

**HIGH COURT OF TRIPURA
AGARTALA**

RSA No.6 of 2021

Smti. Bijali Sinha

D/o Lt. Bashudev Sinha,
Resident of Vill- Ichabpur,
P.S. Kailashahar, P.O.- Ichabpur,
District-Unakoti Tripura

---Defendant No.1 Appellant(s)

Versus

1. Md. Chalek Miah

S/o Lt. Noor Miah
Resident of Vill- Pakhirbadar,
P.S. Kailashahar, P.O.- Ichabpur,
District- Unakoti Tripura

---Plaintiff Respondent

2. Sri Surajit Sinha

S/o Lt. Surendra Sinha,
Resident of Vill- Ichabpur,
P.S. Kailashahar,
District- Unakoti Tripura

3. Md. Kanachir Ali,

S/o Lt. Makchud Ullah,
Resident of Vill- Bongao,
P.S. Kailashahar,
District- Unakoti Tripura

4. Md. Askar Ali,

S/o Lt. Siddek Ali,

5. Md. Amjad Ali,

S/o Lt. Siddek Ali,

6. Md. Takdir Ali,

S/o. Lt. Siddek Ali,
Resident of Vill- Pakhirbadar,
P.S. Kailashahar, P.O.- Ichabpur,
District- Unakoti Tripura.

---Defendant Performa Respondents

For the Appellant(s)	:	Mr. D. R. Chowdhury, Sr. Advocate Mr. S. Sarkar, Advocate
For the Respondent(s)	:	Mr. H. Deb, Advocate
Date of hearing & Delivery of Judgment & Order	:	20.03.2023
Whether fit for reporting	:	Yes

HON'BLE MR. JUSTICE ARINDAM LODH

JUDGMENT & ORDER (ORAL)

This is a second appeal preferred by the original defendant against the judgment and decree dated 17.02.2021, passed by the first appellate court in Title Appeal No.23 of 2019, whereby and whereunder the appeal preferred by the original plaintiff was allowed and decreed accordingly.

2. Facts:

2.1 Plaintiff's case, in brief, is that the suit land along with some other land, in total 2.27 acres originally belonged to one Dhanamoni Sinha as an allottee. During his lifetime Dhanamoni Sinha transferred the land measuring 1.07 acres to one Kukileswar Sinha by registered deed no. I-1278, dated 14.04.1982 and land measuring 1.20 acres were transferred to one Ratna Sinha vide registered deed no. I-1279 dated 14.04.1982. Subsequently, Ratna Sinha again transferred it to Kukileswar Sinha by registered deed no. I-2672, dated, 09.02.1986.

Accordingly, the said land was mutated in the name of Kukileswar Sinha. After expiry of Kukileswar Sinha, the said land including the suit land was owned by his legal heirs and was also mutated in their name vide Khatian no.287. The said legal heirs of Kukileswar Sinha after obtaining the sale permission from the District Collector transferred the suit land to the plaintiff, Chalek Miah vide registered deed no.I-959, dated 16.06.2004 and since then plaintiff has been possessing the suit land.

2.2 But recently, the defendants, having no right title, interest or possession over the suit and just to harass the plaintiff, filed a case under Sections 145/146 of Cr.P.C. before the SDM Kailashahar in respect of the suit land and, accordingly, the SDM has attached it. Hence, by filing the case under 145 of Cr.P.C. in respect of the suit land, defendants disturbed the plaintiff's peaceful possession and legal right, title over the suit land. Hence, the instant suit is filed by the plaintiff with the following prayers:-

"(a) Granting declaration to the effect that, the plaintiff is the rightful owner and he has right, title and interest in the suit land.

(b) Granting declaration to the effect that the plaintiff is entitled to get the restoration of possession of the suit land.

(c) Granting all other relief deemed fit & proper.

(d) Granting full cost of litigation."

2.3 After institution of the suit, process was served and accordingly defendants appeared and contested the suit by filing written statement.

2.4. In the written statement, all the defendants denied the plaintiff's case and defendant no.3, Kanachir Ali, stated that the suit land is owned and possessed by him on the strength of registered kawala bearing No.1-1551, dated 03.06.1992 executed in his favour by Dhanamani Sinha and he was possessing the said suit land by growing segun and betel nut trees thereon.

2.5 On the other hand, defendants no.1, 4, 5 and 6, inter alia, stated that actually there were two numbers of fisheries within the suit land and one of the fisheries was owned and possessed by defendant no.1 with her co-sharers and heirs of deceased brother of defendant no.1. But, none of them was made party to the instant suit. Hence, the suit is liable to be dismissed for non-joinder of necessary parties. It is also stated that plaintiff is trying to grab the fishery of defendant no.1 wrongfully and earlier also he tried to dispossess the defendant no.1 therefrom. Hence, the suit is liable to be dismissed with cost.

