

**HIGH COURT OF TRIPURA
AGARTALA
RSA 12 of 2022**

Md. Ismail Miah,
son of late Khurshid Miah,
resident of Kamalasagar, Miah Para,
P.O. Kamalasagar, P.S. Madhupur,
District : Sepahijala, aged about-54 years,
By occupation-Cultivation, By faith-Muslim,
Citizen of India

----Defendant-Appellant(s)

Versus

Mst Nehera Begam,
wife of Md. Zahir Miah @ Jaher Miah,
resident of kamalasagar, Miah Para,
P.O. Kamalasagar, P.S. Madhupur,
District : Sepahijala

----Respondent(s)

For Appellant(s)	:	Mr. N. Chowdhury, Adv.
For Respondent(s)	:	Mr. Sankar Bhattacharjee, Adv.
Date of Hearing	:	04.03.2024
Date of Judgment & Order	:	12.03.2024
Whether fit for reporting	:	YES

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

Heard Mr. N. Chowdhury, Learned counsel appearing for the appellant-defendant as well as Mr. Sankar Bhattacharjee, Learned counsel appearing for the respondent-plaintiff.

2. This is an appeal under Section 100 of CPC challenging the judgment dated 11.11.2019 and decree dated 22.11.2019 and corrected decree dated 12.02.2020 in Title Appeal No.35 of 2017 delivered by Learned Additional District Judge, Sepahijala, Bishalgarh

by setting aside the judgment dated 11.11.2019 and decree dated 22.11.2019 in connection with case No. Title Suit 39 of 2014 delivered by Learned Civil Judge, Senior Division, West Tripura, Agartala, Court No.2.

3. Before enter into the merit of the appeal, let us discuss about the subject matter of the dispute cropped up amongst the parties. One Wahab Ali, S/o of Late Majlu Ali @ Malu Miah represented by his lawful attorney Md. Jahangir Alam, S/o of Md. Jahir Miah of Kamalasagar Miah Para, P.O. Kamalasagar, P.S. Bishalgarh, District- Sepahijala filed one suit before the Court of Learned Civil Judge, Senior Division, Court No.1, West Tripura, Agartala for a decree of declaration of title and for recovery of possession under Section 5 of the Specific Relief Act against the defendant Md. Ismail Miah.

4. According to the plaintiff, the land measuring 1.30 acres of Mouja-Kamalasagar, Tahashil-Bishalgarh, Revenue Circle-Bishalgarh, Sabek Khatian No.306, Hal Khatian No.580 comprised in Old Plot No.812(P) corresponding to Hal Dag No.769/1677 as described in Schedule-B of the plaint is the part of land measuring 2.34 acres described in Schedule-A of the plaint and Schedule-C is the suit land which is part of land measuring 1.30 acres of land as mentioned in Schedule-B of the plaint. According to the original plaintiff, he was landless and as such on his prayer in the year 1981, the Government of Tripura allotted land measuring 2.34 acres under Mouja-Kamalasagar to him and he got delivery of possession of the entire land measuring 2.34 acres and Khatian was prepared in his name vide No.306 which was later on finally published in the year 1982 and the said plots of land comprised in Hal Plot No.769 and 740 under Mouja-Kamalasagar which was described in Schedule-A of the

plaint. After getting the allotment, the plaintiff started enjoying the entire land by constructing dwelling hut and planted various trees enjoying usufructs therefrom.

5. After that, the Government vide L.A. Case No.12/88 under Serial No.58 in the year 1988 for the purpose of construction of Border Road acquired land measuring 0.70 acres from Plot No.769(P) of the total quantum of land measuring 2.34 acres and accordingly, the plaintiff received award/compensation from the Government. After acquisition, rest quantum of land measuring 1.30 acres left under Plot No.769(P) and 0.34 acres of land left under Plot No.740 in Khatian No.306 under Mouja-Kamalasagar. In the year 1994, the appellant-defendant requested the plaintiff to allow him to use some land and out of sympathy, the plaintiff allowed to use some portion of land from the said land measuring 1.64 acres left after acquisition. The land was permitted to be used only for the purpose of survival but not for any other purpose. In the month of May, 2007, all on a sudden, according to plaintiff, the appellant-defendant started cutting some valuable trees and when the plaintiff raised protest, that time, some dispute cropped up amongst them and the plaintiff noticed that the defendant illegally occupied 0.70 acres of land as mentioned in the Schedule-C of the plaint which is the suit land of the suit. On 26.12.2007, the plaintiff requested the defendant again to vacate the suit land as occupied by him as he was not further allowed to remain as permissive possessor but the defendant denied to vacate the same and thus, he became as illegal possessor. But that time, the defendant stated that he is the owner of the suit land. After that, the plaintiff collected the relevant Khatian No.306 and found that in his Khatian total land measuring 2.34 acres was shown again, although,

