

HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_

FAO.No.01 of 2023

Sri Dibakar Roy

.....Defendant-O.P. Petitioner

_V_E_R_S_U_S_

Rajibkanti Gupta & Others

.....Plaintiff-petitioner-respondents

For Petitioner(s)	:	Mr. S. M. Chakraborty, Sr. Advocate. Mr. S. Lodh, Advocate.
For Respondent(s)	:	Mr. S. Bhattacharjee, Advocate. Mr. S. Noatia, Advocate.

HON'BLE MR. JUSTICE T. AMARNATH GOUD

_O_R_D_E_R_

19/10/2023

Heard learned counsel Mr. S. Lodh, for the petitioner-defendant and Mr. S. Bhattacharjee, learned counsel for the respondent-plaintiff. The arguments advanced before the learned Court below by both the parties are reiterated.

[2] This appeal has been filed under Order-XLIII Rule-1(r) of the Code of Civil Procedure, 1908 against the order dated 14.06.2023 passed in Civil Miss 35 of 2023 arising out of T.S. 11 of 2023 passed by the learned Civil Judge Senior Division, Court No.2, North Tripura, Dharmanagar.

[3] The facts in brief are that the respondent No. 1 filed a suit in the Court of the learned Civil Judge Senior Division, North Tripura, for perpetual and prohibitory injunction with some other consequential relatives. Along with the said suit he filed an application under Order-39, Rule 1 and 2 of the Code of Civil Procedure, 1908 for restraining the appellant and his men and agents from entering into the suit land. According to the respondent No. 1 he is the joint owner of the suit land as the name of his deceased father was reflected in the records of right and he claim is based on the said entry in the records of right

when the said respondent in the injunction petition stated that he along with his mother transferred their share of land in the plot number of the suit land to his wife. The appellant contest the same and he stated that the respondent No.1 has no right, title, interest and possession over the suit land and he also failed to make out any *prima facie* case in his favour and for the balance of convenience and inconvenience was not in his favour. The learned Court below after hearing the injunction petition did not appreciate the pleadings and the documents filed before it and in gross violation of natural justice and settled law of the land passed the order of injunction against the present appellant.

[4] Hence the present appeal has been preferred before this Court for redress.

[5] The learned Court below after hearing the parties and on perusal of the material evidence on record has observed as under:

“Thus, the petitioner is still a co-sharer of the suit land and he has the locus standi to file an application praying for injunction against any third party. Hence, I hold that basing on Khatian no. 3516/1 of Mouja: Dharmanagar, the petitioner has *prima facie* case here.

Secondly, if the position of the suit land, the land purchased by respondent no.1 and the common path falling under RS plot no. 6404 as shown in page no.8 of registered gift deed no. 1-01461 dated 17.07.2013 is taken to be the correct position of the aforesaid pieces of land, respondent no.1 would suffer no loss if temporary injunction is granted restraining him from entering into the suit land as he can directly go to the common path situated on the Western side of the land purchased by him in auction. On the other hand, if by chance or by evil motive respondent no.1 enters into the suit land, the right of peaceful possession of the suit land by the petitioner would be affected. Hence, I hold that the petitioner has balance of convenience in his favour in the instant case.

Thirdly, Ld. Counsel for respondent no.1 has rightly pointed out that in para no. 14 of the original application, the petitioner has stated that he has filed the original suit for declaration and other consequential reliefs, but in para no. 22 of the plaint, only a decree of perpetual injunction has been prayed for. However, in my considered opinion, order XXXIX rule 1 of CPC does not lay down that temporary injunction may be prayed for and granted only when the relief of declaration of title is prayed for in the original suit.

Order XXXIX rule 1 of CPC lays down only two conditions for granting of temporary injunction which areas follows:

- a) The land over which injunction is prayed for is the suit land, and
- b) Such land is in danger of being wasted, damaged or alienated by any party or being sold in execution of a decree, or the defendant threatens or intends to remove or dispose of his property to defraud his creditors, or the defendant threatens to dispossess the plaintiff or otherwise cause injury to him in relation to the suit land.

In the instant suit, the land measuring 0.049 acre falling under RS plot no. 6415 of Mouja: Dharmanagar is the suit land and the original application clearly reveals that respondent no.1 attempted to encroach upon the same on 24.04.2023 which, if done, would amount to causing of injury to the petitioner in his right of peaceful possession of the suit land. Therefore, only because the petitioner has not prayed for the relief of declaration of title in the plaint, the merits of this case is not affected. Rather, it appears to me that if during pendency of the original suit, respondent no.1 illegally encroaches into the suit land, the very purpose of filing the original suit would be frustrated and the petitioner would suffer irreparable loss.

