

**(2023) 01 TP CK 0010**

**In the Tripura High Court**

**Case No :** Civil Revision Petition No. 91 Of 2022

Md. Abdul Rahim

APPELLANT

Vs

Muslem Miah Son Of Late Jahar Ali & Ors

RESPONDENT

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**Date of Decision :** 06-01-2023

**Acts Referred:**

Code Of Civil Procedure, 1908 — Section 115  
Constitution Of India, 1949 — Article 227

**Citation :** (2023) 01 TP CK 0010

**Hon'ble Judges :** Arindam Lodh, J

**Bench :** Single Bench

**Advocate :** Raju Datta, Sankar Lodh, Samar Das

**Final Decision :** Disposed Of

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## **Judgement**

Date of hearing & judgment : 6th January, 2023

[1] Heard Mr. Raju Datta, learned counsel appearing for the petitioner and also heard Mr. Sankar Lodh, learned counsel appearing for the respondents.

[2] The present petition has been filed by the petitioner under Section 115 of CPC for quashing the order dated 14.09.2022 passed by the learned Civil Judge, Junior Division, Court No.3, Udaipur, Gomati District in Case No. Civil Misc. 06 of 2022 arising out of Title Suit No.13 of 2020 whereby the application filed by the petitioner was rejected.

[3] Brief facts are as under :

The petitioner on 18.04.2022 filed an application before the learned trial Court and prayed for amendment of the plaint of TS 13 of 2022 as per schedule mentioned thereto since at the time of filing the plaint, the petitioner failed to mention some facts which were not incorporated in the plaint. The defendant-respondent No.1 submitted written objection against the said application and after hearing the learned counsel for the parties, the trial Court by an order

dated 14.09.2022 rejected the application filed by the petitioner for amendment of the plaint on the ground that allowing the amendment of plaint would change the original nature of the suit and will prejudice the defendant respondent.

[4] The plaintiff-petitioner initially filed Title Suit No.13 of 2020 before the learned Civil Judge, Junior Division, Gomati Tripura, Udaipur for declaration of right title, interest & recovery of the possession over the suit land and conforming recovery of possession over the suit land in favour of the plaintiff, for passing an order restraining the defendants from interfering with the peaceful possession of the plaintiffs over the suit land and also prayed for passing a decree to deliver vacant possession of the suit land to the plaintiff after evicting the defendants.

[5] The respondent side also filed written statement alleging that the suit of the plaintiff-petitioner is not maintainable as the same is barred by law of limitation and same is liable to be rejected. In his written statement, he further alleged that the petitioner has no legal right and locus standi to file the instant suit against the answering defendants. In paragraphs 11 of the written statement, he contended that the plaintiff filed the suit for declaration of right, title interest and recovery of possession but in paragraph No.5, the plaintiff stated that he is entitled to a decree declaring his right, title and interest over the suit land and confirmation of possession, so it is admitted fact that the plaintiff is in possession of suit land and as such the suit is liable to be dismissed.

[6] The learned Civil Judge vide order dated 14.09.2022 after hearing the learned counsel for the respective parties and after perusing amendment of plaint, dismissed the petition filed by the plaintiff inter alia contending that by allowing the new facts would change the original nature of the suit which would prejudice the opposite party and would only detriment the very purpose of dragging the case. The operative portion of the order is reproduced hereunder :

"After perusing the contents of schedule of proposed amendment of above mentioned application which they want to add in original plaint, it has observed that at this stage allowing these new facts will change the original nature of the suit and which will prejudice the opposite party and which only detriment the very purpose of justice by dragging the case. By such introducing new fact, plaintiff trying to delude the attention of the Court from the original fact of the case. Hence, the present prayer for the amendment of the plaint by the plaintiff side is rejected."

[7] Being aggrieved by the order of the trial Court, the petitioner filed this petition seeking the following relief :

"(i) It is, therefore, most humbly prayed that Your Lordships would graciously be pleased to issue Rule upon the respondents to show cause as to why the impugned order dated 14.09.2022 passed by the learned Civil Judge, Junior Division, Court No.3, Udaipur, Gomati District in Case No. Civil Misc 06 of 2022 arising out of T.S 13 of 2020 should not be quashed and/or set aside and as to

why the application dated 14.08.2022 filed by the plaintiff-petitioner under Order VI Rule 17 for amendment of the plaint of TS 13 of 2020 should not be allowed.

(ii) To pass such other order/orders so as to give full relief to the petitioner;

(iii) Pending disposal of this petition be pleased to pass an interim order staying further proceeding of case No. Title Suit No.13 of 2020 pending in the Court of learned Civil Judge, Junior Division, Court No.3, Udaipur, Gomati District till disposal of this petition."

[8] Mr. Raju Datta, learned counsel appearing for the petitioner contends that the impugned order is per se, perverse as it suffers from non application of mind. He further submits that the learned trial Court did not consider some very important facts which were not incorporated in the plaint as the plaintiff-petitioner was fully dependent on his engaged counsel. Counsel further stated that due to inadvertence of the engaged counsel, the plaintiff-petitioner should not be suffer irreparable loss. Subsequently, he prays for setting aside the order dated 14.09.2022 passed by the learned Civil Judge, Junior Division, Court No.3, Udaipur, Gomati District.

[9] On the other hand, Mr. Sankar Lodh, learned counsel appearing for the respondent No.1 vehemently opposed the petition contending that in the plaint, the particulars of suit land is specifically mentioned by the plaintiff in the Schedule of Suit land but by proposed amendment the plaintiff is trying to change the quantum of suit land and also the plaintiff is trying to add a new cause of action though the same is specifically mentioned in the plaint and prays for dismissal of the same.

[10] This Court is of the considered view that the present petition needs to be converted into Article 227 of the Constitution of India in the light of the judgment of the Apex Court. Accordingly, the present Civil Revision Petition filed under Section 115 of CPC is converted into Article 227 of Constitution of India in light of the judgment of the Apex Court in case of Raj Shri Agarwal @ Ram Shri Agarwal and another versus Sudheer Mohan and others, reported in 2022 LiveLaw (SC) 864.

[11] The only relief sought by the petitioner is with regard to the amendment petition and the court below has rejected the same. In the amendment petition the words appearing "recently" to be substituted "i.e. on 08.08.2020" and after four line from the top of paragraph No.2 after the word "suit land" following sentence be also substituted "i.e. land measuring 0.06 acres i.e. 3 gandas of land under khatian No.220 of Mouja-Hirapur, Sabek Dag No.PB 9353, RS Plot No.701."

[12] During the course of argument, Mr. Raju Datta, learned counsel appearing for the petitioner sought relief from this Court for filing fresh suit by withdrawing the same under Order XXXIII of CPC. Mr. Sankar Lodh, learned counsel appearing for the respondent has made preliminary objection to the merits of the case.

[13] After hearing learned counsel for the respective parties, this Court feels it appropriate that ultimate justice in the matter where property, rights of a citizen is involved, a reasonable opportunity needs to be given to both the parties. Accordingly, permission is granted. The present civil revision petition is disposed of giving liberty to the petitioner to file his application before the court below under Order XXXIII of CPC seeking to withdraw and file a fresh suit as per the process contemplated under Civil Procedure Code. In the event of such filing, the respondents are at liberty to raise all objections and considering the submissions of both sides, the court below shall pass a reasoned order, in accordance with law.

[14] Petition is disposed of with the aforesaid terms. Pending application(s), if any, also stands disposed of.