

**HIGH COURT OF TRIPURA
AGARTALA**

RSA No.4 of 2023

1. On the death of Late Nantu Ghosh,

S/O- Late Radha Ballav Ghosh,

His legal heirs and representatives:-

1(a). Smti. Niva Rani Ghosh,
W/O. late Nantu Ghosh.

1(b). Sri Biki Ghosh, Age 31 years
S/O. Late Nantu Ghosh

1(c). Sri Jeki Ghosh, Age 25 years
S/O Late Nantu Ghosh

All are residents of Dharmanagar,
P.O. & P.S. Teliamura,
District Khowai, Tripura.

---Appellant(s)

Versus

1. Sri Litu Acharjee,

S/O- Late Dinesh Acharjee,

Presently residing at Ward No.10

Algapur, Chararpar, Dharmanagar,

P.O. Dharmanagar, P.S. Dharmanagar,

District North Tripura, PIN-799250.

Represented by son, appointed General

Power of Attorney Sri Raju Acharjee,

S/O. Sri Litu Acharjee of Kali Tilla,

P.O. Teliamura, P.S. Teliamura,

District Khowai, PIN-799205,

As per GPA Deed No.00292 dated 26.03.2016,

Being No.00010, Sub-Registry Office Teliamura,

2. Sri Raju Acharjee,

S/O. Sri Litu Acharjee,

Resident of Kali Tilla, P.O. Teliamura,

P.S. Teliamura, District Khowai, Tripura.

- (son of the deceased Plaintiff).
3. **Smti. Doli Acharjee(Nama Das),**
D/O. Sri Litu Acharjee,
W/O. Sri Narendra Nama Das,
Resident of Matarbari, P.S. R.K. Pur,
District Gomati.
(daughter of the deceased Plaintiff).
4. **Sri Rajib Acharjee,**
S/O. Sri Litu Acharjee,
Resident of Kali Tilla, P.O. Teliamura,
P.S. Teliamura, District Khowai, Tripura.
(Son of the deceased Plaintiff).
5. **Smti. Rupa Acharjee(Chakraborty),**
D/O. Sri Litu Acharjee,
W/O. Late Tapas Chakraborty,
Resident of Ramnagar-8,
P.S. Ramnagar, Agartala,
District West Tripura.
(daughter of the deceased Plaintiff).
6. **Sri Sanjoy Acharjee,**
S/O- Sri Litu Acharjee
Resident of Kali Tilla, P.O. Teliamura,
P.S. Teliamura, District Khowai, Tripura.
(Son of the deceased Plaintiff).

---Respondent(s)

For the Appellant(s)	:	Mr. P. K. Dhar, Sr. Advocate Mr. R. Debnath, Advocate
For the Respondent(s)	:	Mr. Ratan Datta, Advocate Ms. K. Roy Barman, Advocate
Date of hearing and Delivery of Judgment & Order	:	22.05.2023
Whether fit for reporting	:	Yes

HON'BLE MR. JUSTICE ARINDAM LODH

JUDGMENT & ORDER (ORAL)

The present second appeal is directed against the judgment and decree dated 21.12.2022, passed in T.A. No. 13 of 2019 by the Ld. District Judge, Khowai District, Khowai upholding the judgment and decree dated 20.04.2019, passed in TS No.06 of 2016 by learned Civil Judge (Junior Division), Khowai.

2. The facts, as projected by learned first appellate court, may be produced here-in-below:-

“2. Factual backdrop leading to the instant appeal is that the suit land was allotted to the plaintiff respondent no.1 along with his deceased wife Anjali Acherjee (plaintiff no.2 of the original suit. Respondent no. 2 to 5 are the legal heirs of Anjali Acherjee. The Respondent No. 1 and respondent no 2 to 5 had been residing in the allotted land by constructing a house. In 2000 when the wife of respondent no.1 came to know about the second marriage of respondent no. 1 a matrimonial dispute cropped up between respondent no. 1 and his wife. Ultimately the respondent no.1 left his wife and his children. Then plaintiff no. 2 (now deceased) took shelter at her parental home with her children at Kalitalla, Teliamura. The house was given on rent to one Tanu Ghosh. Lt. Anjali Acherjee was a maid servant and had to depend on the rent. Tanu Ghosh resided in that house for a long period. As Lt. Anjali Acherjee was not financially sound she permitted Tanu Ghosh to construct a room on the suit land on condition that amount spent for the construction of the room would be adjusted with the rent. Tanu Ghosh committed suicide in the said house but his family continued to stay in the suit land as tenant. When the wife of Tanu Ghosh left the rented house the present appellant came in the house as tenant. He took the entire house on rent @ Rs. 2000/- per month. After that the appellant told the land lady about the urgent repairing works for which money was required. As the land lady expressed her inability

