

**HIGH COURT OF TRIPURA
AGARTALA**

RSA No.1 of 2021

Sri Gouranga Debnath
S/O-Lt. Jagadish Debnath
Resident of Joykatpur,
P.S. Belonia, Dist: South Tripura.

....Plaintiff-Appellant(s)

Versus

1. Sri Biswajit Malakar
S/O-Lt. Lilu Malakar,
2. Smt. Kajal Malakar (Datta)
W/O Sri Mana Datta D/O Lt. Lilu Malakar,
3. Sri. Bijali Malakar (Dey)
D/O Lt. Lilu Malakar,
All of Joykatpur,
P.S.Belonia, Dist: South Tripura.

....Defendant-Respondent(s)

For the Appellant(s)	:	Mr. D. Sarma, Advocate
For Respondent(s)	:	None
Date of hearing and delivery of judgment and order	:	22.03.2023
Whether fit for reporting	:	Yes

HON'BLE MR. JUSTICE ARINDAM LODH

Judgment and Order (Oral)

This is a second appeal filed against the judgment and decree dated 04.05.2020 passed by learned First Appellate Court in Title Appeal No.11 of 2019 whereby and whereunder the learned First Appellate Court

confirmed the judgment and decree dated 13.02.2019 passed in TS 14 of 2012 by the learned Civil Judge, Junior Division, Belonia, South Tripura.

2. The facts of the case as projected by learned trial Court may be reproduced here-in-below:

“[2] The case of the plaintiff in brief is that the father of the plaintiff was a Baishnab and by the income of day to day begging he grown up the plaintiff and later on while the plaintiff started income by dint of daily labour and barga cultivation after accumulating some money on 24.12.2001 he entered into an agreement with the father of defendant no.1 namely Lt. Lilu Malakar in the style of Nadabi for 0.40 decimal of land comprised in Khatian no.1133, RS (Plot) no.4443, T.K Sarashima, Mouja Bashpadua and the said Nadabi was executed by the predecessor of the defendants late Lilu Malakar (now deceased) and defendant no.1 writing the contents that due to the cause of marriage ceremony of the daughter of Lt. Lilu Malakar he took Rs.7500/- from the plaintiff and bequeathed possession of 0.40 decimals of land from R.S Plot no.4443 of Mouja Bashpadua with a condition that none of the successor of Lilu Malakar shall be able to claim the above 0.40 decimals of land and if they do so then it shall be treated as illegal. It was also written in the nature of agreement that as per government rules in the land shall be registered later on in the name of the plaintiff and thereafter on promissory transfer of said un-registered Nadabi agreement the plaintiff started to possessing the land by constructing house thereon and permanently residing there since 24.12.2001 which was situated at TK Sarashima, Mouja Bashpadua, by paying Rs.7500/-. During the life time of Lt. Lilu Malakar the plaintiff approached him to get

registered sale deed and also helped him in many ways to regularize the Nadabi to have permission from collector for transfer the land but unfortunately Lilu Malakar died and thereafter the plaintiff requested the defendants to have transfer of 0.40 decimals of land as per Nadabi but the defendants showing this or that ground did not comply the same and in the meantime the plaintiff developed the land by constructing home and hut thereon and the defendants being greedy tried to sell the land and also filed a case bearing no. TS.48/09, dated 12.08.2009 against the plaintiff which was decreed on exparte in favour of the defendants and then the plaintiff filed a revision petition before the Hon'ble Guwahati High Court, Agartala Bench for stay order of execution.

[3] On receipt of notice the defendant no.2 appeared and filed written statement but the suit proceeded exparte against the defendant no.1 and 3. In the written statement defendant no.2 denying all the assertions of the plaintiff and stated that the actual fact of the case is that the father of the defendants is the owner of the suit and including other lands which was under his possession and after the death of his father all the defendants became the actual owner and possessor of the suit land including other lands in Mouja Bashpadua, T.K. Sarashima, Khatian no.1133 plot no.4443 for which they filed a suit against the plaintiff for declaration of title and recovery possession vide case no.TS. 49/09 which they got decree on 25.11.2009 and subsequently being the decree holders filed an execution case vide no.Exe(T) 01 of 10 against the plaintiff but the plaintiff file a revision before the Hon'ble Gowahati High Court, Agartala Bench which is under

adjudication. Hence, the defendants prayed for dismissed the suit with cost.”

