

HIGH COURT OF TRIPURA
AGARTALA
RSA 16 of 2022

1. Shri Manash Banik, son of Sri Shital chandra Banik, resident of North Maheshpur, Kathalia, P.S. Jatrapur, Sonamura, District- Sepahijala, Tripura

2. Shri Shital Chandra Banik, son of late Pran Gouranga Banik, resident of North Maheshpur, Kathalia, P.S. Jatrapur, Sonamura, District- Sepahijala, Tripura

3. Smt. Sankari Banik, wife of Sri Sital Chandra Banik, resident of North Maheshpur, Kathalia, P.S. Jatrapur, Sonamura, District- Sepahijala, Tripura

4. Shri Tapan Kanti Banik, son of late Rasaraj Banik, resident of North Maheshpur, Kathalia, P.S. Jatrapur, Sonamura, District- Sepahijala, Tripura, presently residing at 111, Professors Lake, Parkway, Branton, Ontario, L654PH, Canada, represented by Smt. Sankari Banik (Appellant no. 3)

... Defendant-Appellants

VERSUS

Sri Milan Kanti Banik, son of late Rasaraj Banik, resident of 24/B Old Kalibari Lane, Krishnanagar, P.O. Agartala-799001, P.S. West Agartala, District- West Tripura

... Plaintiff-Respondent

For Appellant (s)	:	Mr. SS Debnath, Advocate
For Respondent (s)	:	Mr. PK Dhar, Sr. Advocate Mr. R. Debnath, Advocate
Date of hearing and delivery of judgment order	:	26.05.2023
Whether fit for reporting	:	No

HON'BLE MR. JUSTICE ARINDAM LODH
JUDGMENT & ORDER (ORAL)

Heard Mr. SS Debnath, learned counsel for the appellant. Also heard Mr. PK Dhar, learned senior counsel assisted by Mr. R. Debnath, learned counsel for the respondent.

2. This second appeal has been filed under Section 100 of CPC against the judgment and decree dated 22.12.2021 passed by the learned District Judge, Sepahijala, Tripura in Title Appeal No. 05 of 2020 affirming the

judgment and decree dated 20.12.2019 passed by the learned Civil Judge, Senior Division, Sepahijala District, Sonamura in T.S. 25 of 2015.

3. At the time of admission of the appeal, by order dated 12.04.2022, this court has formulated the following substantial question of law:

“Whether the Judgment and Decree of the Courts below are perverse for not deciding on evidence the question of “possession” of the entire ‘A’ Schedule land in spite of assertion and denial of this fact by the parties in their pleading?”

4. Briefly stated, the facts, as narrated by the learned trial court are as under:

The facts of the plaintiff's case, in a nutshell, is that plaintiff became the owner of the ‘A’ scheduled suit land measuring 0.62 acre appertaining Khatian No. 552/1 of Moza Mahespur, Tahashil Kathalia within Sonamura Subdivision by way of purchase from three owners namely, Indra Mohan Dey by dint of registered sale deed No. 1807 dt. 26.2.1982, from Jotirmoy Chakraborty by dint of registered sale deed No. 11966 dt. 31.05.1982 and from Dulal Chandra Debnath by dint of registered sale deed No. 11314 dt. 7.05.1983 and by dint of one gift deed No. 11340 dt. 30.03.1982 executed by Rasharaj Banik (father of plaintiff) with delivery of possession. Name of plaintiff was duly muted in the Khatian No.552/1. Plaintiff purchased another plot of land measuring 0.22 acre from one Sudhir Chandra Dey which was subsequently sold out by him. According to plaintiff defendant No.3 is his fullblooded sister while defendant No.2 is her husband and defendant No.1 is the nephew. Defendant No.1 was inducted into the ‘B’ schedule, suit land as a lessee by executing one registered deed of lease No.1602 dated 14.05.2003 for a period of 5 years on monthly rent basis and as per this agreement defendant No.1 was to vacate the ‘B’ schedule suit land after expiry of 5 years from the

date of lease. It is also alleged that defendant No.1 did not pay the monthly rent in terms of the lease deed, rather he constructed one hut over the lease property illegally without consent of plaintiff and despite this he did not vacate the 'B' schedule suit land and became an unauthorized occupier of that land and he is liable to be evicted. It is further narrated that defendants No. 2 & 3 were instigating defendant No. 1 in this regard.

