

**HIGH COURT OF TRIPURA
AGARTALA
RFA NO.10 OF 2023**

Swapan Chandra Dey

.....Appellant(s)

Versus

Ashok Petroleum Agency and ors.

....Respondent(s)

For the Appellant(s) : Mr. P. Chakraborty, Advocate.

For the Respondent(s) : Mr. S.M. Chakraborty, Sr. Advocate.
Mr. S.S. Debnath, Advocate.
Ms. P. Chakraborty, Advocate.

Date of hearing and delivery of
Judgment & Order : 24.09.2024

Whether fit for reporting : NO.

**HON'BLE MR. JUSTICE T. AMARNATH GOUD
HON'BLE MR. JUSTICE BISWAJIT PALIT**

J U D G M E N T & O R D E R (O R A L)

(T. Amarnath Goud, J)

This present appeal has been filed for setting aside and modifying the original Judgment and Decree date 03.01.2023 and 17.01.2023 respectively passed by the learned Civil Judge, Sr. Division, Court No.2, Agartala, West Tripura in connection with Title Suit No.92 of 2013.

2. The brief of this case is that the plaintiff-respondent No.1 is a registered partnership firm while the plaintiff-respondents Nos.2 to 6 are its partners. The plaintiff-

respondent firm being an agent of the Indian Oil Corporation deals in the distribution of petrol/diesel at a retail dispensing unit in Agartala located at Durgabari Road just beside the main gate of the Agartala Palace which is the suit land described more particularly in the schedule appended to the plaint. The plaintiffs' partnership firm by virtue of a lease agreement executed in the year 1976 with the original owner of the suit land has been in continuous and undisturbed possession of the suit land thereby running its business of petrol dispensing outlet thereon since 1976. Originally the suit land belonged to the Roy Choudhury Family. It is asseverated that to convert the pumping station into an ideal Motor Oil Dispensing Unit at Agartala, Indian Oil Corporation had in the year 2003 entered into a Sale Agreement with the original owners of the suit land. However, during the subsistence of the said agreement with the Indian Oil Corporation, the original owners stealthily sold the suit land to one Swapan Chandra Dey i.e., the defendant-appellant herein who in turn mortgaged the suit land to the UCO Bank i.e. defendant-respondent No.9 herein for obtaining loan. Then the Indian Oil Corporation instituted a suit vide T.S.59/2003 for Specific Performance of the Sale Agreement inked with the original owners of the suit land. In the meanwhile the Bank i.e. defendant-respondent No.9 herein not being able to realize/recover the huge loan amount from Swapan Chandra Dey

i.e. defendant-appellant herein applied the SARFAESI Act and took over the symbolic possession of the suit land and then transferred the said mortgaged property i.e., suit land to a Securitization Company named ASREK (India) Ltd. i.e. defendant-respondent no.7 herein. It is asserted that the plaintiffs who are only a lessee in possession of the suit land apprehending illegal dispossession filed a suit for permanent injunction which is registered as TS 72/2003 and pending in the court of learned Civil Judge (Sr. Div), Agartala. The plaintiffs obtained an order of temporary injunction dated 21-01-2023 from the court of the Civil Judge (Sr. Div.-2). It is further asserted by the plaintiffs that the defendant-respondent No.7 had in the newspaper dated 24.02.2013 brought an advertisement inviting offers for sale of the suit land fixing the lowest offer at Rs.47,00,000/- (Rupees Forty Seven Lakhs) only. This advertisement having come to the notice of the plaintiffs' firm, its agent contacted defendant-respondent No.7. In a concluded negotiation, it was a verbal commitment made by the defendant-respondent no.8 on behalf of the company that the price will be Rs.48,00,000/- and the transaction will be made only after the court cases are settled or withdrawn. Thereafter, the plaintiffs were in peace and confident that the suit land would be their own land and they could continue their business. But it transpired from a private source that the said defendant

