

**HIGH COURT OF TRIPURA
AGARTALA**

RSA NO.53 of 2022

1. Sri Pradip Chanda,

S/O Lt. Probodh Kr. Chanda,
R/O-village-Bhabatarini Mandir Road, Kumarghat,
P.O & P.S- Kumarghat, District- Unakoti Tripura

2. Sri Indu Bhusan Majumder,

S/O- Lt. Jamini Kr. Majumder,
R/O-village-Nidevi, Kumarghat,
P.O & P.S- Kumarghat, District- Unakoti, Tripura

... The Appellants

Versus

1. Sri Jadu Lal Roy,

S/o Lt. Chitta Ranjan Roy,
R/O-village & P.O- Kanchanbari,
District-Unakoti, Tripura,
PIN-799288

2. Sri Bimal Kanti Dhar,

S/O- Lt. Bonomali Dhar,
R/O-Nidevi, Kumarghat (Near Nivedita Children school),
P.O & P.S- Kumarghat,
District-Unakoti, Tripura (Asstt. Teacher of Nivedita Children School)

3. Sri Sumon Chanda,

S/O- Lt. Subodh Chanda,
R/O-Vill-Kumarghat (Near S.E Office Complex),
P.O & P.S- Kumarghat,
District-Unakoti, Tripura (I/C Principal of Nivedita Children School).

4. Smt. Aparna Paul,

W/o- Sri Ashit Deb,
R/O-Village-Kumarghat (near Municipal Council Office),
P.O & P.S- Kumarghat,
District- Unakoti, Tripura (Assistant Teacher of Nivedita Children School)

5. Sri Rabindra Debnath,

S/O- Sri Nirode Debnath,
R/O-Village- Halaimura, Kumarghat,
P.O & P.S- Kumarghat,
District- Unakoti, Tripura (Assistant Teacher of Nivedita Children School).

... The Respondents

For Appellant(s)	:	Mr. P. Roy Barman, Sr. Adv, Mr. Samarjit Bhattacharjee, Adv.
For Respondent(s)	:	Mr. H. Laskar, Adv.
Date of Hearing	:	14.03.2024
Date of delivery of Judgment and Order	:	28.03.2024
Whether fit for Reporting	:	NO

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

This appeal is preferred challenging the judgment and decree dated 17.08.2022 and 22.08.2022 respectively, passed by Learned District Judge, Unakoti District, Kailashahar in T.A. 02 of 2020. By the said judgment, the Learned District Judge upheld the judgment and decree of the Learned Trial Court.

02. Heard Learned Senior Counsel, Mr. P. Roy. Barman assisted by Mr. Samarjit Bhattacharjee, Learned Counsel for the appellant and also heard Mr. H. Laskar, Learned Counsel for the respondent-defendant.

03. Before proceeding with the merit of the appeal, let us discuss the subject matter of the dispute cropped up amongst the parties for which the suit was preferred by the appellant-plaintiffs before the Learned Trial Court.

The short campus of the case of the appellant-plaintiffs before the Learned Trial Court was that one 'Nivedita Children School' has been running by the School Management Committee of the appellant-plaintiffs and the

plaintiffs No.1 and 2 are the President and Secretary of the SMC of the said school and one Gouri Shankar Majumder, the then president of that school used to maintain the custody of materials of the school and he also used to maintain the management of the school. But on his death, a meeting was held on 26.12.2017 and in the said meeting temporary responsibility was given to the defendants for the custody of the material and for management and running of the school with a condition to return the custody of the material and management of the school by 31.03.2018 to the plaintiffs, SMC, but on demand by the plaintiffs SMC on 31.03.2018, 21.05.2019 and 10.09.2019 the respondent-defendants failed to return the same and started to deny and avoid the running and activities of plaintiffs SMC. Hence, the appellant-plaintiffs filed the suit before the Court of Learned Civil Judge, Senior Division, which was numbered as T.S.02 of 2019.