Furthermore, admittedly the suit land situates in the heart of Dharmanagar Town, the area which remainstheckly populated by common people throughout the day. Situated thus, if respondent no.1 attempts to forcefully enter into the suit land during pendency of the original suit, law and order situation may be adversely effected in the said area which would be against the public interest.

As a conclusion to the above discussion, the application filed by the petitioner under order XXXIX rules 1, 2 and 3 of CPC stands allowed.

Respondent no.1 and his men and agents are hereby restrained from entering into the suit land and from disturbing peaceful possession of the petitioner over the same in any manner during pendency of the original suit no. TS 11 of 2023.

With this observation, the instant case stands disposed off on contest.”

[6] Mr. S. Lodh, learned counsel appearing for the petitioner has submitted that the learned trial Court below ought to have considered that as per provisions of section 43(3) of the Tripura Land Revenue and Land Reforms Act, 1960 the entry in the records of right has the presumptive value unless contrary is proved and the statement made in paragraph Nos. 3 and 4 of injunction petition are in total contradiction with the entry of the records of right. As per the statement made in those paragraphs, it is clear that the

respondent No. 1 transferred the entire share of his predecessor in interest along with his mother and thus he was having no share in the suit land. Apart from that, the plot, which the said respondent No. 1 purchased from the share of his co- owners (respondent Nos. 9 & 10) is separate not involved in the injunction petition and that lane is recorded in a new record of right bearing khatian No.9926 with separate particulars.

[6.a] It has been contended that the learned trial Court ought to have considered that after transfer of the share of the respondent No. 1 from plot No. 6415, i.e., the suit land, the respondent No. 1 is no longer a joint owner of the plot No. 6415 as per law he has no *locustandi* to file the suit with injunction petition. The learned trial Court below should have considered that the petition of the respondent No. 1 did not fulfil any of the conditions as laid down under Order-XXXIX Rule-1 and 2 of the Code of Civil Procedure, 1908. The learned Court below should have considered that the respondent No. 1, his mother and the predecessor in interest of the respondent Nos. 3 to 5 had transferred their share by meets and bounds and nobody challenged the said deed and in absence of any such prayer learned Court below arbitrarily and illegally came to the conclusion that boundary in the said deed is not correct;

[6.b] It has been further submitted that the learned Court below ought to have appreciated that the respondent No. 1 failed to prove his possession over the suit land as he at the time of transferring his share of land from the plot No.6415 of the suit land to his wife, also transferred his possession over the suit land to his wife and in absence of possession of the respondent No.1 over the suit land the question of suffering of irreparable loss by the respondent No.1 does not arise.

[6.c] Mr. Lodh, learned counsel has argued that the learned Court below should have considered that the respondent No. 1 had to show *prima facie* case in his favour but in his petition for injunction at Paragraph No. 3 and 4 it is specifically stated that the share of his father in plot No.6415 of the suit

land is transferred by him and his mother, since deceased, and he had handed over the possession of the land to his wife and thus he had failed to establish the *prime facie* case in his favour, but the learned Court below most illegally and mechanically came to a conclusion that the respondent No. 1 has a *prima facie* benefit in his favour. The respondent No. 1 failed to show and establish the balance of convenience and inconvenience in his favour but the learned trial Court below measurably failed to appreciate the same.

[07] Mr. S. Bhattacharjee, learned counsel appearing for the plaintiff-respondent has submitted that the case of the respondent-plaintiff is that the said passage is not a passage and the property of the defendant is behind the said property of the plaintiff and if the access is blocked, the property gets frustrated. The defendant purchased the said property in a bank auction in the SARFAESI proceeding and in the said proceeding, the said passage which is under dispute is shown as a accessible passage measuring 10 feet in breadth and 30 feet in length.

[08] It has been averred that the affidavit of the respondents is placed on record and it has been categorically stated that the respondent-plaintiffs stating that the petitioner-defendant is not facing any inconvenience and right of entry is not blocked since he is having right of access in addition to the passage which is under dispute. The said contention has not been denied by way of any rejoinder by the petitioner-defendants. It is not on record nor there is any bank record obtained from the bank which is placed before this Court to say that the bank has acquired the said passage and same is alienated in the auction to the petitioner-defendant and thus, the defendant has right over it.

[09] In support of the claim of the plaintiff, he has placed the revenue records and also the partnership documents which are executed between the wife of the plaintiff with 3rd party together who became the defaulter with the Tripura Gramin Bank against whom SARFAESI proceeding is initiated for the loan obtained from the bank.