after acquisition, he had left only 1.64 acres of land. After that, he again enquired the matter and collected a computerized copy of Khatian No.306 of Mouja-Kamalasagar that time he found that out of 1.64 acres of land in Sabek Plot No.1141(P), Hal Plot No.740 only 0.34 acres of land has been recorded instead of 1.64 acres and after collecting the same, it was found that in the said Khatian MR Case No.68/96 was mentioned. Accordingly, he collected the relevant Khatian against MR Case No.68/96 when he found that a separate Khatian bearing No.580 under Mouja-Kamalasagar was created in the name of the defendant as an allottee which was described in Schedule-B of the plaint. It was also further detected that Sabek Plot No.812(P) and Hal Plot No.769/1677 is recorded in the name of defendant which was originally part of land of Khatian No.306 standing in the name of the plaintiff. That time, it came to his knowledge that the defendant in connivance with Tahashil staff managed to procure one Khatian in his favour but the plaintiff never sold the said land to the appellant-defendant.

6. After that, the plaintiff filed an application on 02.05.2011 to the Office of D.M. & Collector, West Tripura for eviction of the defendant and accordingly, the D.M. & Collector in Revenue Case No.21/2012 enquired the matter through DCM, Bishalgarh when it was detected that no such MR Case No.68/96 was found available in Debipur Tahashil Office and the Khatian No.580 was created without any instruction from the appropriate authority. After creation of separate District in Sepahijala, the records of Revenue proceeding was transferred to D.M. & Collector, Sepahijala and accordingly, on receipt of the enquiry report of Tahashilder of Debipur Tahashil, the DCM Bishalgarh submitted his report to SDM, Bishalgarh stating that the

Khatian number created in the name of Ismail Miah vide No.580 may be treated as illegal and liable to be cancelled. On the basis of field enquiry report of DCM Bishalgarh and SDM Bishalgarh, D.M. & Collector, Sepahijala by order dated 30.06.2012 observed that the opposite party i.e. the appellant-defendant herein by crafty trick got mutation without producing any valid documents. So, he opined that the mutation proceeding No.68/96 be liable to be cancelled.

7. Further, according to the plaintiff, before the District Collector it was crystal clear that MR proceeding No.68/96 was false and fabricated one and he ordered to identify the official who were involved with the misdeed. The plaintiff further asserted that that time the defendant with an ulterior motive filed a suit for declaration of title, confirmation of possession and perpetual injunction which was registered as T.S. Case No.124/11 before the Court of Learned Civil Judge, Senior Division, Court No.2, West Tripura, Agartala. And the present defendant also filed an injunction petition along with the original suit but the Learned Court declined to pass any order of injunction in favour of the defendant vide order dated 15.11.2011. Thereafter, the defendant preferred one Misc. appeal against the order dated 15.11.2011 before the Court of Learned Addl. District Judge, Court No.5, West Tripura, Agartala and by the judgment dated 07.07.2012 the Learned Addl. District Judge, Court No.5, West Tripura, Agartala dismissed the Misc. appeal. After that, on 12.10.2012, the present defendant filed one petition under Order 26 Rule 9 for local investigation before the Court of Learned Civil Judge, Senior Division Court No.2 in T.S.124/2011 in respect of land as mentioned in Schedule-B of the plaint and the Advocate Commissioner submitted his report on 04.12.2013 and in the report it was asserted

that the plaintiff was in possession of some portion of land along with huts standing therein where he was residing along with his family members and the defendant was also illegally possessing some quantum of land. Ultimately the suit filed by the appellant-defendant was dismissed. However, with the aforesaid assertions the plaintiff filed the suit as stated above.

