

HIGH COURT OF TRIPURA
AGARTALA

RSA No.01 of 2023

Sri Pran Hari De,

S/o Late Sachiram De, resident of village Kanchannagar, P.S. Amtali,
P.O. A.D. Nagar, District West Tripura.

..... Appellant(s)

- V e r s u s -

Sri Khagendra Chandra Dey,

S/o Late Sachiram Dey, Resident of village Kanchannagar, P.S. Amtali,
P.O. S.D. Mission, District West Tripura.

..... Respondent(s)

For the Appellant(s) : Mr. P.K. Dhar, Senior Advocate.
Mr. S. Chakraborty, Advocate.
Mr. R. Debnath, Advocate.

For the Respondent(s) : Mr. D.C. Roy, Advocate.

Date of hearing : **16th August, 2024.**

Date of delivery of Judgment & order : **13th December, 2024.**

Whether fit for reporting :

YES	NO
	√

HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA

JUDGMENT & ORDER

The appeal arises out of the judgment dated 19.11.2022 passed by the learned District Judge, West Tripura, Agartala in Title Appeal No.16 of 2021 whereby the appeal was dismissed and judgment passed learned Civil Judge (Jr. Divn.), Court No.7, Agartala on 15.09.2021 dismissing the original suit bearing No.T.S. 110 of 2015 and the related decree thereof were affirmed.

[2] The appellant (plaintiff of the original suit) and respondent (defendant of the original suit) are two full brothers. According to plaintiff, he and his brother and mother were residing at Bangladesh having their immovable property therein in joint

stock and the suit land situated at Mouja Charipara under Sub-Division-Sadar was purchased jointly by both the brothers by selling their lands at Bangladesh and both the brothers resided under jointness inside the suit land till their mother expired in the year 2002. Khatian of the land was accordingly recorded jointly in the names of the plaintiff and the defendant showing 50% share each therein but suddenly the defendant submitted a petition to the DM & Collector, West Tripura, Agartala under Section 95 of the TLR & LR Act, 1960 for correction of the record producing some purchase deeds in his name based on which the DM & Collector passed order for rectification of the record by mutating Khatian in the name of the defendant for major portion of the land. In that background, the plaintiff instituted the suit for partition of the suit land claiming 50% share therein. According to him, those purchase deeds were executed during the period 1991 to 1993 and at that time the defendant had no such financial capacity to purchase the same.

[3] According to the defendant, he purchased those lands through four nos. of deeds from his own source of income and not from any joint fund. According to him, he purchased 3 gandas of land by registered sale deed dated 12.11.1993, 4 gandas of land by sale deed dated 06.02.1992, 1 ganda 1 kara of land by another sale deed dated 19.06.1991 and land measuring 0.03 acres vide sale deed dated 24.12.1992. As further stated, he came to India long ago and doing business here, he purchased such lands and he was never in jointness of mess and family with the plaintiff. It was

further stated by him that during revisional survey and settlement operation, wrongly record was created in his name jointly with the plaintiff. Thereafter, he filed petition under Section 95 of the TLR & LR Act, 1960 before the DM & Collector, West Tripura and the DM & Collector ordered for correction of record by way of recording of 0.19 acre of land solely in the name of the defendant, 0.02 acre of land in the name of plaintiff and 0.01 acre of land both in the name of plaintiff and defendant showing their equal share and accordingly, Khatians were also corrected as per said direction of the Collector.

[4] The plaintiff during trial examined himself and other two witnesses namely, Smt. Durga Datta [PW-2] and Sri Rupan Datta [PW-3] on his behalf. The plaintiff also proved some documents into evidence. The defendant examined himself as DW-1 and proved certain documents on his behalf but he did not examine any other witness further.

[5] Learned trial court dismissed the suit observing that as per order of the DM now, three separate Khatians were in existence and plaintiff failed to produce any documentary evidence to show that by disposing the joint property at Bangladesh, the suit land in India was purchased. Learned trial court also observed that the plaintiff could not prove his right, title and interest in the suit land. Those findings were endorsed by learned First Appellate Court with further observation that the suit land was not a joint family property of the plaintiff and the defendant.

