedule suit land. The defendant No. 1(a) alone is entitled to 4/9th (four-ninth) in the schedule 'A' suit land. The plaintiff Nos. 1 and 7, and the defendant Nos. 1(b), 1(c), 1(d) and the defendant No.2 are not entitled to any share in the schedule 'A' property of the suit. Accordingly, the parties are directed to amicably partition the schedule 'A' suit land only according to the share declared above by meets and bounds within 30 (thirty) days from today failing which the parties are at liberty to approach this Court for preparation of final decree in terms of this preliminary decree. Prepare a preliminary decree accordingly and put up before me for signature within 15(fifteen) days from today. Given under my hand and seal on this the 12th day of May, 2015 at Agartala."

The preliminary decree prepared on 14.05.2015 is also to the same effect. Learned counsel for the petitioner submits that there was no occasion for the plaintiff to seek incorporation of schedule 'B' land in the preparation of the final decree as prayed for by the plaintiffs through their application vide Annexure-2. A written objection was also filed by the defendants vide Annexure-6, taking the plea that such an amendment with regard to schedule 'B' land which was excluded from the decree could not be allowed. Moreover, in the plaint schedule 'B' land there was no Khatian number, no plot number and no classification of schedule 'B' land and as such, such amendment should have been rejected with exemplary cost.

Learned counsel for the petitioner submits that learned trial Court has completely misdirected itself in allowing such an amendment by resorting to section 151 and 152 of the CPC and directing the plaintiff to file a fresh plaint incorporating the changes and supply copy thereof to the defendants.

Upon notice respondent has entered appearance through learned counsel Mr. A. Sengupta in both the revision petitions. In support of the impugned order, learned counsel for the respondents submits that the decree is a formal expression of the judgment. The adjudication made by the Court on the rights of the parties to all or any of the matters in controversy in the suit should have reflected on the relief sought for also in respect of Schedule-B part of the land. The amendment allowed by the learned trial Court by the impugned order only incorporates the recent plot numbers of the suit land. Such a correction could be permissible under Order VI Rule 17 of CPC read with Sections 151 and 152 of CPC. Learned counsel for the respondents, therefore, submits that there is no error in the impugned order.

Mr. P. Chakraborty, learned counsel for the petitioners in reply submits that Section 152 of CPC can be invoked for amendment of judgments, decrees or orders so far as the clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission is concerned on the application of the parties or by the Court on its own motion. Section 151 of CPC contains the inherent powers of the Court which can be invoked for the ends of justice to prevent abuse of the process of the Court if there are no other specific provisions to that effect in the CPC. However, an amendment in Schedule-B of the plaint to the

extent of adding plot numbers could not be an accidental slip or omission which should be allowed to be corrected in the preliminary decree or final decree by the learned Court in exercise of the powers under Section 152 of CPC. Let it be also indicated that by way of the written objection to the amendment application the defendants/petitioners herein had objected to only the correction of Schedule-B land in the decree only.

I have considered the submissions of learned counsel for the parties and taken note of the relevant materials placed from record as are reflected in the operative paragraph of the order. “Decree” as defined under Section 2(2) of CPC means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within Section 144 but shall not include (a) any adjudication from which an appeal lies as an appeal from an order or (b) any order of dismissal for default.

Section 152 of CPC reads as under :

152. Amendment of judgments, decrees or orders.- Clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Court either of its own motion or on the application of any of the parties.

In the present case, the plaintiff at the time of preparation of the final decree sought an amendment under Order VI Rule 17 of CPC in the body of the decree to incorporate the Schedule-B suit land with the

description of the plot numbers. The descriptions of Schedule-A and Schedule-B land in the plaint are as under :

SCHEDULE A

In Agartala Town, Nutan Habeli Bazar, Sheet No.3, appertaining to Lokshishi Taluk No.251 under Tehasil Pargana Agartala, Tripura and within the boundary bounded on the-

North :-

Sri Amulya Chandra Chowdhury.

South : Drain.

East:- Pucca Wall.

West:- Municipal Drain and Mantri Bari Road.

Within this boundaries 5 gandas and 8½ dhurs and pucca structure with 16 doors thereon.

SCHEDULE - B

In West Tripura, P.S. West Agartala, Sub Registry Sadar, Mouja Town Municipality Sheet No.2/10, Jote No.319, within this 1 Kani 11 Gandas 1 Kara land with pond bounded by:-

North:- Road.

South: Old Mantri Bari Road.

East: House of Rajmohan Deb.

West: House of Khitish Chandra Saha & Thakur Dhan Roy.

Within this boundaries properties measuring 1 Kani 11 Gandas 1 Kara.

VERIFICATION

The statements made in para 01 to 13 are true to my knowledge and in acknowledgement whereof we sign this Verification of this plaint on 29th day of December, 2003 A.D.

Non description of the plot numbers or recent plot numbers for Schedule-B land in the original plot on which adjudication has been made cannot be said to be an accidental slip or omission which can be sought to be corrected by the Court at the stage of preparation of the final decree. The preliminary decree does contain the exact description of Schedule-B land as incorporated in the plaint.

In such circumstances, this Court is of the view that the introduction of addition of recent plot numbers of the suit land in Schedule-

B in the decree by an amendment should not have been allowed in exercise of powers under Section 152 of the CPC. It is true that in respect of the relief sought for in Schedule B land, the learned Trial Court had in answer to issue No.III clearly held that since Schedule-B land is a pond, the same if partitioned would radically change the intrinsic nature and character of the property making it unusable as pond. Therefore, relief of partition of the Schedule-B land could not be granted to the plaintiffs. The ultimate findings and operative part of the order of the learned Trial Court as regards partition of Schedule-A land amongst the plaintiff and defendants have been duly described in the decree. Beyond what has been adjudicated by the learned trial Court, incorporation of the plot numbers in the description of Schedule-B land, which were absent in the plaint, therefore, should not have been allowed by the learned Trial Court at the behest of the plaintiff at this stage under Section 152 of the CPC.

The impugned order is, therefore, interfered to the extent of incorporation of any plot numbers of Schedule-B which were never described in the plaint as the same should not have been allowed by the learned Trial Court.

The instant revision petitions are disposed of with the aforesaid observations.

(APARESH KUMAR SINGH) CJ