

**HIGH COURT OF TRIPURA
AGARTALA**

RFA No.13 of 2024

Sri Subhash Chakraborty,
S/O. Sri. Nimai Chakraborty,
Resident of South Badharghat,
Charipara, P.O. & P.S.- A.D. Nagar,
District- West Tripura.

....The Plaintiff Appellants(s)

Versus

1. Smt. Sandhya Deb,
W/O. Lt. Rakhal Chandra Deb,

2. Sri Amiya Deb,
S/O. Lt. Rakhal Chandra Deb,
Both residents of H.G.B. Road,
Agartala, P.S.- West Agartala,
Near Battala Market,
Dist.- West Tripura,
Pin-799001.

3. Smt. Soma Deb (Saha)
W/O. Sri. Tapan Saha
Resident of Town Pratapgarh,
Agartala, P.S.- East Agartala,
District- West Tripura,
Pin- 799004.

....The Defendant Respondent(s)

For Appellant(s)	:	Mr. D. Deb, Adv,
For Respondent(s)	:	None.
Date of Hearing	:	12.08.2024
Date of delivery of Judgment and Order	:	16.08.2024
Whether fit for Reporting	:	YES

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

This is an appeal challenging the judgment and part decree dated 02.02.2024 and 08.02.2024 respectively delivered by Learned Civil Judge, Senior Division, Court No.2,

West Tripura, Agartala in connection with case No.T.S.62 of 2022.

02. Heard Learned Counsel, Mr. D. Deb for the appellant-plaintiff. None appeared on behalf of the respondent-defendants inspite of receipt of notice.

03. Before coming to the conclusion of this appeal, let us discuss the subject matter of the dispute filed by the appellant as plaintiff before the Learned Trial Court. The appellant-plaintiff filed the suit before the Learned Trial Court for declaration, perpetual injunction and also for recovery of the amount of loss suffered by the plaintiff and for mandatory injunction.

04. The genesis of the case of the plaintiff-appellant before the Learned Trial Court was that the plaintiff-appellant is the owner of the hotel Anjana in 3rd floor and a part of the 4th floor of the multi-storied building situated at H.G.B Road near Battala Bazar. The appellant-plaintiff constructed the said multi-storied building including the 3rd floor and the 4th floor in pursuance of a Developer Agreement entered with the respondent-defendants. After completion of construction of the said building on the land of the respondent-defendants, as per agreement, three rooms on the ground floor were distributed to the developer, i.e. the plaintiff herein by following the terms and conditions of the developer agreement dated 25.07.2013. The said multi-storied

construction was constructed on the land of the defendants situated at Mouja-Agartala, Sheet No.-6 under Revenue Circle-Sadar, Tehsil-Agartala, West Tripura, under Touji No.2468, Khatian No.495 under Old C.S. Plot No.4653/P, 4654/P, 4653, 4654 and 4655/P corresponding to Hal C.S. Plot No.256, 257 and 328 for land measuring 0.048 acre. It was the further case of the appellant-plaintiff that the defendants in addition to the developer agreement had to make some payment of Rs.63,00,000/- (sixty three lakhs only) for the purpose of initial work demolition of the old structures and building, cutting of the trenches, obtaining Municipal Permission for construction, payment of taxes etc. The construction work was done by obtaining loan, but unfortunately, the defendants on the assurance of payment of said amount to the plaintiff-developer failed to make such payment even after completion of the construction of the said multi-storied building. Only an old room in the ground floor of the multi-storied building could not be reconstructed which was under the occupation of a tenant namely, Sri Ratan Debnath of Bardowali, Agartala on monthly basis for which said room could not be demolished. It was further asserted that as the respondent-defendants failed to make payment of Rs.63,00,000/- to the appellant-plaintiff, so, it was decided and settled that two rooms covering the rent in the ground floor of the said building to be transferred/sold by

the respondent-defendants to the developer plaintiff. For that a registered agreement for sale of two rooms in the ground floor was executed between the plaintiff and the defendants on 26.11.2018, which was registered before the Sub-Registrar, Sadar, vide no.I-6828. Later on, on 08.02.2019 another agreement was made without any registration between the appellant-plaintiff and the respondent-defendants being continuation of the earlier agreement before the Notary Public.

