

**HIGH COURT OF TRIPURA  
AGARTALA**

**CRP No.12 of 2025**

Sri Rajkumar Roudra Paul, S/o Late Rukmini Roudra Paul, of Gopal Nagar,  
P.S. Kalyanpur, District-Khowai, Tripura.

..... Petitioner(s).

**V E R S U S**

Sri Himangshu Paul, S/o Late Hirendra Paul, of Gopalnagar (Kunjaban), P.S.  
kalyanpur, District-Khowai, Tripura.

..... Respondent(s).

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

For Respondent(s) : None.

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**HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH**

**Order**

**28/02/2025**

Heard Mr. Pradip Chakraborty, learned counsel for the petitioner.

The petitioner is the plaintiff in Title Suit No.6 of 2019 instituted for declaration of right, title, interest over the suit land as mentioned in Schedule "A" of the plaint and also for recovery of possession of the suit land as mentioned in Schedule "B" of the plaint. By the judgment dated 17.01.2023 passed by learned Civil Judge (Sr. Div.), Khowai, Tripura. The suit was dismissed in the following manner:

**"Conclusion**

As a corollary to the discussion and decision made on all the foregoing issues, I am of the considered opinion that the plaintiff has not been successful to prove that he is entitled to a decree declaring his right, title and interest over the suit land described in Schedule "A" of the plaint. The plaintiff has also not been successful in proving that he is entitled to a decree for recovery of possession of the suit land described in Schedule "B" of the plaint evicting the defendant from there.

**ORDER**

It is hereby declared that the plaintiff has not been successful to prove that he is entitled to a decree declaring his right, title and interest over the suit land described in Schedule "A" of the plaint. The plaintiff has also not been successful in proving that he is

entitled to a decree for recovery of possession of the suit land described in Schedule “B” of the plaint evicting the defendant from there.

Thus, the case is disposed of on contest.”

The plaintiff being aggrieved has preferred Title Appeal No.02/2023 before the learned District Judge, Khowai. During pendency of the appeal, the defendant/respondent sought to adduce additional evidence in the nature of a Khatian and the present appellant also sought to adduce additional evidence in the nature of certified copy of sale deed bearing No.1-809 dated 12.07.2011 and certified copy of partition deed No.1-528 dated 19.05.2008 invoking Order XLI, Rule 27 of the CPC. Plaintiff/appellant also prayed for appointment of a Survey Commissioner. The prayer of the defendant-respondent to adduce additional evidence was rejected. Both the prayers by the plaintiff/appellant/petitioner have been rejected by the impugned order. Petitioner being aggrieved has approached this Court in revision. The learned appellate Court has observed that any evidence in the appeal stage cannot be looked into without any pleadings in that regard. Moreover, the sale deed dated 12.07.2011 was duly exhibited and marked as Exbt.A during trial on identification by DW-1 without any objection.

Mr. Pradip Chakraborty, learned counsel for the petitioner submits that the necessity to seek additional evidence in the nature of these two documents arose in view of a copy of a Khatian sought to be introduced as additional evidence on behalf of the respondent which revealed that the vendors of the respondent was not the owner of RS Plot No.7277 under Tehasil-Dwarikapur, Mouja-Kunjaban, P.S. Kalyanpur. These additional

evidences were necessary to dislodge the case of the appellant at the appellate stage in order to succeed.

It is further submitted that the learned appellate Court has erroneously refused to allow appointment of a survey commissioner to identify the suit land as it would be necessary to establish whether the defendant was in possession of Schedule “B” suit land and also for a declaration in respect of Schedule “A” of the plaint in favour of the present plaintiff. Therefore, the petitioner has approached this Court in revision.

I have considered the submission of the learned counsel for the petitioner and also gone through the impugned order. The provision for adducing additional evidence are contained in Order XLI, Rule 27 of the CPC is well settled. Order XLI, Rule 27 of the CPC reads as under:

**“27. Production of additional evidence in Appellate Court.- (1)**

The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if-

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

[(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or]

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause,

the Appellate Court may allow such evidence or document to be produced or witness to be examined.

(2) Whenever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.”

These two documents which were sought to be adduced by the plaintiff-petitioner herein were not those which were not in existence at the

time of the trial since they are prior to the institution of the Title Suit No.6 of 2019. The plaintiff has also not been able to show that despite due diligence these documents could not be produced in evidence during trial or that the learned trial Court refused to admit them. The plea of the plaintiff is based upon an attempt on the part of the defendant/respondent in TA No.02/2023 to adduce additional evidence in the nature of a Khatian which has also been rejected. As such, the approach of the learned appellate Court in refusing to allow the prayer for adducing additional evidence in favour of the plaintiff is well reasoned and does not call for interference. However, the learned appellate Court has also rejected the plea for appointment of a survey commissioner for local investigation for identification of the suit property as per boundary of the sale deed. The learned appellate Court has observed that at no point of time the appellant approached the learned trial Court with such an application. Therefore, he did not find any merit in such a plea.

Mr. Pradip Chakraborty, learned counsel for the petitioner submits that appointment of survey commissioner in terms of Order XXVI, Rule-9 is within the domain and discretion of learned trial Court or the appellate Court and it can be exercised at any point of time in order to assist the learned Court in arriving at the adjudication of the real issue in controversy by identification of the suit lands. Therefore, rejection of this prayer at this stage was not proper. He, however, submits that in case this Court is not inclined to interfere in the order of rejection of the application for appointment of survey commissioner at this stage, such liberty may be left open to the appellate Court to be exercised at an appropriate stage if deem fit.

Upon consideration of the submission of the learned counsel for the plaintiff/appellant/petitioner this Court is of the view that though such a prayer for appointment of survey commissioner at this stage has been declined by the learned Court vide impugned order dated 19.11.2024 but it shall not preclude the learned appellate Court from exercising such discretion at an appropriate stage if it deems fit.

With these observations, the instant petition is disposed of without interfering in the impugned order.

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

**(APARESH KUMAR SINGH), CJ**

