

**HIGH COURT OF TRIPURA
AGARTALA**

RSA No. 10 of 2024

Sri Chitta Chakraborty.

.....Appellant(s)

Versus

Smt. Namita Chakraborty & Ors.

.....Respondent(s)

For Appellant(s)	:	Mr. D.R. Chowdhury, Senior Adv.
	:	Mr. S. Sarkar, Adv.
For Respondent(s)	:	Mr. S.M. Chakraborty, Senior Adv.
	:	Ms. A. Pal, Adv.

HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA

ORDER

10.07.2024

Heard Mr. D.R. Chowdhury, learned senior counsel assisted by Mr. S. Sarkar, learned counsel appearing for the appellant.

[2] Also heard Mr. S.M. Chakraborty, learned senior counsel assisted by Ms. A. Pal, learned counsel appearing for the Plaintiff-Respondent Nos.1, 2 & 3 who are the Caveator in the case.

[3] Both the appellant (hereinafter referred as principal-defendant No.1), the respondent Nos.1, 2 & 3 (successor of the original plaintiff) and respondent No.4 (hereinafter referred as proforma-respondent) jointly purchased 0.20 acre of land from one Smti. P. Debbarma. The predecessor of the plaintiff-respondents and the appellant-defendant and proforma-respondent are 3 (three) brothers and it is admitted by the parties that after purchase, one amicable partition took place between the parties as manifested through the execution of one deed of

partition by which the original plaintiff got 0.10 acre of land and both the appellant-defendant and proforma-defendant got 0.05 acre of land respectively.

[4] In the plaint it is stated that for the convenient use of the land by all the brothers, he sacrificed a small portion of land of breadth 3 (three) cubits from his portion for a pathway so that all of them could enjoy their respective portion properly.

[5] According to the plaintiff, he allowed principal-defendant to reside in a mud wall hut situated within his own portion of land i.e. 'B' Schedule of suit land and when he asked for vacating said land in the year 2017 and even also sent one advocate notice thereafter in this regard, the principal-defendant denied to vacate this same and ultimately the suit was filed for declaration of right, title and interest over the whole area of 0.10 acre of land as described in 'A' Schedule of the plaint and for recovery of possession of 0.04 acre of land as described in 'B' Schedule of the plaint and according to the plaintiff, it is part of 'A' Schedule land.

[6] It was also mentioned in the plaint that initially after purchase, names of 3 (three) brothers were reflected in a joint Khatian which after execution of partition deed was separated and new Khatians were created for each of the 3 (three) brothers and even some change in the ROR of plaintiff was also done as per order of Directorate of Settlement and Land Records (DSLRL) by way of recording of 2 (two) plots viz RS plot No.3722 and RS plot

No.3723 in the name of the plaintiff. The principal-defendant in his written statement denied the ownership of predecessor of plaintiff over 'B' Schedule land and according to him, the plaintiff in connivance with the Revenue officials got his name recorded against said land in the Khatian.

[7] It is also specifically asserted by principal-defendant that in between RS plot No.3722 and RS plot No.3723, there is a path for ingress and egress of all the 3 (three) brothers for convenient use of their land. According to the principal-defendant, he is in possession of said RS plot No.3723 and plaintiff-respondent is in possession of RS plot No.3722.

[8] The principal defendant, however, did not disclose who is the actual owner of 'B' Schedule land though he denied ownership of the plaintiff therein. The third brother i.e. proforma-respondent through his evidence supported the case of the plaintiff. Both the Ld. Trial Court and Ld. First Appellate Court arrived at concurrent findings that the original plaintiff was the owner of 'B' Schedule land and accordingly, granted decree of recovery of possession in respect of said land in their favour.

[9] Mr. D. R. Chowdhury, learned senior counsel strenuously argues that admitted fact of the plaintiff is that he has sacrificed some land for pathway for common use of all the 3 (three) brothers and in a portion of that pathway, there is a mud wall hut existing wherein the present defendant-appellant is residing. As per the admission of the plaintiff, Mr. Chowdhury,

learned senior counsel submits, the plaintiff already sacrificed that land for use of pathway and if now the recovery of possession is granted in respect of said land, necessarily the right to ingress and egress of principal defendant will be disturbed and such right of enjoyment of pathway cannot be curtailed by way of evicting the principal defendant from that land. Regarding the assertions made in the written statement that common pathway is situated in between RS plot Nos. 3722 and 3723 indirectly meaning thereby, pathway does not fall within any of these plots, Mr. Chowdhury, learned senior counsel also argues that it is time honoured principle that plaintiff is to succeed in his case on the basis of his own strength and he cannot rest on the weakness of the defendant's case.

[10] Mr. S.M. Chakraborty, learned senior counsel, on the other hand, seriously refuted the submission of Mr. Chowdhury, learned senior counsel stating that the appellant in the second appeal is totally deviating from what he has stated in his written statement and now, he is trying to build up a new case going beyond his own pleading and therefore, such plea cannot be entertained. Mr. Chakraborty, learned senior counsel also submits that the land of 3 (three) cubits breadth was sacrificed only for the use and enjoyment of 3 (three) brothers and the same was not transferred to any of them by relinquishing his own right therein and, therefore, he has his right to claim ownership over the said land and his client is not going to disturb any of his brothers in due enjoyment of said path. Mr. Chakraborty, learned senior

counsel also submits that according to the assertions made in the written statement itself, no path is situated inside the 'B' Schedule land. Finally, Mr. Chakraborty, learned senior counsel relies on a decision of Honble Supreme Court in ***Kshitish Chandra Purkait vs. Santosh Kumar Purkait & Ors., AIR 1997 SC 2517*** and at Para 7 it was observed by the Apex Court that an appellant cannot be allowed to set up a new case in the second appeal or raise a new issue (otherwise than a jurisdictional one), not supported by the pleadings or evidence on the record, and unless the appeal involves a substantial question of law, a second appeal shall not lie to the High Court.

[11] Considered the rival submissions of the parties and also perused the record.

[12] So far the point agitated by the appellant that if decree of recovery of possession in respect of 'B' Schedule land is allowed to exist, due enjoyment of pathway by the appellant will be disturbed, but such plea was never taken in the written statement by the appellant and as indicated above, his claim was that said pathway is situated in between RS plot Nos. 3722 and 3723. No such assertion has also been made by the appellant in the written statement that any portion of 'B' Schedule land falls within the said pathway. Therefore, such new plea cannot allowed to be taken in the second appeal going beyond what was stated in the pleading. The judgment of Ld. Trial Court indicates that in the proceeding commenced before the Director of Settlement and Land Records (DSLRL) regarding correction of Khatian in the name

of original plaintiff, the appellant was also a party therein and after the order passed by DSLR, he showed no grievance against the same by challenging it in appropriate forum. The plaintiff also did not assert that he sacrificed the land from 'B' Schedule land for the said pathway. Mr. Chakraborty, learned senior counsel also pointed before this Court that in no way the right of enjoyment of said pathway by any of the parties is going to be disturbed if the decree of recovery of possession is allowed to remain in force. However, all these are purely the matters of appreciation of facts and second appeal cannot be admitted for such re-appreciation purpose.

[13] Taking into consideration of above said facts and also on perusal of the record, no substantial question of law is found to be involved in this second appeal. Therefore, the second appeal is not admitted.

The appeal is accordingly disposed of.

Communicate a copy of this order to both Ld. Trial Court and Ld. First Appellate Court.

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

JUDGE

SATABDI DUTTA
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