

IN THE HIGH COURT OF TRIPURA
A G A R T A L A

RSA No.12 of 2024

- 1. Smt. Sushanti Debnath,**
wife of late Nirendra Debnath
- 2. Sri Bimal Debnath,**
son of late Nirendra Debnath
- 3. Smt. Sheli Debnath,**
daughter of late Nirendra Debnath
- 4(a). Smt. Shanta Debnath,**
wife of late Nirmal Debnath
- 4(b). Sri Neelava Debnath,**
son of late Nirmal Debnath

All are residents of P.O & P.S. Panisagar,
District- North Tripura

- 5. Smt. Sefali Debnath,**
wife of Sri Bimal Nath, daughter of late
Nirendra Debnath of Netaji Chowmuhani,
Dighalbank, P.S. Dharmanagar, District-
North Tripura

..... **Appellant (s)**

- V e r s u s -

The Satsang,
a registered Society registered under the
Societies Registration Act, 1960, District &
P.O. Deogarh, Jharkhand having its branch
(Ashram) all over the country including one
at Panisagar, represented by the Secretary,
Managing Committee, Panisagar Satsang
Kendra, Panisagar, North Tripura

..... **Respondent (s)**

For the Appellant(s)	:	Mr. S. Deb, Sr. Adv. Mr. S. Datta, Adv.				
For the Respondent(s)	:	Mr. D.K. Biswas, Sr. Adv. Mr. G.K. Nama, Adv. Mr. D.S. Kunwar, Adv.				
Date of hearing	:	25.09.2024				
Date of delivery of Judgment & order	:	17.12.2024				
Whether fit for reporting	:	<table border="1"><tr><td>YES</td><td>NO</td></tr><tr><td></td><td>√</td></tr></table>	YES	NO		√
YES	NO					
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HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA

JUDGMENT & ORDER

The appeal arises from the judgment dated 18.12.2023 passed by the learned District Judge, North Tripura, Dharmanagar in Title Appeal No.20 of 2022 and related decree thereof. By said judgment, learned First Appellate Court affirmed the judgment dated 01.08.2022 of the learned Civil Judge, Sr. Division, Court No.2, North Tripura, Dharmanagar in Title Suit No.30 of 2017, whereby the right, title and interest of the plaintiff (the respondent herein) in the suit land was declared and prayer for recovery of possession of a part thereof, described in the 'B' schedule of the plaint was granted.

[2] The appellants (the defendants of the original suit) being aggrieved by the concurrent findings of both the learned courts below have preferred this appeal.

[3] The plaintiff, a Society, called the Satsang, institutes the suit with the averments that they became the owner of 0.15 acres of land of CS Plot No.2269 and 2265 (P) [described in the schedule of the plaint] by way of registered gift deed executed by one Thakurmani Debnath vide deed of gift No.1-2504 dated 22.04.1976 [Exbt.2]. According to them, said Thakurmani Debnath, purchased 0.15 acres of land by a registered deed No.1-7030 dated 11.11.1970 [Exbt.C] from one Nalini Mohan Das and further 0.08 acres of land from Nirendra Ch. Debnath [the predecessor of the defendants] vide sale deed no. 1-6942 dated 02.11.1970 [Exbt.D] and became the owner

in possession of total 0.23 acres of land and out of the said property, he gifted 0.15 acres of land to the plaintiff, but, on 18.12.2005 suddenly the defendants illegally occupied a portion of the said land by raising fence and therefore, the prayer for recovery of possession has been made.

[4] According to the plaintiff, in the year 1997, the defendants filed a suit bearing No.T.S.26 of 1997 against them claiming right, title and interest in the suit land and recovery of possession and the said suit was partly decreed and partly dismissed by Ld. Trial Court. Against the said judgment and decree, the appeal bearing No.T.A.18 of 2005 was preferred and the learned first appellate court dismissed the entire suit with the findings that the plaintiff had right, title and interest in the entire suit land. Thereafter, the said judgment and decree were not challenged by the defendants in the higher forum making it binding on them.