It was further asserted by the appellant-plaintiff that as said Ratan Debnath did not vacate the room after being requested by the defendants. So, an eviction case was filed under RCC Act against said Ratan Debnath by the defendants before the Rent Control Court bearing case No.RCC 07 of 2014, with the supervision and financial assistance given by the appellant-plaintiff. It was the further case of the appellant that as the defendants failed to comply with the terms and condition of the Agreement for the Sale of two rooms in the ground floor to the plaintiff, so, the appellant-plaintiff filed a civil suit vide No.T.S.102 of 2021 in the Court of Learned Civil Judge (Sr. Div.), Court No.1, West Tripura, Agartala for specific performance of contract against the defendants for getting the sale deed registered and for taking possession of the said two rooms in the ground floor of the said multi-storied building, as per Agreement of Sale.

The said Civil Suit filed is still pending for adjudication. It was also the case of the appellant that the defendants after institution of the said Civil Suit No.T.S.102 of 2021 have become more vindictive to cause harm and harassment to the plaintiff and started disturbing the plaintiff in different manners like disturbances in running the hotel business in the rooms of 3rd floor and a part of 4th floor of the said multi-storied building as the appellant-plaintiff has got lease agreement for ten years with option for further extension of period. The defendants have been creating obstruction to the boarders, staff and manager of the plaintiff's hotel by unnecessary disgraceful comments since long. Even the defendants did not abstain from making such disturbance after several objections and requests of the plaintiffs.

On 13.03.2022 at about 10.30 to 11.00 p.m., the defendant Nos.1 and 2 in presence of manager, staff and other customers of Hotel Anjana locked the door of room No.2 of 3rd floor of the said multi-storied hotel, which was taken by the appellant-plaintiff from the defendants with few other rooms, under the Monthly Lease Agreement.

The subject matter of the instant suit was the Room No.2 situated at 3rd floor of multi-storied building of hotel Anjana which is located at H.G.B. Road, Agartala. It was further contented by the appellant-plaintiff that the defendant No.1, being influenced by other defendants, has

been disturbing the plaintiff, the staff and the boarders of hotel Anjana, even after giving the 3rd floor (including suit premises i.e. Room No.2) and part of the 4th floor to the plaintiff for ten years on lease. It was further asserted that after receipt of notice in connection with case No.T.S.102 of 2021, the respondent-defendants have become more violent and just to take revenge they have forcefully locked the Room No.2 of 3rd floor of the said hotel.

It was also submitted that the manager and other staff and the boarders, after hearing hot altercation between the manager of the said hotel and the defendant No.1 appeared and resisted the defendant No.1 from locking the door of Room No.2 but that was in vain.

Thereafter, on the same night, the manager informed the matter to the Battala outpost but no action was taken. The appellant-plaintiff further submitted that due to disturbance caused by the respondent-defendants, he suffered a lot in normal and regular use of the stair case of the said multi-storied hotel and also suffered loss for the illegal act of locking the door of the Room No.2 of the 3rd floor of Hotel Anjana. Hence, the appellant-plaintiff filed the suit seeking the following reliefs:

“(i) decree for declaration that the plaintiff has right and interest over the suit premises i.e. the Room no.2 of 3rd floor of Hotel Anjana as per the registered monthly Lease Agreement entered with the

defendants dated 17.04.2015 vide No.I-323;

(ii) decree for recovery of the amount of Rs.5,00,000/- (rupees five lakhs only) with interest @6% per annum since date of locking the door till the realization from the defendant for the loss caused due to illegal locking of the suit premises;

(iii) decree for permanent injunction restraining the defendants and their agents from disturbing the peaceful use of the staircase of the Hotel and possession of the rooms of the 3rd floor and part of 4th floor of Hotel Anjana by the plaintiff and his staffs in and

(iv) decree for mandatory injunction directing the defendants to open the door by unlocking the Room No.2 of the 3rd floor of Hotel Anjana."

05. In obedience to the notice issued the respondent-defendants although appeared but did not contest the suit for which the suit proceeded ex-parte against the respondent-defendants. Thereafter, to substantiate the case the appellant-plaintiff adduced four witnesses including the appellant himself and relied upon some documents which were marked as Exhibit-1 to Exhibit-3:

APPENDIX OF EVIDENCE

(A) Plaintiff's Exhibits :-

1. Exbt.1 – computerized Khatian No.495 of Mouja- Agartala Sheet No.6;

2. Exbt. 2 (As a whole) - Original Lease Deed b/n I-3231 dated 17.04.2015; And

3. Exhibit-3 (As a whole) - Certified copy of Order dated 29.01.2022 passed in connection with CM (Injunction) 66 of 2021 arising out of TS 102 of 2021.

