

THE HIGH COURT OF TRIPURA
AGARTALA

CRP 37 of 2011

1. Smti. Pramila Saha,
W/O. Late Rajendra Lal Saha.
2. Shri Bimal Saha
3. Shri Bishu Saha

All are the sons of Late Rajendra Lal Saha
and residents of Indranagar, near ITI,
P.S. East Agartala, District – West Tripura.

4. Smti. Puspa Bala Saha (Das)
D/O. Late Rajendra Lal Saha,
W/O. Late Gopal Das
Presently residing at Chandrapur near ISBT,
P.S. East Agartala, District – West Tripura.

..... *Petitioners*

- Vs. -

1. Sri Pradip Bhowmik,
S/O. Late Jatindra Chandra Bhowmik.
2. Smti. Chandrabati Dhanuk
W/O. Late Lalu Dhanuk,
Both are the residents of Indranagar near ITI,
P.O. Indranagar,
P.S. East Agartala, District – West Tripura.

..... *Respondents*

BEFORE

HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

- | | |
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| For the Petitioners | : Mr. S.M. Chakraborty, Sr. Advocate.
Ms. P. Sen, Advocate. |
| For the respondent
No.1. | : Mr. U.K. Majumder, Advocate.
Mr. B. Choudhury, Advocate. |
| For the respondent
No.2. | : Ms. A. Chakraborty, Advocate. |

Date of hearing & delivery of Judgment & order : 26.02.2015.

Whether fit for reporting : Yes.

JUDGMENT & ORDER (ORAL)

The petitioners by means of this petition have challenged the order dated 29.04.2011 whereby the petition filed by the petitioners (hereinafter referred to as 'the plaintiffs') seeking permission of the Court to examine the witnesses whose evidence has already been closed was rejected by the learned Tribunal.

2. The present plaintiff along with others filed a suit for declaration of title and recovery of possession on 21.05.2005. Issues in the suit were framed on 07.04.2006. Thereafter, the case was fixed on 15.05.2006 for filing the deposition of the witnesses by way of affidavit. On 15.05.2006 both parties prayed for time and the matter was adjourned to 12.06.2006. On this date, the plaintiffs filed the deposition in chief of 2 P.Ws and also filed an application to file deposition of some other witnesses. The defendants sought time to file the deposition. The matter was adjourned to 3rd July, 2006 for cross-examination of P.Ws 1 and 2 and filing deposition of the D.Ws. On the said date i.e. 03.07.2006, the plaintiffs filed deposition in chief of P.W. 3. The defendants filed the affidavits of their witnesses, but nothing could be done as

the Presiding Officer was on leave. The next date was fixed on 27.07.2006, on which date both parties prayed for an adjournment and the matter was adjourned to 06.09.2006. On 06.09.2006, plaintiff No.4 filed Hazira of P.W.1, but when the case was called the plaintiff was not found present and adjournment was granted subject to payment of costs. On 04.11.2006 witnesses of both sides were present, but both the parties sought adjournment and again adjournment was granted by the Court as a matter of routine. The case was then adjourned to 13.12.2006. Again witnesses of both the sides were present. Again lawyers of both the side prayed for adjournment on ground of their personal difficulties and the matter was adjourned to 22.01.2007. On 22.01.2007, three witnesses of the plaintiffs were present. The learned counsel for the defendants requested for an adjournment and the regular Presiding Officer was on leave and therefore, the matter was adjourned. On 15.03.2007, three witnesses of the plaintiffs were again present, but were discharged without examination, but it is not clear on what ground the adjournment was granted. On 30th April, 2007, three witnesses of the plaintiffs were again present, but again a request for adjournment was made by the counsel for the plaintiffs and the matter was adjourned. On most of the dates the regular Presiding Officer was on leave which meant that no effective work could have been done. On 27.06.2007 again the Presiding Officer was on leave and the matter was adjourned to 04.08.2007. On 04.08.2007 counsel

appearing for the defendants prayed that he may be permitted to file evidence of one more witness and this request was allowed and the matter was adjourned for recording the evidence of the plaintiffs witnesses for 05.09.2007. On 05.09.2007, the defendants filed an application seeking amendment of the written statement and also prayed for adjournment. The plaintiffs produced their three witnesses, but adjournment was granted at the request of the defendants. On 29.09.2007, the defendants side again filed an application for adjournment of the case and the matter was adjourned to 04.10.2007. On 04.10.2007, another application was filed by the defendants stating that though it had filed affidavit-in-chief previously, there was some error and it may be permitted to file a fresh affidavit as examination-in-chief. This prayer was not opposed by the counsel for the plaintiffs and the defendants were permitted to file affidavit-in-chief of one Smt. Jogamaya Bhowmik, defendant No.1(a). On the next date i.e. 06.12.2007, an adjournment was sought by the counsel for the plaintiffs which was granted and the matter was adjourned to 31.01.2008. On this date, the regular P.O. was on leave. On the next date i.e. 31.01.2008, the regular P.O. was on leave. On 12.03.2008, at the request of counsel for both the sides, the case was adjourned to 07.05.2008 and the plaintiffs were directed to produce their witnesses on the said date. On 07.05.2008, learned counsel for the defendants submitted that one of the defendants has expired and the case has been defective. Obviously, plaintiffs witnesses could

