

**HIGH COURT OF TRIPURA
AGARTALA
RSA 15 of 2022**

Smt. Bina Saha (Banik),
wife of Shri Mihir Lal Saha,
resident of East Shibnagar,
Near College Lake, P.S. East Agartala,
P.O. Agartala College, District- West Tripura

----- Plaintiff-Appellant(s)

Versus

Shri Ratan Debnath,
son of late Joy Chand Debnath,
resident of Gholaghati (Noabari),
P.S. Takarjala, Sub-Division-Bishalgarh,
District-Sepahijala Tripura

-----Defendant-Respondent(s)

For Appellant(s)	:	Mr. S.M. Chakraborty, Sr. Adv. Ms. P. Chakraborty, Ld. Adv.
For Respondent(s)	:	Mr. D.R. Chowdhury, Sr. Adv. Mr. S. Sarkar, Adv.
Date of Hearing	:	15.03.2024
Date of Judgment & Order	:	04.04.2024
Whether fit for reporting	:	YES

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

Heard Mr. S.M. Chakraborty, learned senior counsel assisted by Ms. P. Chakraborty, Learned counsel appearing for the plaintiff-appellant as well as Mr. D.R. Chowdhury, Learned senior counsel assisted by Mr. S. Sarkar, Learned counsel appearing for the defendant-respondent.

02. This appeal is preferred under Section 100 of CPC challenging the judgment dated 25.08.2021 delivered by Learned

Additional District Judge, West Tripura, Agartala, Court No.5 in Title Appeal No.14 of 2019. By the said judgment, the Learned first appellate Court was pleased to set aside the judgment dated 04.12.2018 and decree dated 17.12.2018 delivered by Learned Civil Judge, Senior Division, Court No.2, West Tripura, Agartala in Title Suit No.114 of 2016 allowing the said appeal.

03. Before entering into the merit of the appeal, let us project the subject matter of dispute amongst the parties. The present appellant as plaintiff filed one suit before the Court of Learned Civil Judge, Senior Division, Court No.2, West Tripura, Agartala which was numbered as T.S.114 of 2016. The appellant filed the suit for recovery of possession under Section 34 of the SR Act. The synopsis of the case of the appellant before the Learned trial Court was that the appellant as plaintiff entered into a registered agreement for purchase of land measuring 0.018 acre i.e. the suit land as described in Schedule-2 of the plaint along with other lands as described in Schedule-1 of the plaint from one Paritosh Saha i.e. the original owner and paid Rs.22,70,000/- and a small amount of Rs.50,000/- was remain unpaid. But the owner failed to execute sale deed accepting the balance amount of Rs.50,000/- on several approach and repeated request. Hence, the appellant-plaintiff filed a suit bearing No.T.S.182 of 2013 before the same Court for Specific Performance of Contract and obtained a decree on 17.04.2014.

04. It was the further case of the appellant-plaintiff that the plaintiff published newspaper publications on 11.10.2013, 17.11.2013, 19.11.2013 and 20.11.2013 stating that no one should purchase the suit land. The appellant-plaintiff also obtained temporary injunction order in Civil Misc. No.150 of 2013 restraining the owner from selling/transferring the suit land till pendency of T.S.182 of 2013. The appellant-plaintiff further pleaded that during pendency of the said suit being T.S.No.182 of