(B) Plaintiff's witnesses :-

1. P.W. 1:- Sri Subhash Chakraborty ;

2. P.W. 2:- Sri Prabir Chandra Saha ;

3. P.W. 3:- Sri Suman Ghosh Chowdhury and

4. P.W. 4:- Sri Ajit Deb.

(C) Defendant's Exhibits :- Nil.

(D) Defendant's witness :- Nil.

(E) Court's Exhibits :- Nil.

(F) Court's witness :- Nil.

06. As the case proceeded exparte, so, to determine the suit Learned Trial Court below determined the following points for decision of the suit:

“(i) Whether the suit is maintainable in its present form and nature?

(ii) Whether the suit has been instituted with a valid cause of action?

(iii) Whether the plaintiff has any right and interest over the suit premise i.e. Room no. 2 of Hotel Anjana?

(iv) Whether the plaintiff is entitled to get a decree for recovery of possession and permanent injunction restraining the defendants from disturbing the peaceful use of the staircase of the Hotel and peaceful possession of the rooms of the 3rd floor and part of 4th floor of Hotel Anjana?

(v) Whether the plaintiff is entitled to get the decree for recovery of the amount of Rs.5,00,000/- (rupees five lakhs only) with interest @6% per annum since date of locking till the realization from the defendants?”

07. Finally on conclusion of trial, the Learned Court below partly decreed the suit. For the sake of convenience, I would like to refer herein below the relevant portion of the judgment and order of the Learned Trial Court which runs as follows:

“Hence, in the light of the afore-mentioned discussion, the suit filed by the plaintiff is hereby partly decreed in his favour against the defendants.

The right and interest of the plaintiff over the suit premises is hereby declared as a lessee w.e.f 15.06.2016 to 14.06.2026 as per the terms and conditions of the lease.

The defendant is hereby directed to hand over possession Room no. 2 of 3rd floor of Hotel Anjana to the plaintiff after unlocking it within 45 days from the date of decree. The defendants are also hereby restrained from disturbing the peaceful use of the

staircase and peaceful possession of the plaintiff in respect of Room no.2 and other rooms of the 3rd floor and part of 4th floor of Hotel Anjana till the expiry of leasehold period i.e. till 14.06.2026.

Prepare the decree accordingly and put up for signatures within 14 days from today.

The suit is thus disposed off accordingly without contest."

08. At the time of hearing of argument, Learned Counsel for the appellant submitted that although the Learned Trial Court below partly decreed the suit but the Learned Trial Court below did not consider the damages sustained by the appellant for illegally shut down the Room No.2 of 3rd floor of the suit premise.

09. Learned Counsel submitted that Exhibit-2 was executed for a period of ten years and there was breach of condition by the respondents in compliance of the said terms and conditions of the Lease Agreement. But inspite of that the respondent-defendants without any authority caused disturbance to the appellant-plaintiff in running the business of hotel and illegally locked the door of the Room No.2 for which he was sustaining loss at the rate of Rs.15,00/- per day.

Accordingly to the Learned Counsel for the appellant, although the Learned Trial Court below granted other reliefs but failed to appreciate the evidence on record regarding allowing of damages sustained by the appellant due to illegal locking of the Room No.2, so, Learned Counsel

finally urged for allowing this appeal and to grant decree for recovery of compensation of amount of loss and sufferings which the Learned Trial Court failed to consider at the time of granting part decree in favour of the appellant.

Learned Counsel further submitted that in the prayer portion of the plaint, specific averment was made regarding sustaining of loss at the rate of Rs.15,00/- per day.