not have been examined on this date. Thereafter, the matter was adjourned for bringing on record the legal representatives and the name of Jogamaya Bhowmik was actually struck off on 02.08.2008. The matter was then adjourned to 06.09.2008 when the plaintiffs prayed for time and this application for time was granted. On the next date i.e. on 18.11.2008, none of the counsel for either side was present and the Court granted last opportunity to the plaintiffs to produce its witnesses. The matter was adjourned to 23.12.2008, but it appears that it was not taken up on 23.12.2008, but was actually taken up on 29.12.2008 and therefore, another date was granted for 11.02.2009. On this date also the plaintiffs sought adjournment. The defendants did not oppose the adjournment and the matter was adjourned to 27.03.2009. On this date i.e. 27.03.2009, the plaintiffs appeared with all the witnesses but sought an adjournment and the matter was adjourned. On 13.05.2009 both side sought an adjournment and the matter was again adjourned. The case was then taken up on 20th June, 2009 when all the witnesses of the plaintiffs were present, but they were discharged without examination without giving any reason, but it appears that probably the regular P.O. was on leave. On 16.07.2009, the plaintiffs sought adjournment. The Presiding Officer was on leave and the case was adjourned to 26.08.2009 on which date, the defendants moved an application for extension of time which was opposed by the plaintiffs, but time was again granted. It appears, the witnesses were present on this

date but since the defendants were not ready to cross-examine them, the case was adjourned to 28.10.2009. On this date again, the plaintiffs were present with their witnesses. The defendants filed another petition for grant of adjournment and the learned Court granted adjournment and the case was fixed for 02.12.2009. On this date an application was filed on behalf of plaintiffs that their counsel were unwell and therefore, the matter be adjourned. On this date, in the absence of the counsel of the plaintiffs, the Court closed the evidence on the ground that it was the last date.

3. Normally, this Court is very reluctant to interfere in such matters which fall within the jurisdiction of the Trial Court. However, the record as quoted hereinabove makes depressing reading. It shows a shocking state of affairs where the Presiding Officer of the Court had no control over the proceedings. When any of the counsel asked for an adjournment, it was granted for the mere asking. From the record as quoted hereinabove, I find that three of the plaintiffs witnesses were present on 11 occasions in this two and a half years. Who is to compensate them for the time they have wasted coming to Court and going back from the Court only because the counsel are not willing to examine or cross-examine the witnesses or the Presiding Officer is on leave. When one deals with judicial matters one must relies that judges are paid salaries to decide cases. Lawyers charge fees from their clients. The litigants have a personal stake in the litigation whether they

be plaintiff or defendant. The Court staff gets salary to do its work. The Public Prosecutors are paid by the Government to prosecute cases on behalf of the Government. The only person who has no personal stake in the matter and who gets virtually nothing for appearing in Court is the witness. Unfortunately, our Court atmosphere is so unfriendly to the litigants and especially to the witnesses that we treat the witnesses with complete disdain and as the record of this case shows the witnesses were present on 11 dates, but they were not examined and on the date when the counsel for the plaintiffs was not present, but an application had been filed that he suffering from severe backache the learned Judge closed the evidence. This is sheer injustice. The learned Court below lost sight of the fact that on 11 occasions the plaintiffs witnesses are present. It lost sight of the fact that on many dates when the witnesses were present, adjournments had been granted at the asking of the counsel. Did not the Presiding Officer(s) remember that the CPC ordains that normally not more than three dates should be granted? The Presiding Officers of Courts must have a firm grip not only of the case, but also of the Court proceedings. They must have full control of the Court proceedings and should not be merely swayed by the seniority of the counsel asking for a date or the number of counsel who oppose or request for an adjournment.

4. The first and foremost duty of the judge is to ensure that justice is delivered in accordance with law. All procedure or Rules are handmaidens to further the cause of justice and not to thwart the cause of justice. The Rules should not be used in such a technical manner that a litigant is thrown out of the Court. Whether a litigant is rich or poor he is guided by his counsel. It is the judges and the counsel, who control the Courts in India and unfortunately a litigant has very little say in the matter. The record of this case shows an abysmal lack of control of proceedings where for three long years the judge(s) continued to grant dates on one pretext or the other even though the plaintiffs witnesses were present on 11 occasions. Unfortunately, the plaintiffs thereafter permitted the defendants evidence to be examined and only then filed the application for recalling his witnesses.

5. It is contended on behalf of the respondents-defendants that merely because one counsel was unwell is no ground to grant an adjournment because there were three counsel representing the defendants. I am not at all in agreement with this submission made on behalf of the respondents because time and again the respondents were also represented by a battery of lawyers and had taken adjournments on virtually similar grounds. If the defendants could have their way and get adjournments when the witnesses of plaintiffs were present on 11 occasions why should the Court have not shown the same leniency to the

plaintiffs especially on a day when an application had been filed that the leading counsel of the plaintiffs was unwell and suffering from backache.

6. Therefore, I set aside both the orders on the following terms and conditions:-

i) That the plaintiffs shall pay costs of Rs.2,000/- (Rupees Two thousand) to the defendants on or before the next date of hearing.

ii) The parties are directed to appear before the Trial Court on 24th March, 2015 on or before which date the costs must be paid.

iii) In case, costs are paid then the learned Trial Court shall give one opportunity to the plaintiffs to produce their witnesses in the week commencing from 6th April, 2015. In case, the plaintiffs lead evidence and the defendants satisfy the Court that in view of this evidence being led they are also entitled to lead evidence, they shall also be permitted two opportunities in the month of May, 2015 to lead their evidence. Thereafter, the matter shall be heard and decided latest by 31st July, 2015.

7. With these observations and directions, the petition is disposed of.

8. The learned Registrar General is directed to circulate this judgment to all the Judicial Officer in the State of Tripura, who shall ensure that in future, cases are not dealt in such an

irresponsible manner and adjournments are not granted in such a casual fashion.

9. Send down the L.C.Rs forthwith.

CHIEF JUSTICE

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