3. Mr. D. Sarma, learned counsel appearing for the appellant drawing my attention to the Memo of appeal has submitted that this Court in the said revision petition bearing CRP No.65 of 2010, titled as *Sri Gouranga Debnath vs. Biswajit Malakar & 2 Ors*, by judgment and order dated 29.01.2015, remanded the matter for recording evidence of the appellant who was the defendant in TS 48/09, setting aside the *ex parte* decree dated 25.11.2009. Thereafter, the respondents of the present appeal i.e. the plaintiffs of TS 48/09 did not appear before the court and the suit was dismissed for default.

4. It is also evident from the record that during the pendency of TS 48/09 instituted by the respondents of the present appeal, the appellant of the present appeal instituted the present suit bearing no.TS 14 of 2012. The respondents of the present appeal i.e. the defendants of TS No.14 of 2012 appeared and contested the suit by filing written statement.

5. Upon hearing the parties on material proposition of law and facts, the learned trial Court framed the following issues:

- “i) Whether the suit is maintainable in its present form?*
- ii) Whether the predecessor of the defendant has entered into contract for specific performance as contained in the Nadabi?*
- iii) Whether there is any other relief to be given to the plaintiff?”*

6. On the basis of the above issues, both the contesting parties adduced their respective evidences and exhibited the relevant documents

including the “Nadabi Patra”, i.e. the Deed of Relinquishment and Khatian i.e. Record of Right created in favour of the father of the respondents.

7. Upon hearing the arguments of learned counsel appearing for the parties and on consideration of the materials on record, the learned trial Court dismissed the suit filed by the plaintiff (the appellant of the present appeal).

8. Feeling aggrieved, the plaintiff/appellant preferred first appeal before the Court of learned District Judge, South Tripura, Belonia which was registered as TA No.11 of 2019, titled as *Sri Gouranga Debnath vs. Sri Biswajit Malakar and Ors.*

9. Upon hearing the learned counsel appearing for the parties, learned District Judge dismissed the appeal confirming the judgment and decree passed by the learned trial Judge.

10. Being aggrieved by and dissatisfied with the judgment and decree dated 04.05.2020, passed in TA No.11 of 2019 confirming the judgment and decree passed by the learned Civil Judge, Junior Division, South Tripura, Belonia in connection with TS No. 14 of 2012, the appellant has preferred the instant second appeal before this Court.

11. I have heard Mr. Sarma, learned counsel appearing for the appellant. None appears for the respondents.

12. The record being examined, it comes to fore that the respondents long back had received the notices issued by this Court, but till today they have not entered appearance.

13. During the course of admission of the appeal, this Court had framed the following substantial question of law:

“(I) Whether the findings of both the Courts below are perverse being based on no evidence?”

14. At the time of hearing, Mr. Sarma, learned counsel has urged for drawing up another substantial question of law, which is as under:

“(II) Whether Rule 14 of Tripura Land Revenue and Land Reforms (Allotment of Land) Rules, 1980 will come in the way of entering into agreement for selling the allotted land?”

15. On going through the findings of the learned Courts below, in my opinion, the above substantial question of law needs to be considered for proper adjudication of the present second appeal. Accordingly, the prayer of Mr. Sarma, learned counsel is accepted and the above substantial question of law has been formulated for consideration of the present second appeal.

16. On perusal of the findings of the Courts below, it comes to fore that the Deed of Relinquishment for selling the suit land to the present appellant by the father of the present respondents is an admitted fact. In the Deed of Relinquishment (Nadabi Patra), it is clearly written that the appellant had entered into an agreement i.e. in the style of deed of

relinquishment to the effect that due to urgent need of money, the father of the defendants/respondents made a proposal to the plaintiff/appellant to sell the suit land. The appellant had agreed to the proposal and paid the entire consideration money as per market value of the suit land since the father of the respondents/defendants was in urgent need of money for the purpose of the marriage of his daughter.

