

HIGH COURT OF TRIPURA
AGARTALA

CO(RSA) 1 OF 2022
ALONG WITH
RSA 41 OF 22(D/O)

Smt. Sikha Paul, W/o Shri Amrit Rudra Paul, resident of Kashipur,
P.O. Kashipur, P.S. East Agartala, Dist. West Tripura, PIN-799008.

... Cross-Objector.

Vrs.

1. Shri Asish Paul, S/o Lt. Dhirendra Kumar Paul, resident of Mirza,
P.O. Upendranagar, P.S. Kakraban, Dist. Gomati Tripura. PIN-799105.

2. Shri Dinesh Debbarma, S/o Shri Bibhishan Debbarma.

3. Shri Sanjoy Majumder, S/o Lt. Swadesh Majumder.

Both are residents of Mirza Barbari, P.O. Upendranagar, P.S. Kakraban,
Dist. Gomati Tripura, PIN-799105.

... Respondents.

Present:

For the petitioner(s) : Mr. S. M. Chakraborty, Sr. counsel.
Mr. H.K. Bhowmik, Advocate.

For the respondent(s) : Mr. D.K.Daschoudhury, Advocate.

HON'BLE MR.JUSTICE ARINDAM LODH

03.04.2023

Order

This cross-objection has been filed in connection with the Case No.RSA 41 of 2022 which has already been disposed of. Since it is related to Regular Second Appeal, this court has treated this cross-objection as a Regular Second Appeal and as such, the same is admitted on the following substantial question of law:

- (i) **Whether the findings of the learned first appellate court is perverse?**

Today itself the matter is taken up for hearing and disposal on consent of learned counsel appearing for the parties. Respondent nos. 2 and 3 have not appeared before the court despite receipt of notices served upon them.

Heard Mr. S.M.Chakraborty, learned senior counsel assisted by Mr. H.K.Bhowmik, learned counsel appearing for the appellant. Also heard Mr. D.K.Daschoudhury, learned counsel who entered appearance on behalf of respondent no.1, namely Sri Asish Paul.

The appellant, who was the original plaintiff instituted the suit for her right, title and interest and for eviction of the respondents from the suit property.

The background of the case is that, partition of the suit land was effected on the basis of a compromise decree, but, it was found by the plaintiff-appellant herein, that her share of land was being possessed by the respondents, i.e. the original defendant nos. 1, 2 and 3 in the suit. Defendant nos. 2 and 3 (respondents nos. 2 and 3 herein) by way of submitting written statement have stated in para 7 that the plaintiff never claimed any rent from them nor they were the tenants under the plaintiff. The fact which prompted the plaintiff to institute the suit claiming that it was not within her knowledge what portion of the land was allocated in her favour in the compromise decree. However, she found afterwards that the land allocated to her in the compromise petition were being possessed by the defendant no.1 and on his behalf some portion of land were occupied by defendant nos. 2 and 3. In that situation, it was impossible for the plaintiff to claim rent from the defendant nos. 2 and 3 because, she even did not know the land allocated to her.

Now, reverting back to the principal issue raised in the suit that whether the plaintiff has right, title and interest over the suit land and

whether she is entitled to claim eviction of the defendants/respondents from the suit land.

The trial court after recording evidence held that the plaintiff has right, title and interest over the suit properties as well as she is entitled to evict the defendants from the suit property because the suit property falls within the allocated share of the plaintiff after the partition.

The defendants preferred appeal before the first appellate court. The first appellate court after hearing learned counsel appearing for the parties held that though the plaintiff has right, title and interest over the suit land, but she is not entitled to get a decree for eviction of defendants/respondent nos. 2 and 3.

I have taken into consideration this finding of learned first appellate court. In my opinion, this finding is absolutely bad in law. The learned first appellate court ought to have held that the plaintiff impleaded defendant nos. 2 and 3 in the suit. Their possession over the suit properties is admitted, whichever form and nature it is.

In view of this, the findings of the learned trial court, is correct in law that the defendant nos. 2 and 3 are also liable to be evicted in the same suit.

Accordingly, I find merit in this second appeal filed by the plaintiff, and accordingly, the judgment and decree passed by the learned first appellate court are set aside and the judgment and decree passed by the trial court stand restored.

In the result, the second appeal filed by the appellant stands allowed and disposed of.

JUDGE