2013 and also violating the order of injunction the respondent-defendant purchased the suit land by registered sale deed bearing No.1-992 dated 24.03.2019. The appellant-plaintiff knowing the fact of said transfer filed one execution petition making the respondent-defendant as a party in the execution case bearing number EX(T) 14 of 2014 and obtained a registered sale deed vide No.1-2414 dated 21.03.2015 through executing Court. It was further asserted that the respondent-defendant at the same time filed one appeal and one objection petition being No. Misc.(Exe)No.05 of 2015 before the executing Court but the same was dismissed by order dated 28.03.2016. The appellant-plaintiff also asserted that he took possession of the suit land on 24.04.2015 and hang up sign board but on 25.05.2015 again he was forcefully dispossessed from the suit land by the respondent-defendant. Hence, the appellant-plaintiff filed the suit before the Learned trial Court. The respondent-defendant contested the suit by filing written statement that on 28.04.2013 an oral agreement for sale was made between him and the owner Paritosh Saha and he paid Rs.35,00,000/- to the owner as advance and thereafter, in continuation of the written agreement for sale was executed on 27.12.2013 and ultimately, the registered sale was executed on 24.03.2014 and possession was handed over to him.

05. It was further submitted by the respondent-defendant that the appellant-plaintiff did not challenge the sale deed of the appellant-defendant and therefore, the decree passed in T.S.182 of 2013 for Specific Performance of Contract and execution thereof was nullity and executing Court illegally rejected the petition of the respondent-defendant filed under Order 21 Rule 97 to 101 of CPC vide Misc. Case No.05 of 2015 and the appeal filed against the said order vide No.Misc.App.02 of 2017 is pending before the High Court. It was further submitted the appellant-plaintiff never got possession of the suit land

and the story of dispossession by the respondent-defendant was false and concocted and the respondent-defendant has been in possession of the suit land since his purchase on 12.06.2013. Hence, the respondent-defendant before the Learned trial Court prayed for dismissal of the suit.

06. Upon pleadings of the parties, Learned trial Court below framed the following issues :

- "1) Whether the suit is maintainable in its present form and nature ?**
- 2) Whether the suit is barred by limitation ?**
- 3) Whether the plaintiff got any cause of action to institute this suit ?**
- 4) Whether the plaintiff has right, title and interest over the suit land ?**
- 5) Whether the plaintiff is entitled to get recovery of possession over the suit land by evicting the defendant on removing his hut at the costs of the defendant ?**
- 6) Whether the plaintiff is entitled to get a decree as prayed for ?**
- 7) To what other relief/relief(s), the parties are entitled according to law?"**

07. To substantiate the issues both the parties have adduced oral/documentary evidence on record.

"Name of the witnesses of the plaintiff :-

- (1) Sri Mihir Lal Saha (husband of plaintiff) as PW-1.**
- (2) Sri Dilip Kumar Banik as PW-2.**

The following documents were also exhibited by plaintiff side in support of her claim in the suit :-

- 1) Computerized khatian vide No.23685 of Mouja-Badharghat in one sheet – (Exbt.1).**
- 2) Photocopies of Certified copy of judgment in TS 182/13 and decree in 12 sheets (Exbt.2/A to 2/L).**
- 3) Photocopies of Certified copy of order passed in Misc(Inj.)150/13, dated 11.11.2013 in three sheets (Exbt.3/A to Exbt.C).**
- 4) Photocopies of Certified copy of registered Sale Deed vide No.1-1992, dated 24.03.2014 in 11 sheets (Exbt.4/A to Exbt.4/K).**
- 5) Photocopies of Certified copy of order, passed in Exe(T)14/14, dated 12.03.2015 in 5 sheets (Exbt.5/A to 5/E).**
- 6) Photocopies of Original registered Sale Deed vide No.1-2414, dated 21.03.2015 in 6 sheets (Exbt.6/A to Exbt.6/F).**
- 7) Photocopies of certified copy of agreement for sale vide no.1-4425, dated 12.06.2013 in four sheet (Exbt.7/A to 7/D).**
- 8) Certified copy of order & judgment passed in Misc.(Appeal)07 of 15, dated 11.01.2016 in 4 sheets (Exbt.8/A to 8/D).**
- 9) Certified copy of order passed in Misc.(Exe.)05 of 15, dated 28.03.2016 in 3 sheets (Exbt.9/A to 9/C).**

Defending the suit, the defendant side has also examined four number of witnesses, namely :-