[5] The defendants in their written statement have challenged the ownership of the plaintiff in the entire suit land. According to them, one Nagendra Chandra Debnath and another Nirendra Chandra Debnath [the predecessors of the present defendants] were the owners in possession of total land area 0.45 acres of C.S. Plot No.2265 [0.30 acres], C.S. Plot No.2266 [0.10 acres] and C.S Plot 2269 [0.05 acres] of Mouja-Panisagar having 50% share each therein. Said Nagendra Chandra Debnath sold out 0.19 acres of land vide registered deed No.1-6841 dated 08.12.1967 [Exbt.A] to one

Nalini Mohan Das and said Nalini Mohan Das, again sold out 0.17 acres of land therefrom to their predecessor Nirendra Ch. Debnath vide sale deed No.1-7233 dated 10.10.1968 [Exbt.B] and thereafter he again sold out 0.15 acres of land to Thakurmani Debnath vide sale deed No.1-7030 dated 11.11.1970 [Exbt.C] though he had only transferable interest of 0.02 acres of land therein after his such transfer of said 0.17 acres of land to Nirendra Ch. Debnath. They also stated that said Nirendra Ch. Debnath sold out 0.08 acres of land to Thakurmani Debnath vide registered deed No.1-6942 dated 02.11.1970 [Exbt.D] and thereafter, said Thakurmani Debnath transferred 0.15 acres of land to Satsang as claimed by the plaintiff though he was not the rightful owner of 0.15 acres of land at that time. According to them, the suit land was all along in their possession under their fencing and therefore, the question of alleged dispossession of plaintiff does not arise.

[6] The learned trial court framed the following 6[six] issues in the suit:

[i] Whether the suit maintainable in its present form and nature?

[ii] Whether there is cause of action for filing this suit?

[iii] Whether the plaintiff has right, title and interest over the suit land?

[iv] Whether the facts of possession of the plaintiff over the suit land and his dispossession therefrom on 18.12.2005 are true? If so, whether the plaintiff is entitled to recovery of possession of the suit land?

[v] Whether the plaintiff is entitled to get the decree for perpetual injunction?

[vi] Whether the plaintiff is entitled to any other relief/relief(s)?

[7] The learned trial court after considering the evidences of both sides along with the documents submitted by them finally decreed the suit basically on the ground that already in the previous suit the right, title and interest of the plaintiff was decided by the court and therefore, it became *res judicata*. The learned trial court decided the ownership of the plaintiff in the suit land while deciding the Issue Nos.(iii), (iv), (v) & (vi) together.

[8] In appeal, the learned first appellate court also subscribes its concurrence with the decision of the learned trial court. It is also held by the first Appellate Court that the admitted position of the parties was that the suit property of T.S.26 of 1997 and the present suit were same and the plea of right, title and interest of the defendants was already discussed in details in T.S.26 of 1997 and also in the connected appeal and it was categorically held that the present defendants had not right, title and interest in the suit land and therefore, the question regarding title in respect of the suit land was directly and substantially in issue in T.S.26 of 1997 and in the consequent appeal No.T.A.18 of 2005. According to the learned first appellate court, the appellants did not challenge the said judgment of T.A.18 of 2005 in the higher forum and therefore, it was finally decided that the present plaintiff had right, title and interest in the suit land and therefore, the first appellate court dismissed the appeal.

[9] Mr. S. Deb, learned senior counsel appearing for the defendant-appellants argues that the previous suit was regarding 2 [two] gandas of land, which was dismissed by the learned first appellate court of that suit, but, the in the present suit, the suit land is of 0.15 acres of land i.e. more than 7[seven] gandas and therefore, the suit lands of previous suit and the present suit are not similar. The second point as raised by Mr. Deb, learned senior counsel is that no specific issue on the point of *res judicata* was framed by the courts below and moreover, the provision of Order XLI Rule 31 of the CPC was also not complied by the learned first appellate court. Mr. Deb, learned senior counsel seriously challenges the impugned judgment on the ground that only two points were taken up for decision by the learned first appellate court which were-whether the plaintiff became the owner of the suit property on the basis of gift deed executed by Thakurmani Debnath and whether the defendants dispossessed the plaintiff from the suit land measuring 0.07 acres as described in 'B' schedule of the plaint and there was no whisper in those 'points for decision' about the issue of *res judicata*. Another point of challenge as raised by Mr. Deb, learned senior counsel is that the boundary description of 'A' schedule land and boundary description of 'B' schedule land of the plaint do not tally with each other, for, in the first schedule land, Satsang temple has been shown on the western side of the suit land whereas in the 'B' schedule land, the said Satsang temple has been shown in the eastern side. However, this point cannot be taken up for consideration in the second appeal for the first

time as no such plea of wrong boundary description was taken in the written statement of the defendants. Mr. Deb, learned senior counsel also relies on some decisions of the Apex Court and the Privy Council which will be discussed in due course.