to invest money for repairing the house, it was decided that the tenant would repair the house and the repairing expenses would be deducted from the monthly rent @ Rs.1000/- and remaining. Rs. 1000/- would be given to the land lady. After completion of repairing works the appellant showed Rs. 1,25,000/- as expenditure then it was decided to deduct Rs. 1,000/- from monthly rent. By 1st October 2015 the total investment was adjusted. In November 2015 the landlady told the appellant to vacate the suit land as it was required for her elder son for dwelling. On 30.12.2015 the appellant denied to vacate the house. Hence, the original suit for declaration of right, title, interest and for recovery of possession against the appellant Nantu Ghosh. On the other hand the defendant appellant contested the suit by submitting written statement denying the allegation made by the plaintiff respondent and stating inter-alia that the suit is hit by Sec.106 and 111 of the transfer of Property Act (T. P. Act). The respondents are not the owners of the suit land. The fact is that on 03.08.1994 Sri Litu Acherjee and his deceased wife Anjali Acherjee transferred the possession of the suit land by executing an unregistered deed and handed over the physical possession of the suit land to one Pankaj Kr.Ghosh. After the death of Pankaj Kr. Ghosh the suit land was transferred by his legal heirs to the appellant through an unregistered sale deed on 26.05.2005. Since then the appellant has been possessing the suit land. It is alleged that the suit land had not been in possession of the respondents from 1994. The respondents sold the suit land in 1994.”

2.1 On the basis of aforesaid facts, the learned trial court had framed following issues:-

- “(i) Whether the instant suit is maintainable in its present form?*
- (ii) Who is having the possession of the suit land?*
- (iii) Whether the defendant was ever the tenant under the plaintiffs or paid any rent?*
- (iv) Whether the defendant is liable to be evicted from the suit land?*
- (v) Whether the plaintiffs have any title over the suit land?*
- (vi) Whether the plaintiffs are entitled to possession of the suit land?*
- (vi) Whether the plaintiffs are entitled to any other relief / reliefs?”*

2.2. The learned trial court on consideration of the evidence and materials on record decreed the suit in favour of the plaintiffs declaring the right, title and interest in favour of the plaintiffs and also had passed a decree asking the defendant to handover the possession of the suit land to the plaintiff.

2.3. Being aggrieved by and dissatisfied with the judgment and order passed by the learned trial court, the defendant had preferred first appeal before the court of the learned District Judge, Khowai, Tripura.

2.4. From the judgment of learned first appellate court, it comes to fore that while hearing the first appeal, the defendant-appellant had raised the following grounds to set aside the judgment and decree passed by the learned trial court:-

“(i) Ld Trial Court has committed serious error while passing the impugned judgment. The respondents filed the suit for recovery of possession under Section 5 of the Specific Relief Act, but in the plaint, the plaintiffs stated that the defendant-appellant is the tenant of the respondents. It is the provision of law that section 5 of the Specific Relief Act would come after termination of lease by the lessor, in this case lease between the parties was/is not terminated and the lease between the parties is in force and keeping the said lease in force, the lessee cannot be evicted by the lessor under section 5 of the Specific Relief Act.

(ii) Section 106 (1) of the Transfer of Property Act, mandates that in the absence of a contract or local law or usage to the contrary, a lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months notice, and a lease of immovable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days, notice but in this case no notice terminating the lease between the parties was served by the respondents. Therefore, the judgment passed by the Ld trial

Court finding the suit is maintainable as per law is perverse in the eye of law.

(iii) Section 106(4) of the Transfer of Property Act also mandates the every notice under sub-section (1) must be in writing, signed by or on behalf of the person giving it, and either be sent by post to the party who is intended to be bound by it or be tendered or delivered personally to such party, or to one of his family or servants at his residence, or not practicable affixed to a conspicuous part of the property but in this case, the said mandatory provision was not complied with. So, the finding of the learned trial court below that the suit is maintainable is perverse in the eye of law.

(iv) It is stated by the respondents in their plaint that the defendant-appellant was their tenant and he has been possessing the premises of long period but they have not given any notice under Section 106 of the Transfer of Property Act before instituting the suit. It is mandatory provision of law that without any notice when such suit is instituted, the suit should have been shot down at the threshold but the learned court has completely misconstrued the provision of issuance of notice under section 106 of the Transfer of Property Act is concerned and reluctantly the said suit has been held to be maintainable but the said finding is totally erroneous against law.

