

**HIGH COURT OF TRIPURA
AGARTALA**

RSA. No. 17 of 2024

1. Ms. Suphi Bibi,
Aged 54 years,
Wife of late Kanu Miah.
2. Md. Ranjit Miah,
Aged 43 years,
Son of late Kanu Miah.
3. Ms. Sima Bibi,
Aged 42 years,
Daughter of late Kanu Miah
and wife of Md. Alamgir Miah.
4. Ms. Ruma Bibi,
Aged 37 years,
Daughter of late Kanu Miah.

-all are resident of village: Rajarbag, Muslim Para,
PS & PO: Radhakishorepur-799120, District: Gomati, Tripura.

.....Appellant(s)

Versus

Smt. Roshana Bibi,
Wife of late Khalek Miah,
Resident of Village: Rajarbag,
PS & PO: Radhakishorepur-799120, District: Gomati, Tripura.

.....Respondent(s)

For Appellant(s)	:	Mr. D. K. Daschaudhury, Adv.
For Respondent(s)	:	None.

Fit for reporting	:	NO.
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HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA

JUDGMENT & ORDER (ORAL)

21.05.2024

Heard Mr. D. K. Daschaudhury, learned counsel
appearing for the appellants.

[2] The present appellants are the legal representatives of
late Kanu Miah who was the sole defendant in the Trial Court. The
present respondent was the plaintiff who filed the suit seeking

declaration of her right, title & interest over the suit land and for recovery of possession.

[3] According to the plaintiff, she purchased the suit plots i.e. RS Plots Nos.1027 (part) and 1035 (part) of area 3 karas from the original owner Sri Nanigopal Datta and his other co-sharers by registered sale deed No.1-1132 dated 24.06.2009. Said Nanigopal Datta executed the sale deed for himself and also for his other co-sharers as their attorney. Further allegation of the plaintiff was that on 22.10.2011 the original defendant Kanu Miah dispossessed her from the suit land and, therefore, the suit was filed.

[4] Said late Kanu Miah i.e. predecessor of present appellants in his written statement did not claim the suit land as of his own, rather according to him, he purchased 0.03 acre land from one Sima Bibi from RS Plot No.1036/5696 with certain boundaries by a registered deed of sale bearing no.1-1700 dated 11.09.2013. According to him, his said purchased land is also not situated adjacent to the boundary line of the land of the plaintiff and, therefore, there was no question of any encroachment or dispossession by him of the plaintiff from the said suit land.

[5] Both side led their evidences, both oral and documentary, in the Trial Court and finally the suit was decreed by the Trial Court which was affirmed by the Ld. District Judge, Gomati District, Udaipur vide Judgment dated 23.02.2024 passed in Title Appeal No.13 of 2020 which along with the related decree drawn thereon are challenged in this appeal.

[6] On the prayer of the original defendant of late Kanu Miah, one Survey Commissioner namely Mr. T.K. Majumder, Revenue Inspector was appointed by the Ld. Trial Court to survey the suit land and to submit the report and in turn said Revenue Inspector along with one Tehsildar namely Sri Iswar Chandra Debnath, submitted their report which were taken into evidence as Exbt.C-1 and Exbt.C-1(i) after they were examined in the Court. As per the Survey Commissioner's report the defendant dispossessed the plaintiff from 1 kara 2 kranta and 1 dhur of land from suit plot No.1035 based on which the Trial Court granted decree of recovery of possession for the said area of suit land.

[7] When the Survey Commissioner's report was submitted in the Trial Court none of the parties submitted any written objection against the same. However, during examination both the said Revenue Inspector and Tehsildar admitted that there was no trained surveyor in Udaipur Sub-Division Office. Except that sentence, there was no challenge from the side of the plaintiff or the defendant regarding the correctness of such report submitted by them.

[8] Mr. Daschaudhury, learned counsel with all emphasis submits that when both the Revenue Inspector and the Tehsildar were not acquainted with the survey work, serious error was committed by Ld. Trial Court in engaging them in commission work and based on such faulty reports and sketch map annexed therewith, Ld. Trial Court has passed the decree which was further affirmed by the Ld. First Appellate Court and same are seriously

prejudicial to the interest of the present appellants. Mr. Daschaudhury, learned counsel also contends that based on such faulty report now the plaintiff will try to evict the appellants from their own land. Therefore, Mr. Daschaudhury, learned counsel submits that substantial question of law in this appeal may be formulated as to whether such report of Survey Commissioner prepared by such a person having no knowledge on survey can be relied on to determine the disputes between the parties.

[9] This Court has considered the submission of Mr. Daschaudhury, learned counsel but what has been raised by learned counsel is a question of fact. First of all, the appellants or their predecessor are disclaimer on the suit plot and according to them their purchased land is situated elsewhere and not adjacent to the suit land. Therefore, such apprehension that based on such commissioner's report, the plaintiff decree holder will now dispossess the appellants from their own land is without any basis. Decree of recovery of possession has been passed by the Trial Court in respect of suit plot No.1035 and said plot is identifiable basing on the revenue map and other revenue records and the decree of recovery of possession as passed by the Ld. Trial Court is confined only within the said plot No.1035 and no decree was passed in respect of purchased plot of appellants i.e. plot no.1036/5696.

[10] All these matters are appreciation of facts and not a question of law. In **Kondiba Dagadu Kadam Vs. Savitribai Sopan Gujar & Ors, (1999) 3 SCC 722** it was observed by the Hon'ble Supreme Court that if a question of law termed as a

substantial question stands already decided by a larger Bench of the High Court concerned or by the Privy Council or by the Federal Court or by the Supreme Court, its merely wrong application on facts of the case would not be termed to be a substantial question of law. It was also in that connection observed that the mere appreciation of facts, the documentary evidence or the meaning of entries and the contents of the documents cannot be held to be raising a substantial question of law.

In view of above, it is held that there is no substantial question of law involved in this appeal warranting admission of the same for further hearing.

The appeal is accordingly not admitted and is disposed of.

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

The Registry is to communicate the copy of this Order to both Ld. First Appellant Court and Ld. Trial Court.

JUDGE

SATABDI DUTTA

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