[10] Mr. D.K. Biswas, learned senior counsel appearing for the plaintiff-respondent firstly argues that there is no substantial question of law involved in the second appeal as the questions involved in this appeal are purely the question of apperception of facts. Mr. Biswas, learned senior counsel also argues that even though the appeal has been admitted for hearing on substantial question of law but as per sub-Section 5 of Section 100 of the Code of Civil Procedure, the respondent has the right to show that the case does not involve any such substantial question. According to Mr. Biswas, learned senior counsel, the matter of *res judicata* is already embodied in the Statute and therefore, no substantial question of law is permissible to be formulated on that ground. Mr. Biswas, learned senior counsel continues to argue that the perversity on findings of facts is not a substantial question of law and only the perversity relating to a pure question of law which is not decided yet by the Apex Court or by the High Court can be entertained in the appeal. Mr. Biswas, learned senior counsel also contends that DW-2 in his evidence admitted the fact of previous suit and therefore, there was no scope of any interference as already the decision taken in the earlier suit became binding on the defendants. Referring to Section 103 of the CPC, Mr. Biswas, learned senior counsel further submits that in any second

appeal, the High Court may determine any issue necessary for disposal of the appeal only within the ambit of section 103. According to Mr. Biswas, learned senior counsel, unless there is any perversity committed by the courts below is not shown by the other side, this court cannot enter into the re-appreciation of the facts.

[11] The present appeal has been admitted on the following substantial questions of law:

[i] Whether the findings of the learned first appellate court that the suit was barred by *res judicata* was perverse?

[ii] Any other substantial question of law may also be heard during haring of the appeal?

[12] The entire controversy centres upon the question of *res judicata* from the court of first instance below. This appeal also basically admitted on the point whether any perversity has been committed by the courts below while holding that the right, title and interest of the parties were already decided in the previous suit keeping in view of the attending facts and evidences as placed by the parties. According to Mr. Deb, learned senior counsel, both the courts below misapplied the provisions of Section 11 of the CPC and as such, misapplication of law itself is a substantial question of law. However, there is no dispute at the bar that both the parties of the instant suit were also parties in the previous suit. Only contention of the present defendants is that only a part of the present suit land was involved in the previous suit and therefore, principle of *res judicata* cannot be applied. In the contexts of submissions and counter submissions of

the parties, the relevant decisions of the Apex Court and Privy Council as relied on by Mr. Deb, learned senior counsel are also required to have reference now.

[13] Mr. Deb, learned senior counsel first relies on a decision of the Privy Council arising from an order of High Court of Judicature of Fort William in Bengal in between **Raja Jagadish Chandra Deo Dhabal Deb vs. Gour Hari Mahato and others** decided on 30.06.1936, wherein the Privy Council observed that the High Court declined to allow the appellant to go into the question of *res judicata* on the ground and it had not been properly raised by the pleadings or in the issues. Said observation was approved by the Privy Council.

[14] Mr. Deb, learned senior counsel further relies on another decision of the Apex Court in **Sajjadanashin Sayed Md. B.E. Edr.(D) by Lrs. vs. Musa Dadabhai Ummer and others, (2000) 3 SCC 350**, and at paragraph 18, the Apex Court observed as follows:

"18. In India, Mulla has referred to similar tests (Mulla, 15th Ed.p.104). The learned author says: A matter in respect of which *relief* is claimed in an earlier suit can be said to be generally a matter 'directly and substantially' in issue but it does not mean that if the matter is one in respect of which *no relief* is sought it is not directly or substantially in issue. It may or may not be. It is possible that it was 'directly and substantially' in issue and it may also be possible that it was only collaterally or incidentally in issue, depending upon *the facts of the case*. The question arises as to what is the test for deciding into which category a case falls? One test is that if the issue was 'necessary' to be decided for adjudicating on the principal issue and was decided, it would have to be treated as 'directly and substantially' in issue and if it is clear that the judgment was in fact based upon that decision, then it would be res judicata in a latter case. (Mulla, p.104) One has to examine the plaint, the written statement, the issues and the judgment to find out if the matter was directly and substantially in issue (*Ishwar Singh vs. Sarwan Singh: AIR 1965 SC 948 and Sayed Mohd. Salie Labbai vs. Mohd. Hanifa: AIR 1976 SC 1569*). We are of the view that the above summary in *Mulla* is a correct statement of the law."