04. That the respondent-defendants contested the suit by filing written statement denying the plea of the appellant-plaintiffs and pleaded that the appellant-plaintiffs No.1 and 2 falsely claimed themselves as the Secretary and President of SMC of Nivedita Children School and the plaintiffs have no right to file the suit as they were not the Secretary and President and also the appellant-plaintiffs had no right to represent the SMC. Further, it was also denied that, on 26.12.2017 a meeting was held of SMC on the death

of Gouri Shankar Majumder and temporary arrangement was made and defendants were entrusted with the duty and responsibility for temporary period as claimed by the appellant-plaintiffs. Rather, the respondent-defendants pleaded that in the year 2012, a new School Managing Committee was formed and one Gouri Shankar Majumder was appointed President and Pradip Chanda, i.e. the appellant-plaintiff No.2 became the Secretary but the said committee was not formed as per Right To Education Act, 2009 and as cashier Ranu Singha resigned, in his place one Sudipta Sinha became cashier and Pradip Chanda, the Secretary used to come regularly for collection of cash money from the school and the account of the school was maintained properly. But in the year 2014, President Gouri Shankar Majumder expelled the Cashier and Secretary and Gouri Shankar Majumder himself took the responsibility of Secretary and Cashier of the school and on 23.12.2017 said Gouri Shankar Majumder died and as per decision of the guardian, Teacher's Council and well wishers, the teachers of the school took the responsibility of admission of the students and accepting the tuition fees etc. and the defendant No.1 was appointed administrator of the school w.e.f. 16.01.2017 and as per deputation of the guardian and parents of the students, a resolution was taken in the meeting held under the President-ship of the administrator, i.e. the respondent-defendant No.1 and thereafter under RTE Act 2009 on 07.08.2018 a general meeting was held with the

guardian of the students, members of the Teacher's Council, well-wishers and the people's representatives and an SMC was formed and one Paban Paul (guardian of a student) was appointed chairperson, Dipankar Goswami (parent of another student) was appointed vice chairperson, Rabindra Debnath (senior teacher) appointed convener, defendant No.1 was appointed member and more members were appointed from the parents, teachers and students and a copy of the resolution was sent to District Education Officer who recognized the said SMC and according to the respondent-defendants, that same SMC had the authority to run the school and finally they prayed for dismissal of the suit with costs.

05. Upon the pleadings of the parties, the following issues were framed by the Learned Trial Court:

(i) Whether the suit is maintainable?

(ii) Whether the suit is bad for non-joinder of necessary party?

(iii) Whether the plaintiff No.1 & 2 are president and secretary of the school managing committee (SMC) of the Nibedita Children School, Kumarghat, English Medium?

(iv) Whether the plaintiffs have right to maintain, guide and control the Nibedita Children School?

(v) Whether the plaintiffs are entitled to the mandatory injunction against the defendants to hand over and return the materials to the plaintiffs as described in the schedule of the plaint?

(vi) Whether the plaintiffs are entitled to the decree as prayed for and/or any other relief/reliefs in this suit?

06. To substantiate the issues, both the parties have adduced oral/documentary evidence on record:

(A) Plaintiffs' Witnesses :-

PW.1 Sri Pradip Chanda.

PW.2 Sri Swapan Mitra Talukdar.

PW.3 Sri Indu Bhushan Majumder.

PW.4 Sri Bikasendu Deb.

PW.5 Sri Ranu Sinha.

PW.6 Sri Aswini Sinha. .

PW.7 Sri Rajib Chakraborty.

PW.8 Sri Churachand Sarma.

PW.9 Sri Sunil Chandra Dey.

(B) Plaintiffs' Exhibits :-

Ext.-1:- Khatian No.98/2.

Ext.2:- Map.

Ext.3:- Resolution dated 02.08.2010.

Ext.4:- Copy of resolution dated 01.06.2012.

Ext.5:- Letter of appointment dated 28.02.2004.

Ext.6:- Form filled by Bimal Kanti Dhar.

Ext.7:- Letter of appointment dated 01.03.2004.

Ext.8:- Letter by Rabindra Debnath to the Secretary, Nibedita Children School.

Ext.9:- Letter dated 07.06.2014.

Ext.10:- No objection certificate dated 07.06.2014.

Ext.11:- Certificate dated 07.06.2014.

Ext.12:- Letter dated 09.06.2014.

Ext.13:- Letter dated 09.06.2014.

Ext.14:- Certificate dated 09.06.2014.

Ext.15:- Letter dated 09.06.2014.

Ext.16:- Letter dated 18.06.2012.

Ext.17:- Letter dated 30.08.2013.

Ext.18:- Notice dated 04.08.2014.

Ext.19:- Recognition memo dated 08.07.2008.

Ext.20:- Resolution dated 02.08.2010.

Ext.21:- Application dated 30.11.2010.

Ext.22:- Letter of appointment of Suman Chanda.

Ext.23:- Letter of appointment of Suman Chanda dated 10.03.2003.

Ext.24:- Bank Pass Deposit Slip.