- (1) Sri Ratan Debnath, defendant as DW-1
- (2) Sri Ranjit Kr. Saha as DW-2
- (3) Sri Kshitish Debnath as DW-3
- (4) Smt. Pramila Debnath as DW-4

The following documents were also exhibited by the defendant side against the claimed of the plaintiff :-

- 1) Photo copy of registered Sale deed bearing no.1-992, dated 24.03.2014, consisting of 8 sheets after comparing with the original copy of the same lying with record bearing no.M.S.29/2015 (Exbt.A, SO).
- 2) Photo copy of registered Sale deed bearing no.1-993, dated 24.03.2014, consisting of 10 sheets after comparing with the original copy of the same lying with record bearing no.M.S. 29/2015 (Exbt.B, SO).
- 3) Computer generated copy of Khatian bearing no.23681 of Mouja & Tahshil-Badharghat, Revenue Circle-Dukli, Sub-Division-Sadar consisting of one, (Exbt.C,SO).
- 4) Computer generated copy of Khatian bearing no.23685 of Mouja & Tahashil-Badharghat, Revenue Circle-Dukli, Sub-Division-Sadar consisting of one, (Exbt.D,SO).

The Court also examined Sri Sajal Chakraborty as C.W.1 and exhibited his signature as scribed in two sale deeds bearing No.1-1992 dated 24.03.2014 and Sale deed bearing no.1-1993, dated 24.03.2014 (Exbt.A/1and Exbt.B/1)."

08. Finally, on conclusion of the trial, the Learned trial Court by judgment and order dated 04.12.2018 decreed the suit in favour of the appellant-plaintiff. The operative portion of the order of the Learned trial Court is as follows :-

"In the result, this suit is hereby decreed on contest without costs.

It is hereby declared that plaintiff has the right, title and interest over the suit land and thereby, is entitled for decree for recovery of the possession of the suit land by way of evicting the defendant from the suit land and by removing the standing hut and all obstructions therefrom.

The defendant is hereby, directed to hand over the vacant possession of the suit land mentioned in the schedule-2 of the plaint to plaintiff without 2(two) months from the date of this judgment and order, failing which, plaintiff is at liberty to file execution case for the same before the court.

Thus, the suit is disposed of on contest.

Sheristadar is hereby directed to prepare decree accordingly and put up the same before me, latest by 19.12.2018.

Record be consigned to the Record Room after lapse of the appeal period in due compliance.

Enter the result in relevant TR."

09. Challenging the judgment, the respondent-defendant filed an appeal under Section 96 of CPC before the first appellate Court and Learned First Appellate Court i.e. Learned Additional District Judge, Court No.5, West Tripura, Agartala after hearing both the sides allowed the appeal No.T.A.14 of 2019 by setting aside the judgment and decree dated 25.08.2021 passed by Learned trial Court in T.S.114 of 2016. For the sake of convenience, I would like to mention herein below the operative portion of the order of the Learned first appellate Court which reads as under :

"In the result, the appeal is allowed and, the judgment dated 04.12.2018 and decree dated 17.12.2018 passed by the Learned Civil Judge (Sr. Division), Court No.2, West Tripura, Agartala in TS 114 of 2016 is set aside.

This appeal is disposed of on contest.

Prepare appellate decree accordingly and place before me for signature within 15 days, latest on 08.09.2021.

Send down the Trial Court Record along with a copy of this judgment and decree.

Make entry in Trial register and upload in CIS."

Being dissatisfied with the judgment and decree of the Learned first appellate Court the plaintiff as appellant preferred this second appeal before the High Court.

10. At the time of admission of the appeal by order dated 08.04.2022, the following substantial questions of law were formulated by this Court which reads as under :

"(I) Whether it is the duty of a first Appellate Court to examine and appreciate the pleadings of the parties and evidence on record thoroughly being the last Court of law and fact and if that is not done then whether said judgment can be said to be lawful and valid one?

