

**HIGH COURT OF TRIPURA
AGARTALA**

RSA No.20 of 2022

1. Sri Sisir Das,

S/O. Late Manasha Charan Das
Resident of Bordowali, Agartala,
P.S. Arundhutinagar,
District - West Tripura.

2. Sri Subal Sarkar,

S/O. Late Haralal Sarkar.

3. Sri Nitai Das,

S/O. Shri Phani Bhusan Das.

4. Sri Krishna Gopal Saha,

S/O- Late Ramesh Ch. Saha
All are resident of Bhattapukur, Agartala,
P.S.- Arundhutinagar,
District - West Tripura

.....Plaintiff Appellants(s)

Versus

1. Sri Anjurai Debbarma.

2. Sri Judhamani Debbarma.

3. Sri Ramesh Debbarma.

4. Sri Magrai Debbarma.

5. Sri Abhiram Debbarma.

All are sons of Late Ananta Debbarma.

6. Smti. Hirapati Debbarma

W/O. Sri Anjurai Debbarma.

7. Smti Papari Debbarma

W/O. Sri Judhamani Debbarma
All are resident of Vill- Ramgati,
S.K. Para, P.O. S.K. Para,
P.S. Sreenagar,
District- West Tripura,
Pin- 799004.

8. (a) Smti. Alo Rani Das

S/O. Late Haradhan Das.

8. (b) Sri Sudip Das

S/O. Late Haradhan Das.

8. (c) Sri Ranjit Das

S/O. Late Haradhan Das.

All are resident of Laxmi Tilla,
Ward No. 2, South Anandanagar,
P.O. S.K. Para, P.S. Sreenagar,
District- West Tripura,
Pin – 799004.

9. Sri Manoranjan Paul

S/O. Krishnadhan Paul
Resident of Netaji Nagar
ONGC Colony, P.S. Amtali,
District- West Tripura,
Pin-799014.

.....Defendant Respondent(s)

For Appellant(s)	:	Mr. P. Chakraborty, Adv,
For Respondent(s)	:	Mr. K. Deb, Adv,
Date of Hearing	:	07.08.2024
Date of delivery of Judgment and Order	:	16.08.2024
Whether fit for Reporting	:	YES

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

This appeal is preferred challenging the judgment and decree dated 07.02.2022 and 17.02.2022 respectively delivered by Learned District Judge, West Tripura, Agartala in connection with case No.T.A.42 of 2017. By the said judgment, the Learned First Appellate Court has affirmed the judgment and decree dated 22.06.2017 and 06.07.2017

respectively delivered by Learned Civil Judge, Senior Division, Court No.2, West Tripura, Agartala in T.S.136 of 2012.

02. Heard Learned Counsel, Mr. P. Chakraborty for the appellants and also heard Learned Counsel, Mr. K. Deb for the respondent-defendants herein.

03. In course of hearing of argument, Learned Counsel for the appellants first of all drawn the attention of the Court referring para No.25, 26 and 27 of the judgment delivered by Learned First Appellate Court and submitted that Learned First Appellate Court and the Learned Trial Court came to an observation that the allotment of the suit land was given as per Allotment of Land Rules, 1980 in favour of the original vendors of the appellants and thus, came to an erroneous finding that the suit land was transferred without permission of the Collector of the district which was totally erroneous and perverse and thus, the judgment of the Learned Courts below suffers from infirmities. Learned Counsel for the appellants further submitted that before the Learned Trial Court, three deeds were exhibited by the appellants which were marked as Exhibit-1, Exhibit-2 and Exhibit-3 and those were exhibited and admitted into evidence without any objection from the respondent-defendants herein, but the Learned Trial Court below at the time of delivery of the judgment did not

consider the same and dismissed the suit which was affirmed by the Learned First Appellate Court and submitted that since the judgment and decree of the Learned Courts below suffers from infirmities, so, the interference of the Court is required and urged for setting aside the judgment and decree of the Learned First Appellate Court and to grant decree in favour of the appellants herein.