Ext.25:- Bank Pass Book of A/C No.8085012206665.

Ext.26:- Another Bank Pass Book of same account number.

Ext.27:- Sale deed No.1-328 dated 01.03.2002.

Ext.28:- Letter dated 21.05.2018.

Ext.29:- Letter of instruction dated 10.09.2018.

Ext.30:- Resolution dated 26.12.2017.

Ext.31:- Code of conduct.

Ext.32:- Resolution dated 25.06.2016.

Ext.33:- Resolution dated 06.01.2019.

Ext.34:- Letter dated 31.03.2018.

Ext.35:- Khatian No.1703.

Ext.36:- Sale deed No.1-1532 dated 02.11.2010.

Ext.37:- Advocate notice and its enclosure dated 03.01.2019.

Ext.38:- Postal receipts and AD card.

Ext.39:- Letter dated 25.01.2019.

Ext.40:- Trust deed No.IV-0007 dated 21.01.2019.

Ext.41:- Resolution book of SMC of Nibedita Children School.

Ext.42:- Resolution book of SMC of Nibedita Children School.

(C) Defendant's Witnesses :-

DW.1 Sri Rabindra Debnath.

DW.2 Sri Jadulal Roy.

DW.3 Sri Paban Paul.

DW.4 Smt. Sima Dey.

DW.5 Sri Dipankar Goswami.

(D) Defendant's Exhibits :-

Ext.A:- Letter dated 25.05.2018 along with enclosure letter dated 28.03.2018.

Ext.B:- Letter dated 10.08.2018 along with enclosure.

Ext.C:- Letter dated 28.01.2019.

Ext.D:- Resolution book of SMC Nibedita Children School, Kumarghat.

07. Finally after hearing argument of both the sides, Learned Trial Court below delivered the judgment on 02.12.2019. The operative portion of the order of the judgment runs as follows:

"In the result, the suit of the plaintiff is dismissed on contest with cost.

The suit is disposed of on contest with cost.

Make necessary entry in the relevant Trial Register.

Prepare decree accordingly and put up before me for signature within 15 (fifteen) days from today latest on 17.12.2019."

08. Challenging that judgment of Learned Trial Court, the appellant-plaintiffs preferred an appeal under Section 96 of CPC before the Court of Learned District Judge, Unakoti District, Kailashahar which was numbered as T.A. No.02 of 2020 and after hearing argument of both the sides, Learned First Appellate Court by judgment and decree dated 17.08.2022 and 22.08.2022 respectively dismissed the appeal of the plaintiff-appellants and uphold the judgment of the Learned Trial Court.

09. For the sake of convenience, I would like to mention herein below the operative portion of the order of Learned First Appellate Court which is as follows:

"In the result, the plaintiff-appellants are not entitled to get any relief. Hence, the appeal is dismissed.

The judgment and decree passed by the learned trial court is upheld.

Prepare appellate decree accordingly.

Send down the LCR along with a copy of this judgment.

The case stands disposed of accordingly."

10. Being dissatisfied with the judgment and decree delivered by the Learned First Appellate Court in T.A.02 of 2020, the appellant-plaintiffs again preferred this appeal under Section 100 of CPC before the High Court. At the time of admission of the appeal by order dated 05.04.2023 following substantial question of law was framed:

"Whether the suit is barred by the principle of non-joinder of necessary parties?"

11. At the time of hearing of argument, Learned Senior Counsel Mr. P. Roy Barman for the appellants drawn the attention of the Court that both the Courts below have committed serious error in dismissing the suit and appeal on the ground of non-joinder of necessary parties, which according to Learned Senior Counsel was nothing but a clear misconception of fact and law, because the appellant-plaintiffs in the plaint had narrated the entire assertions but the Learned Court below considering the evidence on record could not appreciate the evidence properly and came to an erroneous finding that the suit was bad for non-joinder of necessary parties and there was no valid reasons to dismiss the suit on the issue of non-joinder of necessary party.

12. Learned Senior Counsel further submitted that the Learned First Appellate Court also without remanding back the case to the Learned Trial Court below for proper adjudication in accordance with law uphold the judgment of the Learned Court below on the same ground for which according to Learned Senior Counsel there are serious perversity to the judgments of the Court below and prayed for allowing this appeal by setting aside the judgments of the Learned Courts below.