(v) Ld trial court has erroneously found that the suit is maintainable and no notice under section 106 of the Transfer of Property Act is required as it is not merely a suit for eviction of tenant or determination of tenancy, rather it is a suit for declaration of right, title and interest of the plaintiff-respondents and recovery of possession of the suit land but the learned trial court below failed to understand that unless the tenancy/lease between the parties is terminated the tenant cannot be evicted and the leasehold premises cannot be vacated from the hands of the tenants by applying section 5 of the Specific Relief Act.
 „

2.5. At para-5 of the said judgment, the first appellate court had observed thus:-

“5. The striking points as appear from the evidence on record that :-

i) *The main plea of the appellant is that he is the owner of the suit land as he purchased it from D.W.2 by way of an unregistered sale deed.*

ii) *From the Khatian no.2652(Exbt.1) it appears that the suit land was allotted to the respondent no. 1 Litu Acherjee and his deceased wife Anjali Acherjee and it could not be transferred without the permission of the collector.*

As per Sec. 43(3) of the Tripura Land Revenue and Land Reforms Act, 1960 (TLR & LR Act) every entry in the finally published Khatian (Record of Rights) shall be presumed to be correct unless the contrary is proved. There is no evidence on record which shows that there was permission of the collector to transfer the allotted land.

So, in view of the discussion made above specially in view of Section 43 (3) of the TLR & LR Act, the Ld Trial Court rightly decided that the respondents were the real owners and possessors of the suit land.

iii) *As the suit land could not be transferred without the permission of the collector, any kind of sale is void. So, the plea of the appellant as to the fact that the suit land was transferred to the appellant by way of unregistered sale deed cannot be considered.*

iv) *The appellant also took the plea that the instant suit is hit by Sec. 106 of T.P Act as according to the respondents the appellant was their tenant. So, a notice should have been issued U/S 106 of T.P Act.*

Here, the judgment passed by the Hon'ble Supreme Court in Rattan Lal Vs Vardesh Chander (AIR 1976 SC 588) is very much relevant. Hon'ble apex court clearly said that in a suit for the ejectment of tenant, where the landlord obtains decree for ejectment, it amounts to the termination of tenancy. Notice under S. 106 is not necessary.

So, in the instant case no notice U/S 106 of T.P Act is necessary.

6. During argument Ld Advocate of the respondents Mr. D Debnath submitted that in the written statement the appellant claimed that he is the owner of the suit land. In 1994 the plaintiff-respondent sold the suit land in consideration of money. In 2005 the appellant purchased the suit land from one Sabita Rani Ghosh by way of unregistered sale deed and accordingly he has been possessing the suit land from 2005. If it is so, why the appellant is taking the plea that the case is hit by Section 106 of Transfer of Property Act as according to the appellant there is no tenancy between the appellant and the respondents.

7. *The point raised by Ld. Advocate of the appellant is a mere technicality.*

Hence, I am of the view that Ld. Civil Judge (Jr. Div), Khowai rightly declared that the plaintiffs have right, title and interest over the suit land measuring 06 satak under Khatian No.2652, Mouja-Krishnapur (described specially in the schedule to the judgment) and also declared that the plaintiffs are entitled to recover their possession over the suit land measuring 06 satak under Khatian No.2652, Mouja-Krishnapur (declared specially in the schedule to the judgment) & the defendant is directed to vacate his illegal possession over the suit land at his own cost at the earliest.”

Having held so, the first appellate court had dismissed the appeal.

3. Feeling aggrieved by the judgment and decree passed by learned first appellate court, the defendant/appellant has preferred the instant second appeal before this Court.

4. At the time of admission of this appeal, this Court vide order dated 29.03.2023 had formulated the following substantial question of law:-

“Whether the findings of both the courts are perverse?”

5. On the basis of aforesaid substantial question of law, both the learned counsel appearing for the parties have agreed to proceed with the hearing of this appeal.

6. I have heard Mr. P. K. Dhar, learned senior counsel assisted by Mr. R. Debnath, learned counsel appearing for the defendant/appellant. Also heard Mr. Ratan Datta, learned counsel and Ms. K. Roy Barman, learned counsel appearing for the plaintiff/respondents.

7. Mr. Dhar, learned senior counsel for the defendant/appellant has submitted that in the instant suit the plaintiff have not sought for declaration of right, title and interest over the suit land and for this reason the suit for recovery of possession is not maintainable at all.

Another question, Mr. Dhar, learned senior counsel has raised that learned trial court has not framed any issue as regards the validity of the sale deed under which the defendant/appellant has claimed title.

Mr. Dhar, learned senior counsel has further submitted that the plaintiff has failed to establish their title over the suit land and for that reason they are not entitled for a declaration of right, title and interest over the suit land and cannot seek recovery of Khas possession of the said land from the defendant/appellant.