04. On the other hand, Learned Counsel for the respondent-defendants first of all submitted that the submission made by Learned Counsel for the appellants is beyond pleadings because before the Learned Trial Court, the appellants could not prove their possession over the suit land. So, the Learned Court below rightly came to the observation that the appellants herein could not prove their possession over the suit land and as such they were not entitled to get any decree of permanent injunction. Learned Counsel for the respondent-defendants further submitted that the appellants before the Learned Trial Court below could not prove the exhibited documents i.e. Exhibit-1, Exhibit-2 and Exhibit-3 in accordance with the provisions of Section 67 and 68 of the Indian Evidence Act and as such the appellants could not prove their right, title and interest and possession over the suit land by adducing any oral/documentary evidence on record and the Learned Courts below rightly and reasonably dismissed the suit of the

appellants herein, which was affirmed by the Learned First Appellate Court.

So, at this stage, according to Learned Counsel for the respondent-defendants, the present appeal is liable to be dismissed with costs.

05. Now, before coming to the conclusion of this appeal, let us discuss the subject matter of the suit filed by the appellants before the Learned Trial Court. According to the appellants, they filed the suit for declaration of title, confirmation of possession and perpetual injunction before the Learned Trial Court. The case of the appellants before the Learned Trial Court was that the suit land measuring 5.24 acres appertaining to Khatian No.2014 and 1776 under Mouja Madhuban was originally belonged to one Sukhendu Datta and Prafulla Kumar Majumder and after the death of said Sukhendu Datta his wife, Smt. Raimanjuri Dutta and others by a Sale Deed dated 15.06.2011 sold/transferred land measuring 1.84 acres appertaining to Khatian No.2014, surveyed in Old C.S. Plot No.4535/5772 corresponding to Revisional C.S. Plot No.5936 in favour of the appellants. Similarly, on 15.06.2011 Prafulla Kumar Majumder by another Sale Deed transferred land measuring 3.36 acres appertaining to Khatian No.1776 surveyed in Old C.S. Plot No.4535/5752 corresponding to Revisional C.S. Plot No.5935 under said Mouja in favour of the appellant-plaintiffs.

Thereafter, said Prafulla Kumar Majumder by another Sale Deed transferred further land measuring 0.04 acre of present C.S. Plot No.5935 of Khatian No. 1776 to the appellants. Thus, the appellants became the owners in possession of the said land measuring 5.24 acres i.e. the suit land. It was further submitted that thereafter, appellant-plaintiffs erected boundary fencing to do rubber garden but the respondent-defendants started disturbing possession of the appellant-plaintiffs over the suit property. After that, the appellants approached Deputy Collector & Magistrate, Dukli, Revenue Circle for demarcation of the suit land but due to disturbance caused by the respondent-defendants, which could not be done by the Survey Team. After that on 05.08.2012 the respondent-defendants forming a group tried to enter into the suit land but failed due to resistance caused by the respondent-defendants.

Thereafter, also the respondent-defendants made several attempts to dispossess the appellant-plaintiffs from the suit land but failed. Hence, the appellant-plaintiffs filed the suit for granting decree. The respondent-defendants contested the suit by filing written statement. The respondent-defendant Nos.1 to 5, 7 and 8 by filing their written statement denied the assertions of the appellant-plaintiffs in the plaint and they further took the plea that they are in possession of the suit land more than 100 years

by doing cultivation and also denied the possession of the appellant-plaintiffs over the suit land at any point of time. The respondent-defendants Nos.9 and 10 also contested the suit by filing written statement denying the entire assertions of the appellant-plaintiffs and they also took the plea that the suit land was allotted to Prafulla Kumar Majumder and Sukhendu Datta (since dead) beyond their knowledge and the same was illegally sold to the appellant-plaintiffs in violation Rule 12(1) of TLR & LR (Allotment of Land) Rules 1980. So, the contesting defendants by their written statement prayed for dismissal of the suit with costs.