(underscore emphasised)

[15] Both the learned senior counsel also rely on another decision of the Apex Court rendered in **K. Ethirajan (Dead) by Lrs. vs. Lakshmi and others, (2003) 10 SCC 578** wherein at Para-20 it was observed that the argument that principle of *res judicata* cannot apply because in the previous suit only a part of the property was involved when in the subsequent suit the whole property is the subject matter, cannot be accepted. It was further held that the principle of *res judicata* under Section 11 of the Code of Civil Procedure is attracted where issues directly and substantially involved between the same parties in the previous and subsequent suit are the same, may be in the previous suit only a part of the property was involved when in the subsequent suit, the whole property is the subject matter.

[16] This decision as rendered by the Apex Court will answer the challenge as made by Mr. Deb, learned senior counsel that in the previous suit only a part of the present suit land was involved and therefore, principle of *res judicata* was not applicable. In view of above said decision, such plea is not tenable.

[17] Mr. Deb, learned senior counsel also relies on another decision of the Apex Court in **V. Rajeshwari (Smt.) vs. T.C. Saravanabava, (2004) 1 SCC 551**, wherein it was held by the Apex Court that the foundation for the plea must be laid in the pleadings and then an issue must be framed and tried. A plea not properly raised in the pleadings or in issues at the stage of the trial, would not

be permitted to be raised for the first time at the stage of appeal. However, an exception was carved out by the Apex Court that the plea was permitted to be raised, though not taken in the pleadings nor covered by any issue, because the necessary facts were present to the mind of the parties and were gone into by the trial Court where the opposite party had ample opportunity of leading the evidence in rebuttal of the plea. In such a situation, the Apex Court concluded that when the point of *res judicata* had throughout been in consideration and discussion, the want of pleadings or plea of waiver of *res judicata* could not be allowed to be urged. It was also further discussed that not only the plea has to be taken, but it has to be substantiated by producing the copies of the pleadings and issues and judgment of the previous suit. It was also observed that, may be in a given case only copy of judgment in the previous suit is filed in proof of plea of *res judicata* and the judgment contains exhaustive or in requisite details the statement of pleadings and the issues which may be taken as enough proof, but the basic method to decide the question of *res judicata* is first to determine the case of the parties as put forward in their respective pleadings of their previous suit and then to find out as to what had been decided by the judgment which operates as *res judicata*.

[18] The last citation as referred by Mr. Deb, learned senior counsel on this point of *res judicata* is a case in between **Har Narayan Tewari (D) Thr. Lrs. vs. Cantonment Board, Ramgarh**

Cantonment and others, (2024) SCC OnLine SC 1643. The relevant paragraphs 15 and 16 are extracted below:

"15. The submission is that the plaintiff-appellant was non-suited by the First Appellate Court, on the ground that his suit was barred by *res judicata*. One of the essential conditions for the applicability of principle of *res judicata* as enshrined under Section 11 of the CPC is that the issue in the earlier suit and the subsequent suit ought to be directly and substantially the same. In the earlier Suit No. 8/64 instituted by Maharani, her claim was that she is the lawful owner of the entire 5.38 acre of land of Village Ramgarh, on the basis of the maintenance grant made in her favour by the Raja. In the said suit, the plaintiff- appellant was defendant no. 32 and the Cantonment Board, Ramgarh was defendant No. 1. The claim set up by Maharani was not accepted and *ex-facie* there was no adjudication regarding the rights of the co-defendants over the suit land viz 0.30 acres of land of plot Nos.432 and 438 as claimed by the plaintiff-appellant in the present suit. The limited issue therein was whether the Maharani had acquired any right in the above entire property on the basis of maintenance in grant alleged to be executed by the Raja in her favour. There was no issue as to whether the suit land as claimed by the plaintiff-appellant belonged to him or was settled or not settled in his favour as claimed. Thus, in the facts and circumstances of the case, a clear substantial question of law as to whether the present suit as filed by the plaintiff-appellant was barred under Section 11 CPC on principle of *res judicata* inasmuch as there was no adjudication of the rights of the co-defendants in the previous suit with regard to the suit land and the issue therein was not directly or indirectly and substantially the same as in the present suit.

