

**HIGH COURT OF TRIPURA
AGARTALA
RSA 45/2022**

Debeswar Das

----Appellant(s)

Versus

Ratan Debnath

----Respondent(s)

For the Appellant(s)	:	Mr. P. Roy Barman, Sr. Advocate Mr. K. Nath, Advocate
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For Respondent(s)	:	Mr. Kishalay Roy, Advocate
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HON'BLE MR. JUSTICE ARINDAM LODH
Order

11/01/2023

Heard Mr. P. Roy Barman, learned senior counsel assisted by Mr. K. Nath, learned counsel appearing for the appellant. Also heard Mr. Kishalay Roy, learned counsel appearing for the respondent.

This is a second appeal filed under Section 100 of the CPC challenging the judgment and decree dated 05.01.2022 passed by the learned Additional District Judge, West Tripura, Agartala, Court no.2, in case no. Title Appeal 11 of 2018 confirming the judgment and decree dated 17.02.2018 passed by the learned Civil Judge, Senior Division, Court no.1, West Tripura, Agartala, in case no. Title Suit 29 of 2016.

Briefly stated, the plaintiff has instituted a suit for declaration and confirmation of possession and for perpetual injunction. On being noticed, the defendant appeared and contested the suit by filing written statement. Both the parties adduced their respective evidences. Upon hearing the argument of both sides, the learned trial court decreed the suit in favour of the plaintiff. Being aggrieved, the defendant i.e. the appellant herein, had preferred first appeal before the learned District Judge, West Tripura, Agartala. The records had been transferred to the court of learned Additional District Judge, Court no.2, West Tripura, Agartala. The learned first appellate court heard the matter at length during the course of argument advanced by the learned counsel appearing for the parties and confirmed and

upheld the judgment and decree passed by the learned trial court, as stated above. Being aggrieved by and dis-satisfied with the said judgment and decree, the defendant had preferred the instant appeal before this court.

Mr. Roy Barman, learned senior counsel appearing for the appellant has tried to persuade this court on the basis of the following substantial questions of law:

- (i) *Whether the findings of both the courts below are perverse?*
- (ii) *Whether the court can pass a decree without identifying the suit land by appointing a survey commissioner?*
- (iii) *Whether the judgment and decree passed by the learned first appellate court hit by Order XLI Rule 31 of the CPC?*

The matter has come up for admission today. Second appeal is not a matter of right. The court is to decide whether the appeal deserves to be admitted or not.

Accordingly, I have heard learned senior counsel for the appellant at length in support of the substantial questions of law, he has tried to propose before this court.

This court made a specific query to the learned senior counsel as to how the findings of the learned courts below suffer from perversity.

Learned senior counsel has submitted that the suit land was not properly identified for the reason that the court did not identify the suit land by way of appointment of a Survey Commissioner. According to learned senior counsel when the description of the suit land is disputed, then, the court must identify the suit land by appointing a Survey Commissioner.

I am not in agreement with this proposition of learned senior counsel.

In the opinion of this court, if the court is satisfied with the description and identification of the suit land, then, the court may pass a decree and for that purpose appointment of survey commissioner is not the requirement of law. So, both the questions as proposed to be framed by way of substantial questions of law is taken up together and thus repelled.

Next substantial question of law which was tried to be proposed by learned senior counsel is that the judgment passed by the learned first appellate court is not in accordance with the parameter laid down in Order XLI Rule 31 of the CPC.

I have given my thoughtful consideration to the said submission.

I have perused the judgment passed by the learned first appellate court. At para 7 of the judgment, learned first appellate court has clearly held that “*Now question to be determined if the trial court erred in decreeing the suit of the plaintiff*”. So, learned first appellate court has determined the point. Accordingly, learned first appellate court came to the following finding:

“7. The plaintiff claimed to have title over the suit land on the strength of registered sale deed bearing No. 1-1459, dated 03.03.2014 (Exbt. 7) and the sale deed bearing Nos. 1-424, dated 18.01.2016 (Exbt. 11) and sale deed bearing No. 1-423, dated 18.01.2016 (Exbt. 12) contending that initially he along with one Binoy Lodh jointly had purchased the suit land on the strength of Exbt. 7 and at a later stage the plaintiff had purchased the 50% share of said Binoy Lodh on the strength of Exbt. 11 and Exbt. 12. The defendant though disputed the title of the plaintiff over the suit land, but the documents vide Exbts. 7, 11 and 12 so relied on by the plaintiff in support of his title remained undisputed in the evidence on record on the reasoning that those documents were admitted into evidence without any objection being raised by the defendant. In this view of the matter, it can be said that the claim of the plaintiff of having title over the suit land apparently has been proved. As stated earlier the defendant disputed the title of the plaintiff over the suit land and thereby, challenged the existence of the suit land contending that the sale deed dated 02.03.1981 (Exbt. H) so executed by Kamini Kr. Debnath in favour of his (defendant) vendor clearly shows that Kamini Kr. Debnath was the owner of five gandas of land out of which a land measuring 0.019 acres of land was acquired by the government vide Exbt. A and therefore, Kamini Kr. Debnath was left with only 0.021 acres of land which has been purchased by the defendant. That apart, Assam- Agartala road is situated on the southern side of the land of defendant and as such it is totally impossible even to imagine the existence of the suit land. These circumstances leads us to have a reference to the description of suit land as well as the land of the defendant.

The suit land as per sale deed bearing No. 1-1459 (Exbt. 7)

Land measuring 0.019 acres comprised in Khatian No. 535 appertaining to old plot No. 19624(p) and 19624(p), corresponding present plot Nos. 433 and 434 under Mouja- Agartala, Sheet No. 22, Agartala East TK, West Tripura District surrounded by:
North- Defendant (Debeswar Das).
South- Assam-Agartala Road.
East- Jadu Nandan Das Chowdhury.
West- Government road.

The purchased land of the defendant as per sale deed No. 1-5383 (Exbt. J)

Land measuring 0.021 acres comprised in Khatian No. 34163, appertaining to plot No. 19623 under Mouja- Agartala, TK- Sadar East, West Tripura District surrounded by:

North- Upananda Das.

South- Assam-Agartala road.

East- Upananda Das.

West- Dholeswar Road No-11.

8. On a comparative study of the description of the suit land as well as the purchased land of the defendant it emerges that both the lands are altogether separate and identical and the descriptions as available in both Exbt. 7 and Exbt. J are sufficient to identify the land. Therefore, the challenge of the defendant in regards to existence of the suit land cannot stand."

I have considered the discussions and the findings arrived at by the learned first appellate court.

Having considered the same, I do not find any ground to interfere with the findings arrived at by the learned first appellate court. In view of the above, I find no merit to admit this appeal.

Accordingly, the instant appeal stands dismissed.

JUDGE

Saikat