8. It was further asserted that as the plaintiff was aged about 84 years of age, so he filed the suit through his constituted attorney. The appellant-defendant contested the suit by filing a written statement stating that the suit was not maintainable rather he took the plea that prior to filing of the suit he filed another suit against the plaintiff which was numbered as T.S.124/11 for declaration of right, title, confirmation and possession with injunction. It was further asserted that the suit land along with other lands was originally belong to Kayemi Taluk No.158 and one Surendranath Nandi was the owner and later on, it was recorded in khash Khatian and thereafter, the Government allotted land measuring 1.30 acres to the defendant from C.S. Plot No.812 and vide mutation he got Khatian No.580 comprising old C.S. Plot No.812(P) and present C.S. Plot No.769/1677. The appellant-defendant also in his written statement submitted that a portion of land measuring 0.70 acres for construction of road was acquired by the Government from one jotedar Wayab Ali son of Malum Ali but said Wayab Ali was not the present plaintiff. He further submitted that Wahab Ali son of Late Majlu Ali left for Bangladesh since long back and the present plaintiff with a deceitful manner claimed that he was the owner of the suit land and prayed for dismissal of the suit. Upon the pleadings of the parties, Learned Court below framed the following issues :

"ISSUES

- 1) Is the suit maintainable in its present form and nature?**
- 2) Has the Plaintiff any right, title and interest over the suit land?**
- 3) Whether plaintiff has any cause of action to institute the instant suit?**
- 4) Whether the plaintiff is entitled to get a decree of recovery of possession of land measuring 0.70 acres of land mentioned in Schedule-C of the plaint after removing all obstruction/construction therefrom created by the defendant, his men and agent?**
- 5) What other relief/reliefs the parties are entitled to?"**

9. To substantiate the issues, both the parties have adduced oral/documentary evidence on record :

"In order to prove his claim the plaintiff has examined four numbers of witnesses namely –

- 1) Md. Jahangir Alam as P.W.1**
- 2) Md. Jahir Miah as P.W.2**
- 3) Md. Jalil Miah as P.W.3**
- 4) Mr. Sahaalam Miah as P.W.4**

The plaintiff had produced some documents which were exhibited as follows :-

- 1) Certified copy of Khatian No.306 of Mouja-Kamalasagar – (Exbt.1)**
- 2) Another Khatian No.580 of Mouja-Kamalasagar –(Exbt.2)**
- 3) Photocopy of application, dated 02.05.2011**
- 4) Photocopy of letter, dated 13.05.2011**
- 5) Certified copy of Order, dated 30.06.2012 along with certified copy of enquiry report, dated 05.11.2011, 27.10.2011, 26.03.2012, 23.04.2012 and 05.12.2011 – (Exbt.3 series)**
- 6) Certified copy of letter, dated 28.08.2013 along with letter, dated 13.08.2013 and letter, dated 02.07.2013 – (Exbt.4 series)**
- 7) Certified copy of letter, dated 19.03.2012 –(Exbt.5)**
- 8) Copy of Plaint in connection with TS 124 of 2011 –(Exbt.6)**
- 9) Certified copy of order, dated 15.11.2011 in connection with Misc.143 of 2011 and the Judgment in connection with Misc. Appeal No.01/2012 –(Exbt.7 series)**
- 10) Certified copy of Commissioner's report in connection with TS 124/2011 –(Exbt.8)**
- 11) Copy of Tripura Gazette Extra-Ordinary issue, dated 01.06.1988 –(Exbt.9)**

The defendant side has also examined four numbers of witnesses namely-

- 1) Ismail Miah as D.W.1**
- 2) Abdul Kadir as D.W.2**
- 3) Madhu Miah as D.W.3**
- 4) Hiran Miah as D.W.4**

The defendant prayed to adopt already the exhibited documents on behalf of plaintiff in TS 124/2011, in this suit on behalf of defendant which were re-numbered as follows :-