16. In view of the above, we are of the opinion that the High Court manifestly erred in dismissing the second appeal *in limine* on the ground that there was no substantial question of law involved therein."

[19] In view of above said observations of the Apex Court as underlined, the submission of Mr. Biswas, learned senior counsel that the principle of *res judicata* is embodied in Section 11 CPC and therefore, no such second appeal can be admitted on substantial question of law on the point of *res judicata*, is not convincing and acceptable. The improper application of Section 11 of the CPC leading to serious perversity affecting the valuable right of the parties itself constitutes a substantial question of law. The Apex Court in **Union of**

India Vs Ibrahim Uddin & another, (2012) 8 SCC 148 at paragraph No.67 observed that there was no prohibition to entertain a second appeal even on question of fact provided the Court is satisfied that the findings of the courts below were vitiated by non-consideration of relevant evidence or by showing erroneous approach to the matter and findings recorded in the courts below were perverse.

[20] In view of the law as settled already by the Apex Court as well as by the Privy Council as discussed above, it is required to be examined first as to whether the decision of the previous suit i.e. decision of TA 18 of 2005 forms *res judicata* and whether the same was specifically taken in the pleading enabling the other side to take defence against it. The relevant paragraph of the plaint of the present suit for such purposive demonstration is extracted hereinbelow:

"3. That in the year 1997, the defendants herein filed a suit in the Court of the Civil Judge, Senior Division, Dharmanagar, North Tripura, for recovery of possession of the suit land on the ground that their predecessor in interest namely, Nirendra Debnath, was the owner and possessor of the suit land and after his death the Defendants, being his Legal Heirs, became the owner thereof having lawful right, title and interest over the suit land. The said suit was registered as Case No. T.S.-26 of 1997 and was partly decreed by the Ld. Trial Court, against which First Appeal has been preferred before the Ld. Addl. District Judge, Dharmanagar, North Tripura which was registered vide Case No.- T.A. 18 of 2005. In the Appeal, the Ld. First Appellate Court, dismissing the case of the defendants herein with a finding that the plaintiffs here have good title and possession over the entire suit land, that is, land gifted by Thakurmoni Debnath. The specific finding of the Ld. First Appellate Court in last part of the para-9 of its Judgment dated 03.12.2005 is thus,

'So, it reveals that though the contesting respondents challenged the order of the ASO the Exhibit-2 but on careful consideration of the sale deed, I find no infirmity and irregularity of the revenue authority to record the suit land in the name of the Sat Sangha as the Tahkur Mani

Debnath has got transferable title on the land gifted by him to the Sat Sang.'

No further appeal being preferred against the said Judgment of the First Appellate Court, the said Judgment dated 03.12.2005 reached its finality. So, now, there is no cloud over the Plaintiff's title on the suit land."

[21] The reply given by the present defendants against such assertions of the plaintiff in Para-12 of their written statement for such purposive reference is also quoted hereinbelow:

"12. Regarding para 3 of the plaint under reply it is stated that the defendant No.1, 2, 3, 4, 5 being plaintiff filed T.S.26 of 1997 before the court of Ld. Civil Judge (Sr. Division), Dharmanagar, North Tripura against Sri Nityananda Das and others for declaration, recovery of possession, correction of record of rights and injunction and after full trial the suit was partly decreed against which the defendant of T.S.26 of 1997 preferred 1st appeal before the Addl. District Judge, Dharmanagar, North Tripura and as per judgment dated 04-03-2005 passed in c/w T.A.13 of 2004 it was remanded back for trial to the original court and after fresh trial the Ld. Court of Civil Judge (Sr. Division), Dharmanagar, North Tripura again passed decree partly vide judgment dated 16-05-2005 and decree dated 16-05-2005 against which the defendant of T.S.26 of 1997 preferred appeal being T.A.18 of 2005 before the Addl. District Judge, Dharmanagar, North Tripura and after hearing Appellate Court was pleased to set aside judgment and decree dated 03-12-2005 but unfortunately due to financial inability the plaintiff of T.S.26 of 1997 could not preferred appeal before the Hon'ble High Court....."

[22] From such averments of the written statement, it appears that the defendants admitted the decision of the said suit up to the stage of the first appellate forum and also otherwise admitted the fact that the same had reached it's finality without further challenge before the High Court. Therefore, they were although conscious above such specific pleas taken by plaintiff in their plaint of the present suit about the decision of said previous suit. They have not taken any plea that said decision was not at all related to the present suit land. The defendant No.2 in his cross-examination rather admitted that the said

title suit bearing No.T.S.26 of 1997 was instituted with regard to the present suit land.