06. Upon the pleadings of the parties, following issues were framed by the Learned Trial Court:

“(1) Is the suit maintainable in its present form and nature ?

(2) Have the plaintiffs any right, title and interest over the suit land ?

(3) Have the plaintiffs ever been possessed the suit land ?

(4) Have the defendants been possessing the suit land for last 100 years peacefully without any obstruction from any corner ?

(5) Are the plaintiffs entitled to get a decree as prayed for ?

(6) To what other relief/reliefs the parties to this suit are entitled to get?”

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

Witnesses of PWs:

PW-1: Sri Krishna Gopal Saha

PW-2: Sri Jatan Mallik

Witnesses of DWs:

DW-1: Sri Anjurai Debbarma

DW-2: Sri Sibud Dey

DW-3: Sri Sudhir Debbarma

Exhibited documents of PWs:

Exbt.1 – Original registered Sale Deed vide No.1-988 dated 15.06.2011.

Exbt.2 – Original registered Sale Deed vide No.1-990 dated 15.06.2011.

Exbt.3 – Original registered Sale Deed vide No.1-986 dated 15.06.2011.

Exbt.4 – Certified copy of Khatian No.2014 of Mouja-Madhuban.

Exbt.5 – Certified copy of Khatian No.1776 of Mouja-Madhuban.

08. Finally, on conclusion of trial, the Learned Trial Court below by judgment dated 22.06.2017 dismissed the suit. The operative portion of the judgment/order of the Learned Trial Court runs as follows:

"In the result, the suit is dismissed on contest without costs.

The plaintiffs have no right, title and interest over the suit land as well as their possession over the suit land is also not confirmed. The plaintiffs are also not entitled for perpetual injunction over the suit land since they failed to establish their exclusive possession over the same.

With the above observation the suit is disposed of on contest without costs.

Prepare decree accordingly."

09. Challenging that judgment, the appellant-plaintiffs preferred appeal under Section 96 of C.P.C. before the Court of Learned District Judge, West Tripura, Agartala which was numbered as T.A.42 of 2017 and the Learned District Judge after hearing both the sides also dismissed the appeal upholding the judgment and decree of the Learned Trial Court below. For the sake of convenience, I would like to refer herein below the operative portion of the judgment and

order dated 07.02.2022 of Learned First Appellate Court which is as follows:

"In the result, I find no infirmity in the finding of the Judgment arrived at by the Learned Trial Court. Accordingly, this Title Appeal is dismissed on contest with cost.

The Judgment passed by the Learned Trial Court in Title Suit No.136 of 2012 is upheld and affirmed.

Prepare Appellate Decree accordingly.

Send down the L.C. record along with a copy of this Judgment."

10. Being aggrieved with the judgment, the appellant-plaintiffs further preferred this appeal under Section 100 of C.P.C. before the High Court. At the time of admission of the appeal by order dated 11.05.2022 the following substantial question of law was formulated:

"(i) Whether the finding of the First Appellate Court returned by the impugned judgment is perverse because under the relevant Tripura Land Revenue & Land Reforms (Allotment of Land) Rules; no prior permission of the Collector was required for transfer of the allotted land ?"

11. I have heard argument of both the sides and gone through the records of the Learned Court below. The appellants as plaintiffs filed the suit before the Learned Trial Court for granting decree of declaration of right, title and interest and for confirmation of possession and also for perpetual injunction. The Learned Trial Court below dismissed the suit on the ground that the appellant-plaintiffs could not establish their right, title and interest over the suit

lands both by adducing oral/documentary evidence on record and also came to the observation that the appellant-plaintiffs could not prove the Exhibits- 1, 2 and 3 in accordance with law and ultimately dismissed the suit and the Learned First Appellate Court also came to the observation that the suit land was transferred in violation of Rule 12(1) Allotment of Land Rules, 1980 without the permission of the Collector and also Exhibits-1, 2 and 3 were not proved in accordance with the provisions of the Evidence Act and as such Learned First Appellate Court dismissed the appeal upholding the judgment and decree of the Learned Trial Court below. Now at this stage, we are to examine whether the judgments of the Learned Courts below suffers from any infirmities or not.