13. Per contra, Learned Counsel for the respondent-defendant submitted that the Learned Trial Court below after considering the evidence on record dismissed the suit on the ground that the suit was bad for non-joinder of necessary party and was not maintainable. Similarly, Learned First Appellate Court also dismissed the appeal on the same grounds. So, Learned Counsel for the respondents, at the conclusion of argument urged for dismissal of this present appeal and to uphold the judgment of the Learned First Appellate Court as well as the Learned Trial Court. Since the crux question in this appeal is regarding dismissal of suit for non-joinder of necessary party, so, here we are to see as to whether the judgment of the Learned First Appellate Court upholding the judgment of the Learned Trial Court is perverse or not.

14. I have gone through the records of the Learned Court below and also perused the evidence on record both

oral/documentary. It appears that, the Learned Trial Court below came to an observation that the leave of the Court was not obtained by the appellant-plaintiffs as required under Order 1, Rule 8 of C.P.C. Even, according to the Learned Trial Court, no public notice was given by the appellant-plaintiffs before filing of the suit and more so, as the appellant-plaintiffs did not obtain leave of the Court prior to filing the suit, so, the suit was not maintainable. The Learned First Appellate Court also took the similar view.

15. For the sake of convenience, I would like to refer herein below the relevant provision of Order I, Rule 8 of C.P.C. which is enumerated below:

"8. One person may sue or defend on behalf of all in same interest.—(1) Where there are numerous persons having the same interest in one suit,—
(a) one or more of such persons may, with the permission of the Court, sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so interested;

(b) the Court may direct that one or more of such persons may sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so interested.

(2) The Court shall, in every case where a permission or direction is given under sub-rule (1), at the plaintiff's expense, give notice of the institution of the suit to all persons so interested, either by personal service, or, where, by reason of the number of persons or any other cause, such service is not reasonably practicable, by public advertisement, as the Court in each case may direct.

(3) Any person on whose behalf, or for whose benefit, a suit is instituted, or defended, under sub-rule (1), may apply to the Court to be made a party to such suit.

(4) No part of the claim in any such suit shall be abandoned under sub-

rule (1), and no such suit shall be withdrawn under sub-rule (3), of rule 1 of Order XXIII, and no agreement, compromise or satisfaction shall be recorded in any such suit under rule 3 of that Order, unless the Court has given, at the plaintiff's expense notice to all persons so interested in the manner specified in sub-rule (2).

(5) Where any person suing or defending in any such suit does not proceed with due diligence in the suit or defence, the Court may substitute in his place any other person having the same interest in the suit.

(6) A decree passed in a suit under this rule shall be binding on all persons on whose behalf, or for whose benefit, the suit is instituted, or defended, as the case may be.

8A. Power of Court to permit a person or body of persons to present opinion or to take part in the proceedings.— While trying a suit, the Court may, if satisfied that a person or body of persons is interested in any question of law which is directly and substantially in issue in the suit and that it is necessary in the public interest to allow that person or body of persons to present his or its opinion on that question of law, permit that person or body of persons to present such opinion and to take such part in the proceedings of the suit as the Court may specify.”

16. On perusal of the aforesaid Sub-Rule 2 of Rule 8 and also on perusal of record, it appears that in the given case, the appellant-plaintiffs did not obtain the consent from all the members of the SMC of the school before filing the suit. Even, no leave of the Court was obtained at the time of filing of the suit. Furthermore, no public notice was given by the appellant-plaintiffs before filing of the suit. So, in such a situation, it appears that although the Learned Trial Court below decided issue Nos.3, 4 and 5 in favour of the appellant-plaintiffs but decided the issue Nos.1 and 2 against the appellant-plaintiffs and ultimately, dismissed the suit.

Similarly, the Learned First Appellate Court also after elaborate discussions concurred the finding of the Learned Trial Court below, for which I do not find any scope to interfere with the findings of the Learned First Appellate Court in this present appeal. The substantial question of law is accordingly answered against the appellant of this appeal.

17. In the result, the appeal filed by the present appellants is hereby dismissed on contest with costs. The judgment and decree dated 17.08.2022 and 22.08.2022 respectively, passed by Learned District Judge, Unakoti District, Kailashahar in T.A. 02 of 2020 affirming the judgment and decree dated 02.12.2019 and 06.12.2019 respectively delivered by Learned Civil Judge, Senior Division, Kailashahar, Unakoti District in connection with case No. TS 2 of 2019 is hereby affirmed and accordingly, it is upheld.

Pending application(s), if any, shall also stands disposed of.

Prepare decree accordingly and send down the LCRs.

JUDGE

SABYASACHI
BHATTACHARJEE

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