[23] In Title Appeal No.18 of 2005 based on the decision of which the entire controversy of *res judicata* has cropped up, learned Addl. District Judge, North Tripura, as it appears, in the judgment dated 03.12.2005 dealt with exhaustively the claim of both the present plaintiff and the defendants regarding the ownership of the suit C.S. Plots No.2269 and 2265. In Para-5 of the said judgment, learned first appellate court discussed the issues framed in that earlier suit and the relevant portion of such discussions and observations are as follows:

"5. On the pleading of the parties the learned court below formulated as many as seven issues for decision of the suit. The issue No. (i) and (ii) are regarding the maintainability and cause of action of the suit. Issue No. (iii) is regarding the limitation. Issue No.(iv) is regarding the alleged possession of the plaintiffs over the suit land and the alleged dispossession by the defendants there from. Issue No. (v) is regarding the right, title and interest of the plaintiffs over the suit land and the issue No. (vi) and (vii) are regarding the relief claimed by the parties. The learned court below examined four PWs from the side of the respondents and proved four numbers of documents and taken into evidence namely, the certified copy of Khatian order of objection case No. 168, certified copy of Khatian 585/2549 and the certified copy of title deed No.1-783 of 1968 executed by Nalini Mohan Das in favour of the Nirendra Chandra Debnath. From the side of the appellant also examined three DWs and proved seven documents namely Khatian No.222, certified copy of deed dated 21-09-67, 14-09-70 and 11-11-70, certified copy of gift deed dated 22-04-76 and certified copy of map. After considering the oral and documentary evidence the learned court below decreed the suit partly and being aggrieved and dissatisfied with the judgment and decree the appellant (defendant) has preferred the appeal. But the respondents (plaintiffs) has not filed any cross-appeal/cross-objection against the partly decree granted in their favour. The respondents No.7(a) to 7(e) have taken part in the hearing of the appeal but they have not contested the appeal rather supported the case of the appellants."

[24] While revisiting the decisions on above said Issue Nos.(i), (ii) and (iii), the learned first appellate court did not interfere with the findings of the learned trial court. But while dealing with the other issues of the said previous suit, the learned first appellate court held as under:

"8. The main controversy in the present suit is that the plaintiffs claimed title over the suit land by way of inheritance from their predecessor in interest namely Nirendra Nath and on the basis of title have prayed for recovery of possession stating that they were dispossessed by the defendants from the suit land on a certain date and manner which was denied by the appellants as defendants asserting their title over the suit land by way of gift by Takur Mani Debnath. The learned court below has elaborately and critically discussed and considered the oral and documentary evidence on record and decided that the respondent have only the right, title and interest over a part of the suit land measuring 4 decimals of land under C.S. plot No. 2265 but the appellants have right, title and interest over the remaining four decimals of land under C.S. plot No.2269. From the side of the respondents during trial of the suit have produced the documents executed by Nalini Mohan Das in favour of the Nirendra Chandra Debnath, the predecessor in interest of the contesting respondents transferring 17 decimals of land which was purchased by him on 21-09-67. As such the learned court below held that though Nagendra Nath sold out land measuring 19 decimals from their joint property the predecessor in interest of the plaintiffs namely Nirendra Nath purchased 17 decimals of land and accordingly at the time of selling of land by Nalini Mohan Das to Takur Mani Debnath said Nalinimohan Das had no title to transfer 15 decimals of land to Takur Mani Debnath in the year 1970, rather he had only 12 decimals of land to transfer but he transferred 15 decimals of land to Takur Mani Debnath and said Takur Mani Debnath purchased 8 decimals of land from Nirendra Chandra Debnath. So, Takur Mani Debnath practically got 20 decimals of land from Nalini Mohan Das and Nirendra Debnath by purchase in the year 1970. But in 1976 Takur Mani Debnath transferred 15 decimals of land to Sat Sangha. So, the decision of the learned court below that Takur Mani Debnath has no transferable right and title on the land measuring 15 decimals to Sat Sangha is not correct and acceptable as Takur Mani Debnath purchased 20 decimals of land i.e. 8 decimals of land from Nirendra Debnath and 12 decimals from Nalini Mohan Das. Though Nalini Mohan Das had transferable title of 12 decimals of land still Takur Mani Debnath had transferable title over 20 decimals of land. He gifted 15 decimals of land to the Sat Sangha, the organization of the appellants is not beyond the law or is transferred by way of gift cannot be