(II) Whether the non-consideration of the evidence on record and pleadings of the parties and the earlier judgments and orders passed by the learned Appellate Court and trial Court in litigation on the same subject matter between the same parties render the impugned judgment totally bad and perverse in the eye of law?"

11. In course of hearing of argument, Mr. S.M. Chakraborty, Learned senior counsel appearing for the plaintiff-appellant first of all submitted that the Learned first appellate Court in para-16 of the judgment gave positive findings in favour of the present appellant but in

para-18, the Learned first appellate Court gave a contradictory finding and ultimately reversed the finding of Learned trial Court which according to Learned senior counsel was perverse without application of proper mind and erroneous. According to Learned senior counsel, the appellant-plaintiff as per order of the Court got the registered Sale Deed in his favour and got possession over the suit land on 24.04.2015 and hang up signboard over the suit land raising temporary shed but he was most illegally dispossessed from the suit land by the respondent-defendant on 25.05.2015.

12. Further, according to Learned senior counsel, the original owner violating the order of injunction transferred the suit land in favour of the respondent-defendant which is hit by the doctrine of Section 52 of the TP Act. Learned senior counsel further submitted that the present respondent-defendant filed an application under Order 21 Rule 97/99 of the CPC before the Executing Court and that petition was rejected and even the appeal preferred by the respondent-defendant was also rejected by the appellate Court. More so, the respondent-defendant challenging the finding of para-16 of the judgment of the Learned first appellate Court did not prefer any appeal. Learned senior counsel further submitted that the Executing Court cannot go beyond the decree.

13. Finally, Learned senior counsel submitted that the Learned trial Court after considering the oral/documentary evidence on record decreed the suit in favour of the present appellant-plaintiff but the Learned first appellate Court without application of proper mind made contradictory findings in para-16 and 18 of the judgment and ultimately came to the observation that the story of possession of the appellant-plaintiff and the dispossession was totally false and concocted and finally reversed the finding of the Learned trial Court. So, Learned senior

counsel urged for interference of the judgment passed by the Learned appellate Court by allowing the appeal.

14. During the course of his submission, Mr. Chakraborty, Learned senior counsel appearing for the plaintiff-appellant also relied upon one citation of the Hon'ble Supreme Court of India in **Prem Singh and Others versus Birbal and Others** reported in **(2006) 5 SCC 353** where the apex Court has observed as under :

"16. When a document is valid, no question arises of its cancellation. When a document is void ab initio, a decree for setting aside the same would not be necessary as the same is non est in the eye of the law, as it would be a nullity."

15. On the other hand, Mr. D.R. Chowdhury, Learned senior counsel appearing for the defendant-respondent taking part in the hearing submitted that as alleged by the appellant-plaintiff in the earlier suit said Paritosh Saha was made as party but he did not go to the Sub-Registry Office for execution of the deed and so, as per direction of the Court, the deed was executed. But this present respondent-defendant was not made as party in the said suit, so, the suit was suffering from defect of necessary party and the decree itself was *ipso facto* void. Furthermore, according to Learned senior counsel as alleged by the appellant-plaintiff no such possession was restored to her on 24.04.2015 as alleged by the appellant-plaintiff, because that was nothing but a mere paper transactions. Furthermore, no possession was restored to the appellant-plaintiff by any order of the Court. So, the story of possession as alleged by the appellant-plaintiff and subsequent dispossession on 25.05.2015 is nothing but a false and concocted story.

16. Learned senior counsel again submitted that there is also no evidence on record that the appellant got possession of the suit property as per order of the Court. Even in execution proceeding, no possession was restored to her. Furthermore, the suit was barred for non-disclosure of cause of action as required under Order 7 Rule 11 of CPC. Learned

senior counsel further submitted that before the Learned trial Court the appellant-plaintiff did not turn up to the witness box to depose as a witness, rather her husband came to the Court to depose as witness. Furthermore, Learned senior counsel submitted that as per law the attorney in a case of civil nature has no authority to stand as witness in place of the plaintiff or the defendant as the case may be, rather the attorney only can support the case of the plaintiff or the defendant. But here in the given case the appellant-plaintiff as alleged did not turn up to the witness box and so the evidence of her witness cannot be relied upon.