- 1) Certified copy of Khatian No.580 of Mouja-Kamalasagar (new and old) –(Exbt.A)
- 2) Another Khatian No.1 of Mouja-Kamalasagar in the name of Tripura Prasashan connected with Plot No.812 –(Exbt.B)
- 3) Electric Consumer Pass Book of plaintiff –(Exbt.C)
- 4) Certified copy of old Survey Settlement Map –(Exbt.D)
- 5) Certified copy of FIR, Ejahar –(Exbt.E series)
- 6) Voter list published on 05.01.2012 of Kamalasagar Assembly Constituency –(Exbt.F)
- 7) Photo copy of Voter list of Bangladesh of Jagisha Constituency along with original envelop of Bangladesh (Air Mail) –(Exbt.G series)(S/O)
- 8) Certified copy of resolution, dated 28.0.2011 of Kamalasagar Gaon Panchayat and mutation record in c/w MR Case No.68/96 –(Exbt.H series)
- 9) Certified copy of Tripura Gazette (extra ordinary issue), dated 01.06.1988 –(Exbt.G series)”

10. Finally, on completion of trial and after hearing both sides, Learned Trial Court below by the judgment dated 02.06.2017 dismissed the suit on the ground that the plaintiff had no right, title and interest over the suit land. For the sake of convenience, I would like to mention herein below the operative portion of the judgment dated 02.06.2017 which reads as under :

“In the result, this suit stands dismissed on contest without costs.

The plaintiff has no right, title and interest over the suit land as well as not entitled for a decree of recovery of possession over the suit land.

With the above observation the suit is finally disposed of on contest without costs.

Prepare decree accordingly.

Enter the result in Trial Register.”

11. Challenging that judgment, the plaintiff as appellant preferred an appeal before the Court of Learned District Judge, West Tripura, Agartala which was numbered as T.A.35 of 2017. After that, the case was assigned to Learned Additional District Judge, Sepahijala District, Bishalgarh for disposal as per law.

12. Thereafter, the Learned First Appellate Court after elaborate hearing of arguments of both the sides allowed the appeal and reversed the finding of the Learned Trial Court by judgment dated 11.11.2019 and accordingly, the decree was prepared. For the sake of

convenience, I would like to refer herein below the operative portion of the judgment and order of the Learned First Appellate Court which is as follows :

"In the result this Appeal by the appellant plaintiff succeed and as a consequence the Judgment dt.02.06.2017 of the Ld. Trial Court in Title Suit No.39 of 2014 is set aside. It is hereby declared that the plaintiff appellant is the owner and possessor of land measuring 1.30 acres described in schedule B of the plaintiff and he has right, title and interest over the suit land and he is entitled to recover the suit land from the possession of the respondent defendant. Prepare the decree accordingly. Send down the LC record to the Ld. Trial Court along with a copy of this Judgment. This Title Appeal stands disposed of on contest. "

13. It is to be noted here that during pendency of the appeal before the Learned First Appellate Court, the original plaintiff expired leaving behind his daughters. So, by way of substitution, Mst. Nehera Begam was substituted as an appellant before the Learned First Appellate Court as per order dated 07.08.2019. Thereafter, challenging the judgment of First Appellate Court, the present appellant-defendant namely Md. Ismail Miah has preferred the second appeal before the High Court. At the time of admission of this appeal, following substantial question of law was framed vide order dated 28.06.2022:

"Whether the judgment and decree passed by learned Additional District Judge, Sepahijala District, Bishalgarh in connection with case no. Title Appeal 35 of 2017 is perverse?"

14. In course of hearing of arguments, Mr. N. Chowdhury, Learned counsel appearing for the appellant-defendant has submitted that the original allottee left for Bangladesh since long days back and thereafter, he did not come back to India but the plaintiff who filed the suit was a 3rd person who with a deceitful manner filed the suit before the Learned Trial Court. Learned counsel further submitted that the appellant have/had no idea regarding allotment of the suit land in

favour of said plaintiff, rather, he was homeless and landless. So, the Government finding him in possession allotted land measuring 1.30 acres of land to him which was given after observing all formalities. He also submitted that as alleged by Learned counsel for the present respondent-plaintiff the appellant was not the custodian of the MR proceeding rather it remained under the custody of Revenue Authority who allotted the land to him. So, no responsibility could be casted upon him with the allegation that said record could not be traced out.