branded as having no title to transfer the said 15 decimals of land. So, the finding of the learned court below on the issue No. (iv) and (v) is erroneous and as such liable to be interfered as the finding of the title of the land measuring four decimals by the learned court below in favour of the appellant is based on no documents. After critical consideration and analysis of the documentary evidence under Exhibit A to F and Exhibit-4 reveals that at the time of execution of the Exhibit-F Takur Mani Debnath has transferable title over the land measuring 20 decimals but he has transferred only 15 decimals of land including the suit land to the Sat Sangha Ashram of the appellants. So, the finding of the learned court below is not based on materials and evidence on record and as such liable to be interfered and accordingly interfered on the finding of the issue no.(v) and accordingly said finding of the learned court below is hereby interfered and reversed.

9. As a general rule title follows the possession. If a person has a good title he is entitled to recover the same but in the present suit it reveals that as the contesting respondents have failed to establish their title over the suit land mentioned to the schedule of the plaint they are not entitled to recovery of the possession. The respondents led the oral evidence to show that on a certain date as mentioned in the plaint the appellant dispossessed them and from the suit land and as such prayed for recovery of the same. But the documentary evidence reveals that they have no title over the suit land. As such from the evidence of the PWs was not prevailed over the documentary evidence. So, it reveals that though the contesting respondents challenged the order of the ASO the Exhibit-2 but on careful consideration of the sale deed I find no infirmity and irregularity of the revenue authority to record the suit land in the name of the Sat Sangha as the Takur Mani Debnath has got transferable title on the land gifted by him to the Sat Sangha. Accordingly the finding of the learned court below on the issue no. (iv) also interfered and reversed.

10. In view of the finding on the issue No. (iv) and (v) the respondents are not entitled to get the decree as prayed for in this suit but the learned court below partly decreed the suit deciding the issue No. (ii) and (vii) partly in favour of the respondents. So, the said finding of the learned court below liable to be interfered and set aside and accordingly set aside."

[25] The said final observations and decisions of the previous suit were within the knowledge of the present defendants and thereafter, they did not challenge the same in the higher forum and accepted the decision as final. On perusal of the judgment of the learned Addl. District Judge, North Tripura, Dharmanagar dated

03.12.2005 [Exbt.1], it also appears that the said learned court further mentioned of another sale instance as the case of present plaintiff, where the predecessor of the present defendants namely, Nirendra Ch. Debnath transferred 0.10 acres of land to Nalini Mohan Das on 14.09.1970 but said fact is not disclosed by either of the parties in this suit. Anyway, taking note of all the relevant deeds of transfer as proved in that previous suit, the learned first appellate court came to the definite and conclusive finding that Thakurmani Debnath had transferable interest over the land measuring 0.20 acres, out of which, he only transferred 0.15 acres of land to said Satsang Ashram. As a result, said learned court set aside the decree, partly passed in favour of the present defendants by the trial court. The source and basis of the title to the suit property as are agitated by the parties including the defence of the present defendants in the present suit were similar and identical in the previous suit which was decided finally by a court of competent jurisdiction in favour of the present plaintiff and in the present suit, said facts of previous suit were sufficiently brought to the notice of the defendants to which they also admitted the same. Therefore, they cannot be allowed to re-open the entire controversies again for fresh adjudication. In view of above, it is held that the learned courts below were justified in decreeing the suit of the plaintiff without entertaining the defendants from reopening and re-adjudicating of the entire controversy again.

[26] The last point as argued by Mr. Deb, learned senior counsel was non-compliance of provisions of Order XLI Rule 31 of the CPC by the learned first appellate court. Said provision envisages as follows:

31. Contents, date and signature of judgment- The judgment of the Appellate Court shall be in writing and shall state-

(a) the points for determination;

(b) the decision thereon;

(c) the reasons for the decision; and

(d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled;

and shall at the time that it is pronounced be signed and dated by the Judge or by the Judges concurring therein.

[27] Mr. Deb, learned senior counsel also relies on few decisions in the matter of compliance of said provision by the learned appellate courts which are referred below.

