

**HIGH COURT OF TRIPURA
AGARTALA**

RSA No.1 of 2022

Smt. Anjali Paulraj

W/O- Late Jusef Paulraj

Resident of Kunjaban, P.O- Kunjaban,

P.S- East Agartala, District- West Tripura

---Defendant-Appellant

Versus

Shri Sugrib Relly Singh alias Sugrib Kumar Relly

S/O- Ram Chandra Relly

Resident of Melarmath, P.O- Agartala,

District – West Tripura

Represented by Shri Gopal Chandra Das

Through Power of Attorney

S/O- Late Lalmohan Das,

Resident of Surjyamaninagar, Hatirlata,

P.S.- Amtali, District- West Tripura

---Plaintiff-Respondent

For the Appellant(s)	:	Mr. D. R. Chowdhury, Sr. Advocate Mr. D. Debnath, Advocate
For the Respondent(s)	:	Mr. D.C. Roy, Advocate
Date of hearing & Delivery of Judgment & Order	:	18.07.2023
Whether fit for reporting	:	No

HON'BLE MR. JUSTICE ARINDAM LODH

JUDGMENT & ORDER (ORAL)

Heard Mr. D. R. Chowdhury, learned senior counsel assisted by Mr. D. Debnath, learned counsel appearing for the defendant/appellant. Also heard Mr. D. C. Roy, learned counsel appearing for the plaintiff/respondent.

2. This is a second appeal preferred by the defendant/appellant against the judgment and decree passed by the learned first appellate

court as well as the trial court. At the time of admission of this appeal, following substantial questions of law had been formulated:-

“(I) Whether without ascertaining the actual quantum of land under the possession of a person duly purchased by registered Sale Deed and recorded in finally published Khatian an eviction decree can be passed against him on the basis of allegation made by a third party.

(II) Whether the Ld. Appellate Court below rendered its judgment totally perverse in the eye of law because of non-appreciation of the documents submitted from the side of the Appellant in support of her title and possession (Exhibit A, B, C).”

3. Briefly stated, the defendant/appellant had purchased a plot bearing no.- (sabek) 1142/4169 in the year 1974 from the Vendor Ramesh Chandra Sarkar. It is the case of the defendant/appellant that she purchased a plot of land from the vendor measuring 10 gandas and it is the case of the plaintiff/respondent that he purchased a land measuring 5 gandas from the same vendor and from the same plot of land bearing no.- (sabek) 1142/4169. The defendant/appellant took over physical possession of her land measuring 10 gandas after the purchase of the said in the year 1974. The plaintiff/respondent also took over physical possession after the purchase of his land in the year 1982, but, he had been residing at a place which was stated at a distance of 8 kilometers away from the suit land. The plaintiff/respondent found that the defendant/appellant had forcibly entered into his land and took over possession. Hence he filed the suit for declaration of right, title and interest and recovery of possession of the suit land.

3.1. During the course of trial and after exchange of pleadings between the parties to the suit, issues were framed and on the basis of those issues evidences were let in by the parties. Having heard the learned counsel appearing for the parties, the learned trial court decreed the suit in favour of the plaintiff/respondent.

3.2. It is the specific finding of the learned trial court that before filing of the suit a proceeding was initiated by the SDM who passed an order for demarcation. Accordingly, one Deputy Collector and Magistrate during demarcation process, demarcated the land of the plaintiff/respondent and the defendant/appellant.

3.3. During the course of trial, the said demarcation report had been put on evidence and the said report had been accepted by the court.

3.4. The relevant finding of the learned trial court may be produced hereinbelow, for convenience, *in extenso*:-

“The contention of the plaintiff also got a support by the inquiry report prepared by R.I., Sadar which admitted un-disputedly into evidence and was marked as exhibit.4. The relevant portion of the report of the R.I. reads as under:- “During demarcation the local people stated that whereas land of Anjali Palraj area matching with record map and physical 1st party Sri Sugrib Kumar Reli is absolute owner of R.S. Plot No.2032, L/M-0.10 acres and Anjali Palraj will must be released the illegal possession of R.S. Plot No.2032.

During completion of demarcation pillars could not be posted as the 2nd party Anjali Palraj does not agreed.”

3.5. A perusal of the above report under Exbt.-4 crystallizes that the defendant/appellant had taken over possession of R.S. Plot No.2032 belonging to the plaintiff/respondent illegally. When Exbt.-4 was introduced in evidence during the course of trial and a specific order had been passed by the learned trial court, the defendant/appellant neither raised any objection nor preferred any revision or appeal before the upper forum challenging the recording of such report into evidence.

3.6. Being aggrieved of the decree passed by learned trial court, the defendant/appellant preferred first appeal under Section 96 of the Civil Procedure Code, 1908, before the learned District Judge, West Tripura, Agartala. The learned District Judge after perusal of the documents and having considered the submissions of learned counsel appearing for the parties dismissed the appeal filed by the

defendant/appellant and upheld and affirmed the decree passed by learned trial court.

3.7. Hence, this second appeal before this Court challenging the decrees passed by the courts below.

4. Mr. Chowdhury, learned senior counsel has strenuously argued that no Survey Commissioner was appointed by the court to demarcate the land in question, and this Court in exercise of its jurisdiction under Section 100 of CPC should remand the case for the purpose of appointment of a Survey Commissioner to demarcate the land.

5. I am unable to accept this submission of learned senior counsel for the defendant/appellant as I said earlier, the defendant/appellant never raised nay objection when document was taken into evidence and marked as Exbt.4. The defendant/appellant has not preferred any appeal or revision before the competent court.

6. In the opinion of this Court, at this stage, the defendant appellant cannot question the genuinity of Exbt.4. Moreso, the question raised by learned senior counsel for the appellant is a question of fact which has been accepted by the courts below. This is a settled proposition of law that the court in exercise of its jurisdiction under Section 100 of CPC should be slow to interfere with the concurrent findings of fact, unless and until it appears to be patently perverse. I find no patent perversity in the findings of the learned courts below.

7. In addition, on a query made by this court, learned senior counsel for the appellant has submitted that boundaries mentioned in the sale deed and boundaries mentioned in the schedule of the plaint are correct, but he disputes the plot numbers.

8. This is a settled proposition of law that when there is dispute in the plot number, then, the boundary will prevail.

9. In the light of above observations and discussions, I do not find any merit in the instant second appeal. Accordingly, it is dismissed.

However, there shall be no order as to cost.

Send down the LCRs.

JUDGE

SAIKAT KAR
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by SAIKAT KAR
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Rohit



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