3. During the course of trial, the following issues were framed:-

- “(i) *Has there any cause of action for the instant suit?*
- (ii) *Whether the suit is maintainable or not?*

(iii) *Is the plaintiff entitled to get the decree/relief as prayed for?*

(iv) *What other relief the parties are entitled to get?"*

4. Before institution of the present suit, due to apprehension of serious breach of peace the Sub-Divisional Magistrate, Kailashahar in a proceeding under Section 146(1) Cr.P.C. had passed an order of attachment dated 13.04.2007. This order of attachment forced the plaintiff to institute the present Civil Suit and gave rise to the cause of action. The plaintiff in support of his right, title and interest had brought into record the allotment order issued by the DM and Collector, North Tripura, at present Unokoti District.

5. Thus, the plaintiff (Chalek Miah) in support of his right, title interest over the suit land had brought into record the sale deed dated 16.06.2004 being deed no.1-959. He also brought into record the Khatian, i.e., record of right prepared in his name. The suit land was originally belonged to Dhanamoni Sinha as an allottee. He transferred the entire land to one Kukileswar Sinha and Ratna Sinha vide registered deed No.1-1278 dated 14.04.1982 and deed No.1-1279 dated 14.04.1982, respectively.

6. Thereafter, Ratna Sinha had transferred the land by way of sale to Kukileswar Sinha. All those sale deeds were brought into record and were duly executed in accordance with the relevant provisions of the Indian evidence Act.

7. After hearing learned counsel appearing for the plaintiff and the defendants, the learned trial court had come to a finding that record of rights (Khatian), being created in favour of the allottee and in favour of subsequent purchasers including the plaintiff which have raised the presumption that the plaintiff which along with his venders have been possessing the suit land since the order of allotment.

8. On consideration of the materials on record and the evidence thereof, and after hearing the arguments of learned counsels appearing for the parties, learned trial court had dismissed the suit by judgment dated 29.03.2019 and decree dated 02.04.2019.

9. The plaintiff preferred first appeal before the learned Addl. District Judge, Unakoti Judicial District, Kailashahar. The said first appeal filed by the plaintiff was allowed by the first appellate court setting aside the judgment dated 29.03.2019 and decree dated 02.04.2019.

10. Being aggrieved by and dissatisfied with the said judgment and decree passed by the first appellate court, the defendant no.1 i.e. the appellant, herein has presented the present second appeal before this Court. At the time of admission of this appeal, following substantial questions of law were formulated by this Court:-

“(i) When the defendants were in possession over the suit land before the land was allotted in the name of the

predecessor of the plaintiff, can such allotment have any force in law?

- (i) *Whether the interpretation in respect of the condition of allotment emanating straight under Rule 12 of the Tripura Land Revenue and Land Reforms (allotment of Land) Rules, 1980 can be sustained, inasmuch as a statutory prohibition which provides that without prior permission of the collector allotted land cannot be transferred or can it be interpreted that for violation of the Rule 12 of the said Rules the transaction cannot be held void?"*

11. On the basis of aforesaid substantial questions of law, I have heard Mr. D. R. Chowdhury, learned senior counsel assisted by Mr. S. Sarkar, learned counsel appearing for the appellant and Mr. H. Deb learned counsel appearing on behalf of the respondents.

12. The first contention of Mr. Choudhury, learned senior counsel is that whether the Collector has committed an error in allotting the land in favour of Dhanamoni Sinha when defendants were in possession of the land allotted.

13. I find that at no point of time that there was any such issue in this regard. So, it will not be proper for this court to exercise its jurisdiction under Section 100 of CPC and should not enter into this aspect. However, being pressed by learned senior counsel appearing on behalf of the appellant, in the opinion of this court, this point could have been raised by the appellant (the defendant) at the

very initial stage when the allotment order was issued by the DM & Collector, North Tripura in favour of Dhanamoni Sinha, the original allottee of the suit land. It is pertinent to mention herein that the suit land was allotted before the year 1980 in favour of Dhanamoni Sinha and the allotment order was not challenged at any point of time. Hence this submission of learned senior counsel is not taken into account while deciding this appeal being devoid of any substance.

14. *Secondly*, the learned senior counsel has emphatically submitted that Rule 12 of the Tripura Land Revenue and Land Reforms (Allotment of Land) Rules, 1980 has been breached by Dhanamoni Sinha while transferring the suit land to Kukileswar Sinha and Ratna Sinha.

15. In the opinion of this Court, this plea only could have been agitated by the Collector itself and not by the defendant. The Collector allotted the land in favour of Dhanamoni Sinha before the year 1980, who transferred the suit land in favour of said Kukileswar Sinha and Ratna Sinha in the year 1982. Presumption is that, Collector did not think it necessary to cancel the said sale deeds which were executed without prior permission of the collector. This is also established principle pronounced by this Court in a catena of judgments that the Collector may cancel any allotment order issued by him within a reasonable period in case of any breach of the conditions

mentioned in the Allotment Rules, 1980 and said reasonable period must be within 3 years of the date of allotment.