[28] In **B.V. Nagesh and another vs. H.V. Sreenivasa Murthy, (2010) 13 SCC 530**, as relied on by Mr. Deb, learned senior counsel, the following were observed by the Apex Court:

"4. The appellate Court has jurisdiction to reverse or affirm the findings of the trial court. The first appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for re-hearing both on questions of fact and law. The judgment of the appellate Court must, therefore, reflect its conscious application of mind and record findings supported by reasons, on all the issues arising along with the contentions put-forth and pressed by the parties for decision of the appellate Court. Sitting as a court of first appeal, it was the duty of the High Court to deal with all the issues and the evidence led by the parties before recording its findings. The first appeal is a valuable right and the parties have a right to be heard both on questions of law and on facts and the judgment in the first appeal must address itself to all the issues of law and fact and decide it by giving reasons in support of the findings. [Vide Santosh Hazari vs. Purushottam Tiwari, (2001) 3 SCC 179, SCC p.188, para 15 and Madhukar vs. Sangram, (2001) 4 SCC 756, SCC p.758, para 5]"

[29] Mr. Deb, learned senior counsel has also referred **United Engineers and contractors vs. Secretary to Government of Andhra Pradesh and others, (2014) 16 SCC 109** wherein the matter was remanded by the Apex Court to the High Court for fresh decision of the appeal for not adhering to the provision of Order XLI Rule 31 of the CPC.

[30] The third decision, as relied on by Mr. Deb, learned senior counsel, is in case of **Kanailal and others vs. Ram Chandra Singh and others, (2018) 13 SCC 715**. In that case, at Para-12 it was observed by the Apex Court that it was obligatory for both the first appellate court and the second appellate court to comply with the provisions of Order XLI Rule 31 of the CPC and in case of second appeal, the court has to further ensure compliance with the requirements of Section 100 of the CPC.

[31] The last decision as referred on this point is **Malluru Mallappa (Dead) through legal vs. Kuruvathappa and others, (2020) 4 SCC 313** wherein at Para-18 it was observed by the Apex Court that the judgment of the first appellate court has to set out points for determination, record the decision thereon and give its own reasons. Even when the first appellate court affirms the judgment of the trial court, it is required to comply with the requirement of Order XLI Rule 31 of CPC and non-observance of this requirement leads to infirmity in the judgment.

[32] Taking into consideration of the impugned judgment of the learned first appellate court passed in T.A. 20 of 2020, as indicated earlier, the learned first appellate court already drew two points for decision in the appeal in compliance of the provisions of Order XLI Rule 31 CPC and the point No.1 was whether the respondent became the owner of the suit property on the basis of gift deed executed by Thakurmani Debnath and while deciding the said point, the learned first appellate court exhaustively discussed the matter of applicability of *res judicata* based on the decision of previous appeal filed against T.S.26 of 1997 and observed that the defendants had no right, title and interest in the suit property. Though it is fact that no specific issue was framed on the point of *res judicata* by the learned trial court and a specific 'point for decision' was drawn by the learned first appellate court on the point of *res-judicata* in specific words, but both the courts below took up the said issue for decision and also decided the said issue while going to decide the right, title, interest of the parties in the suit land. The defendants were all through conscious about the decision of the previous suit attaining it's finality and the said point was also raised by Mr. Biswas, learned senior counsel before the first appellate court and therefore, the defendants had ample opportunity to answer the same. Therefore, even if specific point for determination in relation to *res judicata* was not taken up in specific words by the learned first appellate court, there is nothing to show that any prejudice has been caused to the present defendant-appellants thereby and more so, it is not a case of gross violation of

total non-compliance of Order XLI Rule 31 CPC by the learned first appellate court. Even the present defendants before the said learned first appellate court in T.A 20 of 2022 did not raise any challenge regarding the decision of the learned trial court on the point of *res judicata* except to the effect that the lands of previous suit and the lands of the present suit were not same. Such plea was basically on the ground that earlier suit was only regarding a part of the present suit land.

[33] In view of above discussions, it is held that there is no merit in the present appeal requiring any interference with the concurrent findings of Courts below.

The appeal is accordingly dismissed with cost in favour of the respondent.

Return the records of Courts below.

Registry is to prepare the decree accordingly.

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

JUDGE

SUJAY GHOSH

Digitally signed by SUJAY GHOSH
Date: 2024.12.17 19:19:43 +05'30'

Sujay