Mr. Dhar, learned senior counsel most emphatically submitted that Record of Right/Khatian does not confer title upon anyone.

8. On the other hand, Mr. Datta, learned counsel for the plaintiff/respondents has submitted that plaintiff/respondents have acquired the title of the suit on the basis of allotment. In the Khatian itself, the plaintiff/respondents have been shown as allottee.

9. It is apparent on the face of the record that learned trial court had framed specific issues as regards the title of the parties that “Whether the defendant was ever the tenant under the plaintiffs or paid

any rent?” and “Whether the plaintiff have any title over the suit land?”.

10. On the basis of above issues, I have taken into consideration the submission of Mr. Dhar, learned senior counsel as regards his plea which he raised in this second appeal that learned trial court had not framed any issue to substantiate the title of the defendant/appellant.

11. In my opinion, this question raised by learned senior counsel for the defendant/appellant is well covered within the issues “*Whether the defendant was ever the tenant under the plaintiffs or paid any rent*” and “*Whether the plaintiffs have any title over the suit land*”.

12. Most importantly, the defendant/appellant in his pleadings and evidence has clearly stated that he purchased the suit land from one Sabita Rani Ghosh by an unregistered sale deed and, by dint of that unregistered sale deed he became the owner and possessor of the suit land and denied his possession as tenant under the plaintiff/respondents.

13. After perusal of the records, I find that the defendant/appellant has failed to adduce any evidence that Sabita Rani Ghosh acquired any title at any point of time over the suit land.

No document had been introduced to substantiate the fact that Sabita Rani Ghosh was the owner of the suit land. On the other hand,

Plaintiff/respondents had introduced the Record of Right where their names have been shown as 'allottee'.

14. Furthermore, on these issues, both the courts below held that the defendant/appellant cannot claim title on the basis of an unregistered sale deed because Section 17 of the Registration Act clearly provides that a document having consideration money of more than Rs.100/- must be registered.

15. Mr. Dhar, learned senior counsel for the defendant/appellant has tried to persuade this Court that under Section 49 of the Registration Act, an unregistered sale deed can be used for collateral purpose to prove ones title.

16. I respectfully disagree with this submission of learned senior counsel for the reason that this aspect has specifically dealt with by the legislature in Section 49 of the Registration Act itself. By way of inclusion of proviso under Section 49 of the Registration Act, legislatures have made it clear that such unregistered document can be used for collateral purpose in a case of specific performance of contract, but not to use it for claiming title because of clear bar embodied in Section 17 of the Registration Act.

17. Both the Courts below held that Rule 12 of Tripura Land Revenue and Land Reforms(Allotment of Land) Rules, 1980 states that the allotted land will be heritable and not alienable without the written

consent of the collector granted on the recommendation of the advisory committee that may be set up by the Government . In the instant case the suit land is an allotted land and the Collector has not cancelled the said allotment within a reasonable period of time, that is, within 3(three) years from the date of allotment as held by this Court in a catena of judgments, hence, it cannot be transferred without the process of law as mentioned above.

18. In view of above discussion, I find no force in the submission of learned senior counsel appearing for the defendant/appellant that both the courts below failed to deal with the issue of title as regards plaintiff/respondents as well as defendant/appellant. Accordingly, this submission is repelled.

19. Now, coming to the question about the legal status of Record of Rights/Khatian, needless to say, Khatian is not a document of title, but, it provides a presumption of possession on behalf of a party unless and until it is rebutted by appropriate evidence. However, in the case at hand, in the Khatian there is clear mention that the plaintiff/respondents are the allottee of the suit land. Section 43(3) of the Tripura Land Revenue and Land Reforms Act, 1960 clearly states that every entry in the Record of Rights as finally published shall be presumed to be correct unless the contrary is proved. Section 43(3) of TLR and LR Act may be reproduced hereunder:-

“(3) Every entry in the record of rights as finally published shall, until the contrary is proved, be presumed to be correct.”

There is absolutely no evidence that this record of right created in favour of plaintiffs/respondents has ever challenged by the defendant/appellant to dispute the title of the plaintiffs/respondents.

20. In the light of above discussion, I may unhesitantly come to a conclusion that the defendant/appellant herein has failed to adduce any evidence to controvert or dispute the Record of Right created in favour of the plaintiffs/respondents. As such, it can easily be said that the plaintiffs/respondents have acquired title by dint of allotment.

For the reasons stated and the analysis made on legal issues here-in-above, I do not find any material in the instant case, to interfere with the judgments and decrees passed by the courts below.

Accordingly, the instant second appeal stands dismissed.

However, there shall be no order as to costs.

Send down the LCRs forthwith.

JUDGE