

**HIGH COURT OF TRIPURA
AGARTALA**

CRP No.55 of 2023

Ayatun Nessa & another

..... Petitioner(s);

Versus

The State of Tripura & others

.....Respondent(s)

For Petitioner(s) : Mr. P. Roy Barman, Sr. Advocate,
Mr. Dipjyoti Paul, Advocate.

For Respondent(s) : Mr. Mangal Debbarma, Addl. G.A.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

23/11/2023

Heard Mr. P. Roy Barman, learned senior counsel assisted by Mr. Dipjyoti Paul, learned counsel for the petitioners and Mr. Mangal Debbarma, learned Additional Government Advocate for the respondents-State.

By the impugned order dated 20.05.2023 passed in case No.26/Apl/Rev/P.S/2022 under Section 93(1)(c) of the TLR & LR Act, 1960, The Principal Secretary, Revenue Department, Government of Tripura/the appellate authority has refused to decide the claim of the petitioners regarding correction of record of rights on the ground that the instant case is related to land recorded in Khatian No.101 of Mouja Dhaliarkandi which is a subject matter of Title Suit No.21 of 2021 in the Court of Civil Judge, Sr. Division, Kailashahar and is sub judice. The relevant part of the impugned order dated 20.05.2023 is extracted hereunder :

“The appellants filed this appeal petition u/s/ 93 of the TLR & LR Act, 1960 against the order of the District Collector, Unakoti dated 27/04/2022 in Revenue Case No.REV/Revision/165/2019 u/s 95 of the TLR & LR Act, 1960.

Heard both the parties.

Appellant no.1 Ayatun Nessa claimed that she has owned and have possession over 0.14 acre of land apartening to CS Plot No.584 corresponding to RS Plot No.1303 of Mouja Dhaliarkandi. She purchased this 0.14 acre of land from Wahab Ullah through registered Sale Deed I-3535 dated 16/10/1979. Thus,

0.14 acre of land from CS plot No.584 corresponding to Rs plot No.1303 recorded in RS khatian No.101 of mouza Dhaliarkandi be recorded in her name.

Appellant No-2 Fakhrun Nessa claimed that she purchased 0.60 acre of land from Wahab Ullah through a registered Sale Deed I-860 dated 06/12/1974 pertaining to 0.20 acre of land in CS plot no.584 (Suit land), 0.30 acre of land in CS Plot no.581 and 0.10 acre of land in CS plot no.586. Thus, 0.20 from CS plot no.584 corresponding to RS plot no.1303 recorded in RS khatian no.101 of mouza Dhaliarkandi be recorded in her name.

In the Order of the District Collector, Unakoti District dated 27/04/2022 in Revenue Case No.REV/Revision/165/2019, it is mentioned that the TS Case No.21 of 2021 in the Court of the Civil Judge (Sr. Div) Kailashahar is related with this suit land.

The appellants claimed that the suit land is not related to case no TS 21/2021 in the Court of the Civil Judge Senior Division (Court no-1) Kailashahar. Examined the certified copy of the TS Case No.21 of 2021 in the Court of the Civil Judge (Sr. Div), Kailashahar in case Docket of Revenue Case No.REV/Revision/165/2019, U/S 95 of TLR & LR Act 1960 received from the Unakoti District and found that the TS case no.21/2021 involves land recorded in Khatian No.101 of Mouja Dhaliarkandi. It is pertinent to mention here that the instant case is also related to land recorded in khatian No.101 of mouja Dhaliarkandi.

As per the downloaded order copy dated 11/04/2023 of TS Case No.21 of 2021 in the Court of the Civil Judge (Sr. Div) Kailashahar from E-Court Tripura, it is found that the next hearing date of the case is fixed on 30/05/2023. Thus, this case is under the purview of res sub judice.

In view of the above position, this appeal petition is hereby rejected. The appellant is at liberty to file a fresh appeal after the final decree of the aforementioned TS Case 21 of 2021 in the Court of the Civil Judge (Sr. Div) Kailashahar.

