

HIGH COURT OF TRIPURA**A G A R T A L A****SAO No.01 of 2025**

1. Sri Bikash Chowdhury, son of late Narendra Kumar Chowdhury, resident of village Nalgaria, Ranir Bazar, P.S. & P.O. Ranir Bazar, District- West Tripura.

2. Sri Tapas Debnath, son of late Birendra Debnath, resident of Melarmath, Gangile Road, P.S. West Agartala, P.O. Agartala, 799001, District- West Tripura, Age- 49 years.

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

V E R S U S

Sri Ratan Debnath, son of late Radha Govinda Debnath, resident of village Mohanpur, P.S. Ranir Bazar, District- West Tripura.

..... *Defendant-Appellant-OP(s)*

For Appellant(s) : Mr. Tapas Kumar Deb, Advocate,
Mr. Biswajit Debnath, Advocate.

For Respondent(s) : Mr. S.M. Chakraborty, Sr. Advocate,
Mr. Uttam Kumar Majumder, Advocate,
Mrs. Pinki Chakraborty, Advocate.

HON'BLE THE CHIEF JUSTICE MR. M.S. RAMACHANDRA RAO

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01/08/2025

Heard Mr. Tapas Kumar Deb, counsel appearing for the appellants as well as Mr. S.M. Chakraborty, learned senior counsel appearing for the respondent.

[2] This SAO is filed challenging the order dated 03.03.2025 of the Additional District Judge, Court No.2, West Tripura, Agartala allowing an application under Order XLVII, Rule 1 CPC setting aside the previous order dated 25.01.2023 passed by the said Court in T.A No.22 of 2019 and giving opportunity to the respondent to adduce additional evidence of a Survey Commissioner.

[3] Admittedly, the application for adducing additional evidence which was filed by the respondent was considered on 25.01.2023 by the

Court of the Additional District Judge and he opined that the same would be considered at the time of hearing of appeal on merits so as to find out whether the evidence sought to be adduced has any relevance on the issues involved.

[4] This view is in conformity with the judgment of the Supreme Court in case of *State of Rajasthan versus T.N. Sahani and others*, reported in (2001) 10 SCC 619. In that case, the Supreme Court categorically held that the application under Order XLI, Rule 27 should be decided along with the appeal, and only if the Court then finds the documents necessary to pronounce the judgment in the appeal in a more satisfactory manner, it can allow the same; and if not, it has to be dismissed at that stage. It also prohibited expression of any view on the application before hearing of the appeal and held that it would be inappropriate to do so.

[5] When the respondent filed the review petition seeking review of the order dated 25.01.2023, the Additional District Judge on 03.03.2025 allowed the review petition and also allowed the respondent to adduce additional evidence of a Survey Commissioner.

[6] The Additional District Judge, who passed the order on 03.03.2025, in my opinion, has acted contrary to the judgment of the Supreme Court in case of *State of Rajasthan versus T.N. Sahani and others* (supra).

[7] Therefore, the SAO is allowed; order dated 03.03.2025 in Title Appeal No.22 of 2019 is set aside; order dated 25.01.2023 in the said appeal is restored; and anything done pursuant to the order dated 03.03.2025 has to

be held to be a nullity and cannot be acted upon by the Additional District Judge. Needless to say, at the time of hearing of the appeal, the application for additional evidence shall be considered as per the judgment of the Supreme Court after hearing both sides.

(M.S. RAMACHANDRA RAO, CJ)