15. He further submitted that as alleged by the respondent-plaintiff the revenue proceeding is still pending before the Court of Learned District Collector, Sepahijala, Sonamura but the Learned First Appellate Court without waiting for the final report of the District Collector has passed the order which was not legally tenable in the eye of law.

16. Learned counsel for the appellant also drawn the attention of the Court that amongst the parties so many cases and counter cases were filed and just after the election, the respondent-plaintiff forcefully ransacked his house and tried to oust him from his allotted land illegally. Furthermore, the name of the original plaintiff was struck off from the voter list of 2014 as the original Wahab Ali was not found to be available in the locality during enquiry.

17. Learned counsel for the appellant also submitted that the present appellant-defendant filed another suit before the Court of Learned Civil Judge, Senior Division, West Tripura, Agartala which was numbered as T.S.124/2011 seeking declaration of title, confirmation of possession and perpetual injunction and the said suit was dismissed and the record has been called for by the High Court.

18. Learned counsel for the appellant finally submitted that Learned Trial Court after considering the oral/documentary evidence on record rightly and reasonably dismissed the suit of the original plaintiff but the Learned First Appellate Court without any basis just on the observation of District Collector, Sepahijala in Revenue proceeding which is still pending for disposal reversed the finding of the Learned Trial Court most illegally and urged for allowing this appeal by setting aside the judgment of First Appellate Court.

19. On the other hand, Mr. Sankar Bhattacharjee, Learned counsel appearing for the respondent-plaintiff submitted that the original allottee Wahab Ali filed a suit as plaintiff and he got allotment of 2.34 acres of land from the Government as he was landless and Khatian was accordingly created in his name in the year 1982 which was finally published. In the year 1994, the present appellant requested him to allow him to stay on a portion of the suit land as he was homeless and he intended to do something. So, considering his request, the original plaintiff allowed him to stay on a portion of total land as permissive possessor. But thereafter, in the year 2007 the present appellant illegally started removing some valuable trees and when the original plaintiff objected that time he disclosed that he is the owner of that land and on close scrutiny it was detected that the present appellant in connivance with the revenue staff managed to procure a fake Khatian in his name showing that he has given allotment of land measuring 1.30 acres. Accordingly, the original plaintiff sought redress before the District Collector for correction of record and that time it was detected that vide purported and fabricated MR Case No.68/1996, 1.30 acres of land was illegally shown to be given allotment in favour of the present appellant and

accordingly, the District Collector by his order dated 30.06.2012 observed that that was obtained by the appellant by applying fraud and accordingly, necessary direction was given. Even DCM, Bishalgarh and SDM, Bishalgarh also opined that the Khatian was illegally created and observed that it should be cancelled.

20. Learned counsel further submitted that the land measuring 0.70 acres was acquired by the Government from the total land measuring 2.34 acres for the purpose of construction of border road and accordingly vide L.A. proceeding bearing No.12/88 the said land was acquired and the notification was published in the official gazette and for acquisition, the original plaintiff got compensation/award from the Government. But the Learned Trial Court without appreciating the legal position came to an observation that the original plaintiff was lacking of title over the suit land and dismissed the suit. But the First Appellate Court after considering all the legal aspects reversed the finding of Learned Trial Court which according to Learned counsel was lawful, justified and reasonable and urged for upholding the judgment of the Learned First Appellate Court dismissing the appeal with costs.

21. In respect of other allegations leveled by the appellant against the original plaintiff in course of hearing, Learned counsel fairly submitted that those part of arguments were not material for the decision of the case and furthermore, as alleged by the appellant that the name of Wahab Ali was struck off from the voter list but later on, the voter list was again corrected by the authority finding him as the inhabitant of that area and accordingly, the voter list was again rectified. Learned counsel for the respondent-plaintiff again submitted

that the other grounds were nothing but fabricated imputations of the appellant.

22. Learned counsel also took the plea that before the Learned Trial Court no such issue was framed on this fabricated ground leveled by the present appellant that the original plaintiff was Bangladeshi National and even before the First Appellate Court no such plea was taken. So, according to Learned counsel, just to divert the mind of the Court this false plea has been taken by the appellant and submitted that since the appellant is in connivance with revenue staff managed to procure false/fabricated documents in his favour so he should be punished and urged for dismissal of the appeal with costs.