10. The Learned Court below in determining point No.5 came to the observation that no actual loss could be proved by the plaintiff, so, no relief was granted. It appears that before the Learned Trial Court, required Court fees was deposited by the appellant before filing of the suit. The contesting respondent-defendants inspite of receipt of summons although appeared but did not contest the suit either by filing WS or by adducing oral/documentary evidence on record. सत्यमेव जयते

11. The appellant as PW-1, in his examination-in-chief in affidavit asserted the said facts in para No.11. Similarly, PW-2 Prabir Chandra Saha in his examination-in-chief in affidavit supported the said fact that the Room No.2 of 3rd floor was locked by the respondent-defendants. Similarly, PW-3 Suman Ghosh Choudhury also supported the said version. PW-4 Sri Ajit Deb also in his examination-in-chief in

affidavit supported the version of the appellant-plaintiff regarding cause of action and for causing damage. From the evidence on record, it appears that the respondent-defendants violated the terms and conditions of the Lease Agreement, i.e. the Exhibit-2 and accordingly, after hearing the appellant as plaintiff and also after considering the evidence on record, Learned Trial Court below partly decreed the suit in favour of the appellant-plaintiff but refused to grant decree in respect of damages.

12. In course of hearing of argument, Learned Counsel for the appellant although submitted that the appellant-plaintiff sought relief in the plaint for damages, but that was not considered by the Learned Trial Court. But on perusal of the evidence on record, it appears that the appellant-plaintiff before the Learned Trial Court failed to give any proper account of the damage, sustained by the appellants due to wrongful act of the respondent-defendants and as such Learned Court below could not grant the said relief in favour of the appellant-plaintiff. The suit was filed for injunction and also for damages.

13. It is the settled position of law that in a suit for injunction the plaintiff also may claim relief for damages. To determine the issue, assistance of ChatGPT is taken with the following query:

ChatGPT

In a suit for injunction whether the plaintiff is entitled to get a decree for damages?

:-In a suit for an injunction, the plaintiff can indeed seek a decree for damages in addition to the injunction, but this depends on the specific circumstances of the case and the relief sought in the plaint.

Key Points:

Combination of Remedies: In many legal systems, particularly under common law, a plaintiff may combine multiple remedies in a single lawsuit. For instance, the plaintiff may ask for both an injunction (to prevent ongoing or future harm) and damages (to compensate for harm already suffered).

Injunction: An injunction is an equitable remedy that requires the defendant to do or refrain from doing a specific act. It is primarily preventive in nature.

Damages: Damages, on the other hand, are a legal remedy that aims to compensate the plaintiff for loss or injury suffered due to the defendant's actions.

Pleading Both Remedies: The plaintiff must specifically plead for damages in addition to the injunction in the plaint. If the plaintiff only seeks an injunction and does not plead for damages, the court may not grant damages unless the plaint is amended.

Discretion of the Court: The grant of both an injunction and damages is at the discretion of the court. The court will assess whether both remedies are appropriate based on the evidence and circumstances.

Separate Proceedings: If damages are not sought in the injunction suit, the plaintiff might need to file a separate suit for damages, depending on the jurisdiction and the specific legal procedures.

From the said observation of ChatGPT, it also appears that in a suit for injunction, the plaintiff also may seek decree for damages subject to specific circumstances of the case.

14. Here in the given case, it is the admitted position that the appellant-plaintiff before the Learned Trial Court in addition to the prayer for injunction also sought relief for

damages but could not give any specific account for the damages sustained by him, just only mentioned the amount sought for without adducing any specific oral/documentary evidence on record.

15. Situated thus, in my considered view the matter needs to be remanded back to the Learned Trial Court with a direction to the appellant-plaintiff to adduce evidence in respect of damages mentioned by him to enable the Learned Trial Court below to give a specific finding on this point.

16. In the result, the appeal filed by the appellant-plaintiff is hereby allowed. The suit is remanded back to the Learned Trial Court with a direction to the appellant-plaintiff to adduce fresh oral/documentary evidence on record, if any, in support of his claim for damages claimed in the suit to enable the Court to give a specific finding on this point. The plaintiff-appellant is further directed to appear before the Learned Trial Court on 27.08.2024. The Learned Trial Court shall make endeavour to dispose of the suit within a period of three (03) months from the date of receipt of a copy of this judgment after affording the appellant an opportunity to adduce evidence.

17. Since, there was no other separate prayers challenging the judgment and part decree granted by the Learned Trial Court by judgment dated 02.02.2024 and

decree dated 08.02.2024, so, the same is hereby upheld and accordingly, it is affirmed. With these observations, the appeal is disposed of.

Prepare decree accordingly.

Send down the LCRs along with copy of the judgment for immediate compliance.

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

JUDGE



**MOUMITA
DATTA**

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