17. Finally, Learned senior counsel submitted that that since no possession was given to the appellant-plaintiff by the order of any Court, so there was no cause of action on the part of the appellant-plaintiff to file the suit. Furthermore, as the appellant-plaintiff was not in possession of the suit land so the story of dispossession is totally false and concocted. Lastly, Learned senior counsel submitted that the Learned first appellate Court after considering the evidence on record and after hearing both the sides rightly came to the proper finding reversing the judgment of the Learned trial Court and urged for dismissal of the appeal with costs.

18. I have heard detailed argument of both the sides and gone through the records of the Learned Court below. Here, in this case, we are to decide whether the findings of the Learned first appellate Court reversing the judgment of the Learned trial Court is perverse or not. The factual aspects of the suit have been discussed above in detail. Here in this case, the Learned trial Court after considering the evidence on record both oral/documentary decreed the suit in favour of the appellant-plaintiff which the Learned first appellate Court reversed at the time of delivery of judgment. In course of hearing of argument, a question was

raised by Learned senior counsel for the respondent-defendant that though as per order of the Executing Court, deed was executed in favour of the appellant-plaintiff but actually no possession was handed over to the appellant-plaintiff in respect of the suit land. In this regard, I have perused copy of deed relied upon by the appellant-plaintiff which was marked as Exbt.6/A to Exbt.6/F.

19. On perusal of the same, it appears that in the said deed, in page No.14 in the recital it was mentioned that the suit land was duly measured and the possession was handed over to the purchaser i.e. the present appellant. So, as alleged by Learned senior counsel for the respondent-defendant that no possession was given is not true because on the day of execution of the deed i.e. on 21.03.2015 the possession of the suit land was restored to the present appellant through the execution proceeding and challenging that order of the Executing Court although appeal was preferred vide No.Misc.App.07 of 2015 but the same was also dismissed by order dated 11.01.2016 and the said appeal was preferred by one Jatan Debnath marked as Exbt. 8/A to Exbt.8/D and the objection of the respondent-defendant in Misc.(Exe.)05 of 2015 was also dismissed by order dated 28.03.2016 by the Executing Court which was also marked as Exbt.9/A to 9/C. Now, in respect of non-appearance of the appellant-plaintiff as witness to the witness box in course of trial before the trial Court it appears that on behalf of the appellant-plaintiff her husband has appeared to stood as witness.

20. In this regard, I would like to refer herein below the relevant provision of Section of 120 of the Evidence Act which provides as under:

"120. Parties to civil suit, and their wives or husbands, Husband or wife of person under criminal trial.- In all civil proceedings the parties to the suit, and the husband or wife of any party to the suit, shall be competent witnesses. In criminal proceedings against any person, the husband or wife of such person, respectively, shall be competent witness."

From the aforesaid provision, it appears that in a suit of this nature on behalf of the husband the wife also may appear before the Court to participate in the proceeding which in the present case the husband of the appellant-plaintiff did. So, as alleged by Learned senior counsel for the respondent-defendant that there was no scope to rely upon the evidence of the husband of the appellant-plaintiff cannot be accepted.