23. In course of hearing of argument, Learned counsel for the respondent plaintiff relied upon one citation of Supreme Court of India in **R.V.E. Venkatachala Gounder versus Arulmigu Viswesaraswami & V.P. Temple and Another** reported in **(2003) 8 SCC 752** wherein in para-33 of the said judgment, Hon'ble Apex Court has observed as under:

"33. The offshoot of the above discussion is that no question of law much less a substantial question of law arose in the case worth being gone into the by the High Court in exercise of its second appellate jurisdiction under Section 100 of the CPC. The High Court was bound by the findings of fact arrived at by the two courts below and should not have entered into the exercise of re-appreciating and evaluating the evidence. The findings of facts arrived at by the courts below did not suffer from any perversity. There was no non-reading or misreading of the evidence. A high degree of preponderance of probability proving title to the suit property was raised in favour of the appellant and the courts below rightly concluded the burden of proof raised on the plaintiff having been discharged while the onus shifting on the defendant remaining undischarged. The judgment of the High Court cannot be sustained and has to be set aside."

Referring the same, Learned counsel submitted that there is no scope to re-appreciate or to evaluate the evidence on record at

this stage and Learned First Appellate Court after considering all aspects rightly delivered the judgment in favour of the original plaintiff i.e. the present respondent plaintiff. I have taken note of the principle of the aforesaid judgment in deciding this case.

24. I have heard detailed argument of both the sides and gone through the records of the Learned Court below. After going through the records of the Learned Courts below it appears that originally 2.34 acres of land was allotted in the name of the original plaintiff Wahab Ali by the Government in the year 1981 and thereafter Khatian was created in his name after final publication vide No.306, Touzi No.5 showing land measuring 2.34 acres against old C.S.Plot No.812(P) corresponding to R/S Plot No.769 land measuring 2 acres and old C/S Plot No.1141(P) corresponding to R/S Plot No.740 land measuring 0.34 acres, in total land measuring 2.34 acres. From the said Khatian, it appears that in the relevant column No.24, there was no adverse entry showing permissive or forceful possession of any person, even the present appellant also. Thus, it can be inferred that when the land was allotted and Khatian was finally published in the year 1982 no other person was there over the total land measuring 2.34 acres except the respondent-plaintiff. Further, on perusal of the gazette notification dated 01.06.1988 it also appears that from the said Khatian No.306, 0.70 acres of land was acquired from Plot No.769(P) for the purpose of construction of road along Tripura Bangladesh border at Mouza Kamalasagar. It is the admitted position that said Wahab Ali got compensation/award from the Government in respect of acquisition of land measuring 0.70 acres of said Khatian No.306 against C/S Plot No.769(P). After acquisition, it appeared that land measuring 1.64 acres left in the name of said Wahab Ali, all

though, the Khatian was not rectified/corrected by the authority. In this regard, I would like to mention herein below the relevant provision of Section 43(2) of the TLR & LR Act which provides as under :

"43(2). When all objections have been considered and disposed of in accordance with the rules made in this behalf, the survey officer shall cause the record to be finally published in the prescribed manner."

25. During survey operation after exhausting so many processes finally published Khatian was prepared. Apart from the original plaintiff had there be any other person, even the appellant-defendant also, in that case his/her name would definitely could be reflected in the relevant column of possession by settlement authority either as permissive possessor or as forceful possessor or the settlement authority could pass appropriate order in accordance with the law. But later on vide MR Case No.68/96 it appears that 1.30 acres of land was given allotment in favour of the appellant defendant deducting from old Plot No.812(P) showing butted Plot No.76/1677. The defendant appellant could not prove any allotment order on the basis of which he got allotment from the Government. The alleged MR Case bearing No.68/96 could not be produced or proved by the defendant rather there is evidence on record that record of proceeding was not available. Furthermore, from the order of District Collector dated 30.06.2012 in Revenue Case No.21/12 it appears that he opined that the said proceeding was manipulated one and SDM, Bishalgarh also opined that the said document was fabricated, illegal and it was liable to be cancelled. All though, the final order of the Revenue proceeding could not be produced by either of the parties in any of the forum even before this Court also. There is also no evidence on record that the original plaintiff at any point of time

