

**HIGH COURT OF TRIPURA
AGARTALA**

RSA No.22 of 2023

Sri Binode Mallik

....Appellant(s)

Versus

Sri Chandan Nath and Ors.

....Respondent(s)

For the Appellant(s)	:	Mr. S.M. Chakraborty, Sr. Advocate Mrs. Ankita Pal, Advocate
For Respondent(s)	:	None

HON'BLE MR. JUSTICE ARINDAM LODH

Order

04/09/2023

Heard Mr. S.M. Chakraborty, learned senior counsel assisted by Mrs. Ankita Pal, learned counsel appearing for the appellant.

This is a second appeal filed by the original defendant, appellant herein against the judgments passed by the Courts below in favour of the plaintiff-respondents.

The fact of the case is that the plaintiff-respondents have instituted a suit for declaration of right, title and interest along with a prayer of recovery of Khas possession of the suit land prescribed in Schedule B of the plaint. The plaintiffs have taken a plea in their prayer that their purchased deed comprises the suit land described in Schedule 'B' of the plaint. The defendant-appellant on being summoned contested the suit by filing written statement. Both the parties adduced their respective evidences. On their consent, issues were framed. Learned trial Judge after considering the evidences and materials on record came to a finding that the plaintiff-respondents have been able to establish that their purchased deed i.e. the title deed comprises land of Schedule B described in the plaint, and accordingly, decreed the suit in favour of the plaintiff-respondents.

Feeling aggrieved, the defendant had preferred a first appeal before the Court of learned District Judge, North Tripura, Dharmanagar. Both the parties argued the case before the court of learned first appellate Court. The first appellate Court having heard the arguments and after examining the evidences available on record did not find any ground to interfere with the findings of the

learned trial Court. Accordingly, the first appellate Court had upheld and affirmed the judgment passed by learned trial Court.

Being aggrieved by and dissatisfied with the judgments passed by the Courts below, the defendant-appellant has preferred the instant second appeal before this Court.

The matter has come up for admission. In my opinion, to admit the second appeal, the appellant has to substantiate whether the appeal consists of substantial questions of law.

Mr. Chakraborty, learned senior counsel has eloquently submitted that both the Courts below have erroneously come to a finding that the suit land described in Schedule B of the plaint attracts the title deed of the plaintiffs. According to learned senior counsel, it was the duty of the Court to appoint a survey commissioner to identify the land in question.

I find no force in the submission of learned senior counsel. It is settled proposition of law that if the Courts find that the land is adequately identifiable from the pleadings as well as from the evidences of the parties, there is no need to appoint a survey commissioner for identification of the suit land. Moreso, if one of the contesting parties, particularly, the defendant raises a question of identification of the suit land, he could raise this plea before the learned Courts below and seek for appointment of survey commissioner to identify the suit land. In the instant case, the defendant-appellant had not taken the recourse of law for the reasons best known to him. As such, he is estopped of raising the plea which is directly related to a question of fact.

In view of this, I do not find any ground to formulate substantial question of law for the purpose of admitting this appeal.

Accordingly, the instant second appeal stands dismissed.

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

JUDGE