16. The relevant part of Rule 12 may be reproduced here-in-below, for convenience, in *extenso*:-

“12. Conditions of allotment

(1) Any allotment of land under sub-section (1) of section 14 and in accordance with these rules, shall be further subject to the following conditions and also the condition specified in the allotment order which shall be, as nearly as possible, in the form at Appendix- ‘B’:-

(i) The land will be heritable but 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:

Provided that the land may be mortgaged to the Government, or a co-operative society or a bank or such institution as may be noticed in the Official Gazette by the State Government from time to time ;

*(ii) ******

*(iii) ******

*(iv) ******

*(v) ******

(vi) The allotment will be liable to be cancelled for breach of any of the provisions of the Act, the rules or any of the conditions of allotment.”

17. On plain reading of the above provisions, it becomes apparent that Allotment Rules, 1980, *nowhere provides that the sale*

without the permission of the Collector would be ipso facto invalid and non est.

(emphasis supplied)

18. In my opinion, it is merely a condition that allotted land cannot be sold or alienated without the written consent of the Collector. The consequence of breach of any of the conditions of Rule 12 is also provided. Clause (vi) of Sub Rule 1 of Rule 12 clearly provides that for violation of any of the provisions of the Act, the Rules or any of the conditions mentioned in the allotment order, competent authority can cancel the allotment. Rules do not provide that sale in violation of condition of allotment, without permission of Collector would be *ipso facto ab void initio* and *non est*.

19. In the instant case, the suit land was transferred by way of “sale” by Dhanamoni Sinha to Kukileswar Sinha and Ratna Sinha on receipt of determined consideration money mentioned in the sale deed. As soon as the execution and registration of the sale deed is complete the ownership of the suit land was transferred to the buyer.

Section 17 of the Registration Act, 1908 provides sale of an immovable property having value more than Rs. 100/- must be registered.

“Sale” is defined under Section 54 of Transfer of Property Act, 1882, which reads as under:

“Sale”, is a transfer of ownership in exchange for a price paid or promised or part paid or part/promised.

20. From the sale deeds, it comes to fore that sale deeds were transacted on payment of consideration of money and there were no disputes in this regard. According to sale deeds, the buyers of those deeds came into possession and consequent to their possessions over the suit land, Khatians i.e. record of rights were also prepared by the Government following relevant provisions under the Tripura Land Revenue & Land Reforms Act, 1980.

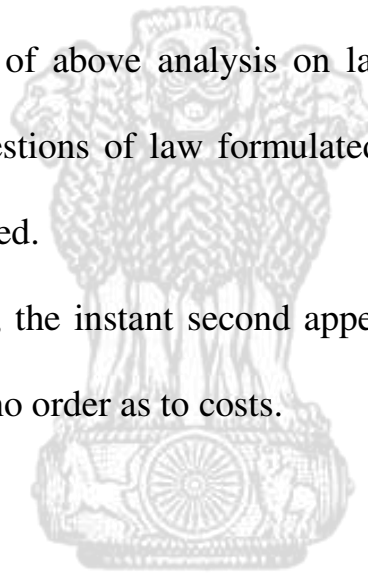
21. It will be useful to mention herein that before final preparation of record of right in the name of a person, the authority concerned had to follow different stages. These are “Khanapuri”, “Bujharat”, “Attestation” and “Final Publication”. At no stage the defendant had raised his objections and on due enquiry having found the purchasers of the sale deeds, that is, Kukileswar Sinha and Ratna Sinha in possession, records of right (Khatian) were created in favour of them.

22. In view of the aforesaid discussions, upon Rule 12 of Allotment Rules, 1980 it can clearly be held that sale without permission of Collector will not be void *ab initio* and *non est* unless such allotment is cancelled by the Allotment Authority within a reasonable period of time, i.e. within 3(three) years of the sale

transaction. A sale deed cannot automatically be said to be void for violating a condition mentioned in the Allotment Rules or any of the conditions mentioned in the allotment order. In other words, if an allottee breaches any of the terms and conditions of allotment or any rule governing the allotment, in that case, it is absolutely within the domain of the Allotting Authority to cancel the allotment, but, for such reason, it will not be wise to hold that the sale deed executed and registered in accordance with the law of the land should be treated as void and *non est*.

23. In the light of above analysis on law coupled with the facts, the substantial questions of law formulated by this court have been answered and decided.

As a sequel, the instant second appeal stands dismissed. However, there shall be no order as to costs.



सत्यमेव जयते

JUDGE