has surreptitiously contracted with the defendant-respondent No.10 for the sale of the suit land at the consideration of Rs.50.00 lakhs concealing the fact of negotiation and verbal agreement with the plaintiffs' firm. Soon thereafter the plaintiffs sent a notice to defendants-ASREK(India) limited by courier on 13.04.2013 and by the said notice the information was sought to be confirmed with the plaintiffs' firm also confirming its readiness to pay the same amount which has been settled with the defendant-respondent No.10. A letter was also sent to the Sub-Registrar, Agartala intimating him about the apprehended illegal sale and consequences thereof. No response came forth from the defendants, and after about a month it came to light that the defendant-respondent No.10 had already deposited the price for concluding the purchase. It is also asseverated that plaintiffs got the information though unconfirmed that defendant-respondent No.7 herein had issued a sale certificate to the defendant-respondent no.10 herein without any information to the plaintiffs whose interest in paramount to the suit land.

3. Hence the plaintiff-respondents filed a suit bearing No.T.S.92 of 2013 before the Court of Learned Civil Judge (Sr. Division), Court No.2 seeking the following reliefs:-

"(a) For passing a decree of declaration to the effect that the plaintiffs have a privilege and civil right to pre-empt sale of the suit land is others before offering to the occupant and the defendant no. I is bound to sell the suit

land to the plaintiff when the same price settled with another third party purchaser is agreed to be paid by the plaintiffs and a further declaration that the sale, if any, concluded between the defendant no.1 and defendant no.4 is illegal and void;

(b) For passing a decree of permanent injunction restraining the defendant no.1 from selling the property to anyone except in the plaintiffs with also injuncting the defendant nos 1 & 4 from disturbing the peaceful possession of the plaintiffs over the suit land or registering any sale of the suit land except to the plaintiffs:

(c) For passing any other orders as may be considered fit for ends of justice:

(d) For passing an ad-interim order of injunction to prevent a hasty transfer of the suit land to the defendant no.4.

4. The Court below vide Judgment and Decree dated 03.01.2023 and 17.01.2023 respectively dismissed the said suit filed by the plaintiff-respondents herein with cost in favour of the defendant-respondents.

5. Being aggrieved by the original Judgment and Decree dated 03.01.2023 and 17.01.2023 passed by the learned Civil Judge, Sr. Division, West Tripura, Agartala, the defendant No.5 i.e., the appellant herein has preferred this appeal.

6. Heard Mr. P. Chakraborty, learned counsel appearing for the appellant i.e. defendant No.5 in the original suit as well as Mr. S.M. Chakraborty, learned Sr. counsel assisted by Ms. P. Chakraborty, learned counsel appearing for

defendant-respondent No.10 and Mr. S.S. Debnath, learned counsel appearing for plaintiff-respondents.

7. Mr. P. Chakraborty, learned counsel appearing for the appellant submits that the value of the suit property would be more than 10 crores according to the present market value, and in the sale notice the reserved price was given at Rs.46.00 lakhs only for oblique purpose and the suit land cannot be transferred as the matter is pending before the Debt Recovery Tribunal. The auction of the suit land was done without following the legal procedure. If proper auction of the suit land had been done, the suit land could have fetched more value and then the defendant-appellant could have also got the residuary amount after adjustment of the loan amount due from the defendant No.5 i.e., the appellant herein. But the learned Trial Court did not give any finding to that purpose. In the absence of those findings, the judgment of the learned Trial Court is erroneous.

8. Heard and perused the evidence on record.

9. The original suit i.e. T.S. No.92 of 2013 was filed by the plaintiff-respondents herein and the same was dismissed against certain findings and their prayer in that suit was not considered. The defendant No.5 therein i.e. the appellant herein has filed this appeal challenging the said Judgment and Decree dated 03.01.2023 and 17.01.2023

respectively passed in T.S. No.92 of 2013. The defendant-appellant herein cannot claim any relief challenging the suit filed by the plaintiff-respondents herein which was dismissed by the learned Trial Court. If the defendant-appellant has his own grievance, he could have taken legal recourse claiming his reliefs but he cannot do the same by challenging the suit filed by the plaintiff-respondents which was dismissed by the learned Trial Court citing certain reasons.

10. So with the above observation, this present appeal stands disposed of and no relief as sought for by the appellant herein is granted while passing this Judgment and Order. As a sequel, stay if any stands vacated. Pending application(s), if any also stands closed.

B. PALIT, J

T. AMARNATH GOUD, J

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