transferred or handed over possession of any land from the suit land to the appellant defendant by way of any registered instruments. So, it is crystal clear that the said purported Khatian No.580 in the name of the defendant appellant was created by the concerned Revenue authority without any basis most illegally beyond the knowledge of original plaintiff or his successor i.e. the present respondent plaintiff also. In this regard, I would like to mention herein below the observation of the Division Bench of our High Court in **Shri Dhaneswar Debbarma versus The State of Tripura and Other [judgment dated 15.06.2015 in Writ Appeal No.04 of 2015]** wherein in para-5 of the said judgment, this High Court has observed as under :

"5. At the outset, we may notice that the land was allotted in favour of the writ petitioner in the year 1988. Assuming that there was any error in the allotment, such allotment should have been challenged within a reasonable time. Allotments cannot be set aside after expiry of reasonable period. What is a reasonable period may depend on the facts of a particular case but normally the reasonable period will not exceed 3 years at the most. It is only in cases where fraud is proved that the period of limitation will start from the date of discovery of the fraud. Otherwise within a reasonable period, proceedings to cancel allotment must start. A person who is allotted land develops the land by dint of his hand work. He invests money and time on the land. After he has developed the land the allotment cannot be set aside after two decades on the ground that the objector had a better claim to the land."

26. From the aforesaid observation, it appears that the allotment once issued cannot be set aside after a reasonable period of three years by the authority. Here in the given case the allotment was given in the name of the original plaintiff in the year 1981 and Khatian was finally published in the year 1982. But from Exbt.A it appears that his allotment was cancelled by the Revenue authority in the year 1997 beyond the knowledge of the original plaintiff without any proceeding and also without issuing any notice to the original plaintiff or his

successor which is totally illegal and in operative and not binding upon the original plaintiff. The Learned Collector by order dated 30.06.2012 rightly observed that the defendant appellant got the same by applying fraud without producing any valid documents. But the Learned Trial Court below without considering the legal position of law just on the basis of purported Khatian No.580 relied upon by the appellant defendant came to the finding that the plaintiff had lacking of title over the suit land which was not permissible as per law. So, Learned First Appellate Court after considering all aspects was pleased to reverse the judgment and decree of Learned Trial Court which in my considered view Learned First Appellate Court rightly did so. Furthermore, as alleged by the appellant defendant as already stated that the original plaintiff was not a citizen of India, this contention also could not be proved and there is also no scope to take any adverse inference against the original plaintiff that he was a foreign national in absence of any valid documentary evidence on record.

27. Learned counsels at the time of hearing of arguments confined their arguments only regarding authenticity of the purported Khatian No.580 standing in the name of the defendant appellant. All though, the proceeding before the District Collector was still pending but from the connected correspondences of the DCM, SDM and also in view of the judgment of this High Court there is no scope to take any positive views in favour of the defendant appellant. More so, regarding the land of Kayemi Taluk as submitted by Learned counsel for the appellant no such documentary evidence was led before any of the forums that the defendant appellant was a sub-tenant or under rayat under the original jotedar to substantiate his claim of possession over the suit land, even no documentary evidence could be produced

and proved by the appellant to take any favourable views in his favour. Thus, the substantial question of law as formulated stands in favour of the respondent plaintiff of this appeal.

28. In the result, the appeal filed by the present appellant is hereby dismissed on contest with costs.

The judgment dated 11.11.2019 and decree dated 22.11.2019 and corrected decree dated 12.02.2020 in Title Appeal No.35 of 2017 passed by Additional District Judge, Sepahijala, Bishalgarh by setting aside the judgment and decree in connection with case No.Title Suit 39 of 2014 delivered by Learned Civil Judge, Senior Division, West Tripura, Agartala, Court No.2 is hereby upheld and accordingly, it is affirmed. The plaintiff appellant is entitled to get the decree in respect of the suit land as mentioned in the Schedule of the plaint by evicting the defendant.

Prepare the decree.

Send down the LCRs forthwith.

JUDGE