17. Thereafter, the father of the respondents had taken some time to obtain consent of the Collector to execute the sale deed. In that meanwhile, the father of the respondents i.e. Lilu Malakar died. Thereafter, the plaintiff/appellant was approaching the present respondents/defendants to execute the sale deed in terms of the agreement entered into between their father and the plaintiff/appellant, but, the respondents denied compelling the appellant to institute the present suit for specific performance of the agreement dated 24.12.2001.

18. As I said earlier, both the Courts below after consideration of the evidence and materials on record came to a definite finding that plaintiff/appellant had been able to prove the due execution of the agreement dated 24.12.2001 wherein the father of the respondents had agreed to transfer the suit land by executing a sale deed on payment of balance consideration money.

19. But, both the Courts decided the case on different connotation. According to the Courts below, the said agreement for sale was itself *void*

ab initio and *non est* and for this reason, it was not executable. In support of this finding, both the Courts below had relied upon Rule 14 of Tripura Land Revenue and Land Reforms (Allotment of Land) Rules, 1980 (for short, Allotment Rules, 1980).

20. I have gone through the relevant provisions of the Allotment Rules, 1980. Rule 11 of the Allotment Rules, 1980 stipulates that prior permission has to be obtained for selling an allotted land. Sub-rule (vi) of Rule 12 lays down condition that “*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*”. Sub-rule (iii) of Rule 14 provides that “*the land shall be liable to be resumed by the Government if used for a purpose other than that for which it has been allotted, or if the allottee has committed breach of any of the conditions of allotment*”.

21. On careful reading of the above provisions, it can easily be said that, nowhere of the Allotment Rules, 1980 lays down that if a sale is transacted without prior consent of the Collector or the competent authority, the said sale would be *void ab initio*. It is a mere condition and there is nothing in the scheme of said provisions that any breach of the condition shall automatically render the transfer of the allotted land *void ab initio* and *non est*. According to this Court, the power of cancellation only lies with the Collector itself being the allotting authority. This Court in a catena of judgments held that the cancellation of allotment also must

be within a reasonable period and the Court held that said reasonable period is 3 (three) years.

22. In the light of above, the findings of the Court below in regard to the interpretation of Rule 14 of Allotment Rules, 1980 are perverse and contrary to the settled principle of law.

23. Yet another important aspect which went unnoticed by both the Courts below is that in Khatian no.1133 that was created in favour of Lt. Lilu Malakar, the father/predecessor of the respondents/defendants, it is clearly written at column no.16 that the said allotted land is transferable after 10(ten) years.

Furthermore, another Khatian was prepared in the name of only Lilu Malakar where 50 percent share of the entire land was recorded in his favour. The suit land i.e. the 50 percent of the allotted land in the name of Lilu Malakar was supposed to be transferred under the agreement dated 24.12.2001, that is, much after the expiry of 10(ten) years. That means, when the deed of agreement for sale in the style of deed of relinquishment was entered into between Lilu Malakar, the predecessor of the respondents/defendants and the plaintiff-appellant, at that time there was no restriction upon Lt. Lilu Malakar, the predecessor of the present respondents/defendants to enter into the agreement to transfer the suit land i.e. 50 percent of the allotted land which was recorded in his name in a separate Khatian. On this score also both the

Courts below have failed to exercise their jurisdiction while appreciating the documents (Khatians) adduced in evidence, and thus committed blatant error on facts which rendered the findings recorded in the judgments perverse.

24. In view of the aforesaid discussions and the relevant provisions of the Allotment Rules, 1980 be analysed, the present second appeal deserves to be allowed.

25. The appeal stands allowed and the judgments and decrees passed by the Courts below stand set aside and quashed. Decree be framed accordingly.

Send down the LCRs immediately after framing the decree.

JUDGE

Snigdha



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