The case is hereby disposed of on merit.

Inform all concerned.”

Mr. Roy Barman, learned senior counsel for the petitioners, has drawn the attention to the chronology of facts and the plaint of the Title Suit No.21/2021 instituted by Amjad Ali and others, sons of late Wahab Ullah versus Khursed Ali and others – in total 36 principal defendants and 7 proforma-defendants. The suit is for declaration of right and title and interest over suit land and for recovery of possession of a portion of the suit land and for confirmation of possession over the rest land of the suit land and for perpetual injunction over the rest land, referable to Sections 5/34/38 of the S.R. Act, 1963 and Order XXI Rule 35 of CPC.

Learned senior counsel for the petitioners has drawn the attention of this Court to the Schedule of the plaint which contains the description of the suit property regarding which a declaration has been sought by the plaintiffs. The Schedule contains the relevant R.S. Khatian plot number and old C.S. Khatian plot number. Learned senior counsel for the petitioner submits that the relevant C.S. plot No.584 corresponding to R.S. plot No.1303 recorded in R.S. Khatian No.101 of Mouja Dhaliarkandi with which the petitioners are interested, are not the subject matter of the Title Suit; though other pieces of land under different R.S. Khatian numbers including 101 are the subject matter of the suit. He also does not dispute that the petitioners are also principal respondents in the said suit. But since the instant C.S. plot No.584 corresponding to R.S. plot No.1303 under R.S. Khatian No.101 of Mouja Dhaliarkandi is not the subject matter of the pending suit, the learned Principal Secretary, Revenue Department/appellate authority should have examined the prayer of the petitioner for correction of record of rights instead of keeping the matter in abeyance pending adjudication of the Title Suit No.21/2021.

Learned senior counsel for the petitioners has also drawn the attention of the Court to the inquiry report dated 20.11.2020 [Annexure-5 series] submitted by the Revenue Inspector, Kailashahar Revenue Circle before the Sub-Divisional Magistrate, Kailashahar Sub-Division and also by the Sub-Divisional Magistrate, Kailashahar Sub-Division before the District Magistrate & Collector, Unakoti District, Kailashahar through letter dated 23.11.2020 [Annexure-5 series]. It is submitted that the inquiry report also shows that the name of the petitioner Ayatun Nessa, wife of Akbar Ali has been deleted from

Khatian No.11 relating to C.S. plot No.584, Hal:-1303/p. Correction of the record of rights has also been recommended. It is, therefore, submitted that the case may be remanded to the appellate authority for fresh scrutiny and decision.

Mr. Mangal Debbarma, learned Additional Government Advocate for the respondents-State, submits that the matter has been taken up for the first time and instructions are awaited. However, in view of the documents brought on record by the petitioners i.e. copy of the Title Suit No.21/2021 containing the schedule of the properties and the instant prayer of the petitioners relating to correction of record of rights in respect of C.S. plot No.584 corresponding to R.S. plot No.1303 in R.S. Khatian No.101 of Mouja Dhaliarkandi, this Court, if may so deem fit, remit the matter to the appellate authority/Principal Secretary, Revenue Department to take a fresh decision after scrutiny of the relevant records.

I have considered the submission of the parties and taken into note the relevant pleadings placed from record. Prima facie it appears to the Court that the matter requires reconsideration after due scrutiny of the relevant records including the subject matter of the Title Suit No.21/2021 by the appellate authority/Principal Secretary, Revenue Department, Government of Tripura since the Schedule of Title Suit No.21/2021, on the face of it does not reflect the C.S. plot No.584 corresponding to R.S. plot No.1303 which is in R.S. Khatian No.101 of Mouja Dhaliarkandi. As such, the impugned order is set aside and the matter is remitted to the appellate authority/Principal Secretary, Revenue Department for fresh consideration in accordance with law.

Let it be made clear that no observations made hereinabove shall be treated as comments on the merits of the case of the parties.

The instant revision petition is disposed of. Pending application(s), if any, shall stand disposed of.

(APARESH KUMAR SINGH), CJ

