

HIGH COURT OF TRIPURA

AGARTALA

CRP 14 of 2020

1. Shri Nirmal Ch Ghosh

S/O. Late Ganesh Ghosh

Village Ganki, P.O. Ganki. Khowai,

District Khowai Tripura.

2. Shri Bimal Ghosh

S/O. Late Ganesh Ghosh,

Village Ganki, P.O. Ganki. Khowai,

District Khowai Tripura.

3. Smt. Sucharu Bala Ghosh

W/O Shri Badal Ghosh,

Village Ganki, P.O. Ganki, Khowai,

District Khowai Tripura.

4. Smt. Kalpana Ghosh (Biswas)

W/O Sri. Shyamal Biswas.

resident of Barjalla, P.O Barjalla, Agartala,

District West Tripura

5. Shri Biswajit Ghosh

S/O. Late Naresh Ch Ghosh.

resident of B.B.C Para. P.O Khowai.

District Khowai Tripura.

6. Shri Prasenjit Ghosh

S/O. Late Naresh Ch Ghosh.

resident of B.B.C Para. P.O Khowai.

District Khowai Tripura.

7. Smt Pratima Ghosh

W/O Late Subhash Ch Ghosh.

Village Ganki, P.O. Ganki. Khowai,

District Khowai Tripura.

8. Sri Mahitosh Ghosh

S/O Late Subhash Ch Ghosh.

Village Ganki, P.O Ganki. Khowai,

District Khowai Tripura.

9. Smt. Dipika Ghosh

D/O Late Subhash Ch Ghosh.

Village Ganki, P.O. Ganki. Khowai,

District Khowai Tripura.

10. Sri Prantosh Ghosh

S/O Late Subhash Ch Ghosh.

Village Ganki, P.O. Ganki. Khowai,

District Khowai Tripura.

-----Petitioner(s)

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Versus

1. Sri Partha Ghosh and Ors

S/O. Unknown. C/O Sri Kumod Sarkar,

Kalikapur, Agartala, P.O.Ramnagar. West Tripura.

2. Smt Chumki Das

W/O. Sri Partha Ghosh.

C/O Shri Kumod Sarkar. Kalikapur, Agartala,

PO Ramnagar, West Tripura

3. (i) Smt. Rekha Rani Dey (Roy)

W/O Late Debasish Ch. Roy,

Town Ganki, PO Ganki, Khowai,

District Khowai Tripura.

(ii)Miss Diya Roy

D/O Late Debasish Ch. Roy

Town Ganki, PO Ganik, Khowai,

District Khowai Tripura.

4. Shri Jadu Roy

S/O. Late Digendra Kr. Roy

Town Ganki, PO Ganki, Khowai,

District Khowai Tripura.

5. Shri Bimal Deb

S/O. Late Pushpa Ghosh

Lalcharra, P.O Khowai,

District Khowai Tripura.

6. Smt Reba Das

W/O Shri Bimal Deb

Lalcharra, P.O Khowai,

District- Khowai Tripura.

-----Respondent(s)

For Petitioner(s) : Mr. T. D. Majumder, Sr. Adv.

For Respondent(s) : Mr. S. Lodh, Adv.

Date of hearing : 04.01.2022

Date of delivery of

judgment & Order : 04.01.2022

Whether fit for reporting : No

HON'BLE MR. JUSTICE T. AMARNATH GOUD

Judgment & Order

It is the case of the petitioner that the respondent is not the son of the deceased Kshitish Ghosh and under the garb of certain Wills the respondent is selling the properties which is in dispute before the trial court

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and the application which is said to be dismissed seeking to get the DNA tested, the petitioner is before this court. The counsel for the petitioner submits that the first respondent is alienating the properties to third parties and nothing remains for the petitioners who are the siblings if they succeed

before the trial court.

[2] Counsel for the first respondent who claims to be the son of the deceased Kshitish Ghosh and his spouse Fulu Rani Ghosh submits that in his school records, and birth certificate and all documents indicates that the respondent is the son of the deceased Kshitish Ghosh and relied upon a judgment by the apex court in Goutam Kundu vs State of W.B and Another (arising out of S.L.P (Cri) No.2648 of 1992 decided on 14-05-1993) which says that in a routine manner the blood test need not be conducted to prove the genuineness of the parents.

[3] Heard both sides.

[4] It is not in dispute that the petitioners herein who are the petitioner-plaintiffs before the trial court that they are aware of the certificates like Birth Certificate, School Records, and certificate from Revenue Department, Aadhar Card, Ration Card and the certificate issued by the Magistrate to show that where it reflects the name of Partha Ghosh son of Kshitish Ghosh and Fulu Rani Ghosh remains unchallenged. The only attack of the petitioner-plaintiffs before the trial court is challenging the Will and to declare the petitioner-plaintiffs as legal heirs and not the first respondent, Partha Ghosh. Unless and until there is a challenge to the birth documents and school register to show that Kshitish Ghosh is not the father of the first respondent, Partha Ghosh, there cannot be any direction to get the DNA of first respondent tested to declare whether he is the son of the deceased Kshitish Ghosh and Fulu Rani Ghosh or not.

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[5] It is not for this court to go into the disputed question of facts when appropriate remedy is available to the parties. The concern expressed by the petitioners who are the siblings of the deceased that they have the vested right and interest over the properties of their biological brother as legal heirs and nothing remains if the first respondent and his spouse proceeds alienating the properties and create third party interest. It is not for this court to decide

this aspect.

[6] However, petitioners-plaintiffs are at liberty to move applications before the concerned court seeking appropriate remedy in support of their claim to protect the property. In the event of filing of any such application, it is for the court below to consider the same on its own merit without being influenced by the observation made by this court in this revision petition.

[7] For the reasons mentioned above, this court is not inclined to interfere with the present CRP and accordingly, the same stands dismissed and the orders passed by the trial courts are not interfered.

In view of the above, interlocutory application, lying pending, if any, stands disposed of.

Send down the LCRs forthwith.

JUDGE