[10] In the year 2014 said Anusree Gupta (the wife of plaintiff) started running a partnership Hotel business under the name and style as "Hotel Ratdin" with one Chayan Bhattacharjee by entering into a partnership deed vide No. IV-00149 date 19/08/2013 taking loan from Tripura Gramin Bank in exchange of mortgaging her recorded property under R.S. Plot No. 6415/19361 under Khatian No. 9491 of Dharmanagar town Mouja, before Tripura Gramin Bank and the said hotel is standing over there adjacent to eastern boundary line of the suit land and whereas the suit land is situated in between the 'Hotel RATDIN' and adjoining path under R.S. Plot No. 6404 connected with the main Road, therefore these business partners convinced the plaintiff by saying that they will purchase the suit land by executing registered sale deed from the plaintiff along with other co-sharers thereto for using the same in order to access into the hotel along with light motor vehicles from the main road through the adjoining path under R.S. Plot No.6404 and they were seeking few time as necessitated to pursue this legal process for preparing deed of conveyance of the suit land and thereby they requested the plaintiff to use the suit land temporarily just for access into the hotel.

[11] In view of the above, this Court is of the opinion that the plaintiff preferred a suit seeking injunction against the defendant in respect of the property which is said to be a open land abating to the property of the common property of the plaintiff and his family members and the defendant is the hotelier under the name and style as Hotel Ratdin and the defendant is using the property of the plaintiff for egress and ingress and their peace is being disturbed and the nature of the property is also changed. The learned Court below after hearing both the parties was pleased to grant injunction order under Order-XXXIX Rules-1, 2 and 3 of the CPC restricting the defendants from granting injunction and the suit is also pending. Being aggrieved by the said order of injunction dated 14.06.2023 the present FAO has been filed.

[12] Admittedly, petitioner/auction purchaser herein is a third party and has purchased the property through bank. The bank is not the party. Since a

portion of composite property was under use as common utility which is shown as passage, the defendant cannot claim the right title and interest upon the same as no specific title to the said suit property of the family members have been alienated to the defendant. Mere showing the passage in the plan does not confirm any right. The bank is not a party before the Court and no document is placed before this Court to show that the bank has attained its alienated right upon the property in dispute in order to further auction of the same in favour of the defendants. The said issue needs to be decided finally.

[13] When the bank has not conferred with the title upon the particular property, it cannot convey the better title to the defendant in the suit. Mere showing the boundaries as passage on the western side of the boundary does not indicate that the defendant-petitioner is having a road upon the same unless, it is decided in the main suit. The petitioner has not placed any evidence on record to convince this Court in support of his argument to say that the passage as indicated in the boundaries is only the passage which adds as an access to the hotel of the petitioner. In the absence of evidence on record and supporting documents from the bank (who is not in the judicial proceeding) deciding the same at an interlocutory level would be deciding the main suit itself. The argument of Mr. S. Lodh, learned counsel that the defendant-petitioner in the light of the contention made in the affidavit by the plaintiff-respondent has no approach away to the hotel is befitted in the light of the contention made in the affidavit by the plaintiff-respondent stating that there is a way, which has not been rebutted. Thus, the said argument is negated

[14] For the purpose of reference, the contention of Mr. S. Bhattacharjee, learned counsel with regard to the approach away, may be reproduced thus *"It is pertinent to mention here that after the institution of suit and passing of the order dated 14.06.2023 the applicant is using the path mentioned in dag No.6426 of Khatian No.2373 for land measuring 0.015 satak of path (way) of class of land to access to the HOTEL RATDIN. Said path runs*

parallel to the suit land after the common path measuring 10 feet breadth and 30 feet in length which is dag No.6404 of Khatian No.2373.”

[15] In view of the above observations and the material evidence on record and since the main suit is to be decided, this Court is not inclined to interfere with the order passed by the learned Court below and thus, the same stands dismissed. If the argument of Mr. S. Lodh, learned counsel is appreciated and the finding is given in his favour, it would be amounting to deciding the main suit. Since the suit is pending on the file of the learned Court below, it is expected that the same would be considered as early as possible.

[16] Accordingly, the present petition stands dismissed. As a sequel, miscellaneous application pending, if any, shall stand closed.

(T. AMARNATH GOUD), J

A. Ghosh

ANJAN
GHOSH

Digitally signed
by ANJAN GHOSH
Date: 2023.10.30
12:41:15 +05'30'



सत्यमेव जयते