21. On perusal of the judgment of the first appellate Court further it appears that in para-16 of the judgment the said Court came to an observation that the alleged deed of the respondent-defendant was void as the same was hit by provision of Section 52 of the TP Act and also in violation of temporary injunction of the Court. Because during pendency of the suit, the original owner executed the deed in favour of the defendant and on the basis of that, Learned trial Court came to a positive finding in favour of the appellant-plaintiff. But the Learned first appellate Court all though in para-16 gave positive finding in favour of the appellant-plaintiff but in para-18 he came to a contradictory finding that the story of dis-possession was not believable and ultimately set aside the judgment of the Learned trial Court which in my considered view Learned first appellate Court committed error in appreciating the evidence on record. Because as already stated that at the time of execution of deed in favour of the appellant-plaintiff as per order of the Court due possession of the suit land was given to the appellant-plaintiff, so, the question of non-possessing the suit land by the appellant cannot be accepted by this Court at this stage. In para-26 of the judgment the Learned first appellate Court also came to the observation that the right of respondent-defendant regarding purchase of the suit land during pendency of the suit is also to be decided by the Executing Court under Section 47 of CPC is also not correct as because by the process of the

Court, the appellant-plaintiff got right, title and interest and possession of the suit land through execution proceeding and it is also on record that the respondent-defendant filed a separate petition which was also numbered as Misc. case and by order dated 28.03.2016 in Misc.(Exe.)05 of 2015, the application of the present respondent-defendant was dismissed by the Executing Court and also the appeal preferred by the respondent-defendant was also dismissed.

22. Thus, it appears to me that the Learned first appellate Court in delivering the judgment misinterpreted and misconstrued the factual aspects as well as the legal aspects and thus came to an erroneous finding and observation for which in my considered opinion, the interference of the Court is required because from the facts and circumstances of this case it appears that the appellant-plaintiff filed the suit against the original owner of the suit land and got decree, but as he failed to register the deed in favour of the appellant-plaintiff, so the appellant had to file the Execution proceeding and in the Execution proceeding also the original owner remained absent and finally, as per order of the Court deed was executed in respect of the suit land in favour of the appellant-plaintiff and possession was given but later on she was dispossessed by the respondent-defendant. Furthermore, the story of purchase of the suit land by the respondent is also appears to be in violation of the order of the Court and also barred by the provision of Section 52 of the TP Act.

23. For the sake of convenience, I would like to refer herein below the relevant provision of Section 52 of the Transfer of Property Act which provides as under:

"52. Transfer of property pending suit relating thereto.—

During the pendency in any Court having authority within the limits of India excluding the State of Jammu and Kashmir or established beyond such limits by the Central Government of any suit or proceedings which is not collusive and in which any right to immoveable property is directly and specifically

in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose.

Explanation.—For the purposes of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a Court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or order has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force.”

From the aforesaid provision it appears that the respondent-defendant purchased the suit land as alleged violating the order of the Court during pendency of the proceeding. So, legally there is no scope to place any reliance on his purchase deed claiming to be the owner of the suit land. Thus, after hearing both the sides and also after going through the records of the Learned Court below and after considering the evidence both oral/documentary on record in my considered opinion the trial Court has rightly decreed the suit in favour of the present appellant-plaintiff but the Learned first appellate Court misinterpreted and misconstrued the factual and legal aspects and passed an erroneous finding reversing the finding of the Learned trial Court which in my considered view the Learned First appellate Court committed serious error in reversing the judgment.

24. In the result, the appeal filed by the appellant-plaintiff is hereby allowed on contest with costs against the respondent-defendant. The judgment dated 25.08.2021 and decree dated 01.09.2021 delivered by Additional District Judge, West Tripura, Agartala, Court No.5 in Title Appeal No.14 of 2019 reversing the judgment of the Learned Civil Judge, Senior Division, Court No.2, West Tripura, Agartala in Title Suit No.114 of 2016 is hereby set aside. The judgment dated 04.12.2018 and decree dated 17.12.2018 delivered by Learned Civil Judge, Senior Division,

Court No.2, West Tripura, Agartala in T.S.114 of 2016 is hereby upheld and accordingly it is affirmed.

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

Prepare the decree accordingly.

Send down the LCRs forthwith.

JUDGE