The next contention of the plaintiff is that he is now required to vacate the 'B' schedule suit land for his bonafide personal use i.e for starting a business over this. Plaintiff also made demand to defendants for vacating this suit land after expiry of the period of lease deed and despite request of plaintiff in May 2008 and in the first part of 2009 to vacate the 'B' schedule suit land, Defendant No.1 again sought time to vacate the same but he could not keep the assurance. Ultimately defendant No. 1 was requested to vacate the 'B' schedule land in December 2013 when he denied the right, title & interest of plaintiff over this land while advocate demand notice for vacant possession was also served to him twice on 15.5.14 and 12.12.14 but no response made. Thereafter defendant No. 2 and 3 also threatened plaintiff in the first week of January 15 causing disturbance to him that gave rise to the cause of action of the suit. Plaintiff claimed his right, title & interest over 'B' schedule land which has been possessed by defendants illegally. Plaintiff also submitted one written objection on 07.01.15 to the Kathalia Electric Office raising objection to the attempt of defendant No.1 to get Electric connection over the 'B' scheduled suit land. 'B' scheduled suit land being the part and parcel of 'A' schedule suit land and title of plaintiff on 'B' scheduled suit land being disputed by defendants, cause of action for the suit arose. With this backdrop of facts plaintiff sought the relief of declaration of his title on the 'A'

schedule suit land along with consequential relief of recovery of possession over 'B' schedule suit land evicting defendants there from.

5. The defendant after receipt of summons appeared and contested the suit by filing written statement wherein he had categorically denied all the assertions of the plaintiff, and particularly, claimed that he acquired title and possession over the suit land.
6. After going through the evidences on record, the learned trial court decreed the suit in favour of the plaintiff. The order passed by the learned trial court may be reproduced here-in-below:-

"In the result, it is hereby held that the plaintiff has succeeded to establish the cause of action for the suit against the defendants and the suit is allowed and decreed on contest with cost with declaration that plaintiff has got right, title and interest over the "A" schedule suit land. Plaintiff is also entitled to get recovery of vacant possession of the "B" schedule suit land evicting the defendants there from.

Defendants No. 1, 2, 3 & 4 and/or their men or agent are hereby directed to hand over the vacant possession of the "B" schedule suit land in favour of plaintiff removing all obstructions there from within 45 days from this date.

Prepare decree accordingly and place it before me for signing within 14 days.

The suit is thus disposed of on contest.

Make necessary entry in the relevant Trial Register.

The record shall be consigned to the Record Room after due compliance."

7. Against the said decree, the defendants have preferred first appeal before the learned District Judge, Sepahijala District, Sonamura. Having heard the learned counsel appearing for the parties and after perusal of the evidences and materials on record, the learned District Judge dismissed the appeal with certain observations upholding the judgment and decree passed by the learned trial court. While dismissing the appeal, the learned first appellate court has held as under:

“On perusal of the evidence on record it is also found that the suit land as mentioned in A-schedule of the plaint is recorded in finally published Khatian No.552/1 vide Exhibit-9 Section 43(3) Tripura Land Revenue & Land Reforms Act, entries in the finally published record of right shall be presumed to be correct unless contrary is proved. But the evidence on record shows that the defendant-appellants could not establish that the entries in Khatian (Exhibit-9) are incorrect or manipulated. Therefore, those entries in the record of right have clearly established the title of the plaintiff in respect of those plots of land considering his title deeds (Exhibit-1 to Exhibit-4). Moreover, Section 90 of the Evidence Act, clearly and convincingly proved the genuineness of title deeds marked Exhibit-1 to Exhibit-4 which the plaintiff got for a valuable consideration and obtaining the possession thereof from the respective vendors. The defendant-appellants also failed to establish by giving any better evidence showing that those instruments were executed by dint of fraud or misrepresentation and as such the findings of the Ld. Court below in that aspects are based on evidence on record and as such it deserves no interference.”

8. Feeling aggrieved by the judgment and decree passed by the learned first appellate court affirming the judgment and decree passed by the learned trial court, the defendants have preferred the instant second appeal before this court.

9. This court does not find any infirmity in the judgment passed by the learned courts below whereby and whereunder both the courts below decreed the suit in favour of the plaintiff declaring his right, title and interest and possession and subsequent dispossession from the “B” Schedule land.

10. Before this court, Mr. SS Debnath, learned counsel for the defendant-appellants submits that there was no issue framed by the learned courts below to find out who is in actual possession over the ‘A’ schedule land.

11. In my opinion, this submission needs no consideration for the reason that the defendants have failed to prove their possession over the ‘A’ schedule land. Moreso, the defendant-appellants were well aware of the issues framed by the learned trial Court. They never prayed for framing any

additional issues during the course of trial. So, the defendant-appellants are estopped and acquiesced to raise this question before this Court at this belated stage. It is noticed that the issue framed by the learned trial Court are well covered with the question raised by learned counsel for the appellants regarding the question of possession of the parties over the Scheduled land.

12. Mr. Debnath, learned counsel has strenuously argued that actually the defendants have been in continuous possession over the 'A' schedule land.

13. If this submission of Mr. Debnath, learned counsel is correct, then, there is no threat to the defendant-appellants regarding their possession over the 'A' schedule land because the plaintiff has not sought for recovery of the possession of 'A' schedule land from the defendants and naturally the decree passed by the learned courts below confirming the possession of the plaintiff over the land of 'A' schedule will be inexecutable. However, both the courts below held that the plaintiff is the possessor of 'A' schedule land besides his title.

14. In the light of above discussion, the instant second appeal stands dismissed.

Send down the LCRs.

Pending application(s), if any, also stands disposed.

JUDGE