[6] Mr. P.K. Dhar, learned senior counsel for the plaintiff-appellant argues that after exhausting different phases and inviting objection etc. ultimately the record was finally published by the settlement authority during revisional survey and settlement operation recording the suit land jointly in the names of both the brothers in equal share and the defendant never objected to such recording so long as his mother was alive. But after the death of his mother, he submitted an application before the DM & Collector for correction of such record which was ultimately allowed by the DM & Collector. According to Mr. Dhar, learned senior counsel, such revenue record can only be corrected under Section 45 of the TLR & LR Act, 1960 after same is finally published and the Collector has no jurisdiction to order for such correction under Section 95 of the said Act but said point was not decided by learned Courts below. Therefore, a fresh issue may be framed on that point and the suit may be remanded to learned trial Court for fresh decision.

[7] Mr. D.C. Roy, learned counsel for the defendant-respondent argues that there were concurrent findings of both learned Courts below and therefore, there is no scope to interfere in the second appeal upsetting such findings in absence of any substantial question of law. Mr. Roy, learned counsel also submits that the order passed by the DM & Collector under Section 95 of the TLR & LR Act was not challenged before any higher forum and therefore, said decision is binding on the plaintiff. Lastly, learned counsel submits that no evidence could be led by the plaintiff to

establish that the suit land was purchased jointly by both the brothers by selling any joint property in Bangladesh.

[8] The second appeal was admitted on the following substantial question of law:

“Whether the findings of both the courts below are perverse in dismissing the suit for declaration of right, title, interest and partition?”

[9] This Court has considered the submission of both sides and has meticulously gone through the records. To substantiate the claim, the plaintiff has proved certified copy of one Khatian No.133 (Exbt.1) which shows that the original suit plot No.3773 created during revisional survey and settlement operation was recorded jointly in the name of both the brothers but no document of purchase in the names of the both the brothers could be produced by him. Under Exbt.3, the plaintiff also proved one BS Khatian standing in the names of both the plaintiff and the defendant and many other persons for land area 7.83 acre under Mouja Khurushkul of District CoxBazar, Bangladesh. But apart from the same, he did not prove any document to show that any such land was sold by them at Bangladesh to accumulate fund to purchase land in India. PW-2 and PW-3, both in their examination-in-chief on affidavit stated that the plaintiff, defendant and their mother disposed of their joint property at Bangladesh and such sale proceeds were sent to the defendant to purchase land in India. PW-2 also stated that on some occasion such amount was sent to the defendant through him and by said money, the suit land was purchased by the defendant. In her cross-examination, she stated

that she had come to India about 30 years ago illegally. There is no document of conversion of any foreign exchange into India. The plaintiff in his cross-examination has given the boundary description of the suit land to be as follows- north-Badal, south west-Lt. Manu Datta, east-Paddy land but it does not tally with the boundary description of the suit land given in the plaint.

[10] The defendant proved the order of the DM & Collector, West Tripura, Agartala dated 07.02.2014 (Exbt.9) whereby he directed for recording of 0.19 acre of land from suit plot No.3773 in the name of defendant, 0.02 acre of land in the name of plaintiff and 0.01 acre of land jointly in the name of both the brothers in separate Khatians. Accordingly, Khatian No.3617 (Exbt.5) has been created solely in the name of defendant for 0.19 acre of land creating a butted plot from said RS plot No.3773. Admittedly, the plaintiff did not challenge said order of the DM & Collector before any higher forum and it stands good and binding on the plaintiff and out of total 0.22 acre of suit land, 0.19 acre stands solely in the name of the defendant.

[11] Though learned senior counsel argues that once the record of right is finally published that cannot be corrected under Section 95 of the TLR & LR Act, 1960 except the provision of Section 45 of the said Act but the Court is not convinced with such submission inasmuch as provision of Section 45 of the Act is meant for correction of any entry in such record within one year after it's final publication, due to any mistake occurred owing to any bona

fide error. It does not affect the power of DM & Collector for correction of record under Section 95 of the TLR & LR Act in any manner. The power of the Collector under Section 95 is wider. The matter has also been discussed earlier in another decision of this Court in ***Solanki Roy (Deb) and others vs. Babul Roy and another, (2014) 2 TLR 1091*** and it was held that in exercise of power under Section 95 of the Act, the Collector has got the authority to rectify/modify any record of rights at any point of time. The finding of the Learned Additional District Judge that the Collector has no power to rectify a record of rights under Section 95 in that case was held to be absolutely contrary to the provisions of law.

[12] Considering all these aspect, this Court does not find any perversity in the judgments of both the learned trial court as well as the learned First Appellate Court requiring any interference. The appeal is accordingly dismissed being devoid of merit.

Return the Trial Court's and First Appellate Court's records.

Registry is to prepare the decree accordingly.

Pending application(s), if any, also stands disposed of.

JUDGE