12. Admittedly, in this case, the appellant-plaintiffs could not produce and prove any order of allotment on the basis of which the suit land was allotted in favour of the original vendors of the appellant-plaintiffs namely, Sri Prafulla Kumar Majumder and Sukhendu Datta (since dead). In order to prove the case, the appellant-plaintiffs have adduced two witnesses and also relied upon some documents which were marked as Exhibit-1 to Exhibit-5. Exhibits-1, 2 and 3 are the registered Title Deeds, on the basis of which the suit land was transferred to the appellant-plaintiffs by the original vendors and Exhibit-4 is the certified copy of Khatian-2014 standing in the name of Sukhendu Datta (since

dead) bearing No.2014 for land measuring 1.84 and Exhibit-5 is the certified copy of Khatian bearing No.1776 standing in the name of Prafulla Majumder for land measuring 3.40 acres. On perusal of Exhibits-1, 2 and 3, it appears that by the aforesaid Title Deeds the appellant-plaintiffs have purchased the suit land from the original vendors i.e. the entire land of Khatian No.2014 and 1776. Exhibits-4 and 5 are the certified copies of Khatians and as such being a public document, it was admissible in evidence and accordingly, admitted into evidence by the Learned Trial Court. Now, in respect of Exhibits-1, 2 and 3, it appears that the Learned Trial Court below at the time of recording evidence of PW1 i.e. one of the appellant-plaintiffs, namely Krishna Gopal Saha admitted those documents into evidence and marked as Exhibits-1, 2 and 3 without any objection from the side of contesting respondent-defendants. But surprisingly, at the time of delivery of judgment, Learned Trial Court below came to the observation in middle portion of para No.6 that those are not admissible in eye of law. This part of observation in my considered view was not in accordance with law because once the document is admitted into evidence and marked as exhibits without any objection from the other side by the Learned Trial Court below, later on, cannot be discarded by another observation that the same are/were not admissible in the eye of law. At the time

of hearing of argument, Learned Counsel for the appellants submitted that those documents were exhibited without any objection by the contesting respondents cannot be subsequently raised in the Appellate Court that the same was not admissible. In this regard, Learned Counsel for the respondent-defendants could not submit anything to discard the submission of Learned Counsel for the appellant.

13. In Lachhmi Narain Singh (Dead) Through Legal Representatives and Others vs. Sarjug Singh (Dead) Through Legal Representatives and Others dated 17.08.2021 reported in (2022) 13 SCC 746, wherein in para Nos.22 to 24 Hon'ble the Supreme Court observed as under:

"22. A similar view was taken by George Rankin, J. in the decision of Privy Council in *Gopal Das v. Sri Thakurji*:1943 SCC OnLine PC 2 where it was held that objection as to the mode of proof must be taken when the document is tendered and before it is marked as an exhibit. It cannot be taken in appeal. Objection as to mode of proof should be taken before a document is admitted and marked as exhibit. In the present case the probate applicant never raised any objection in regard to mode of proof of cancellation deed before the trial court, as is evident from perusal of records and this must be held against him.

23. In support of our above conclusion, we may usefully refer to the ratio in *R.V.E. Venkatachala Gounder v. Arulmigu Viswesaraswami & V.P. Temple*: (2003) 8 SCC 752 where Ashok Bhan, J. while dealing with the aspect of disallowing objection as to mode of proof at appellate stage as a rule of fair play to avoid prejudice to the other side, said as follows: (SCC p. 764, para 20)

20. ... In the latter case, the objection should be taken when the evidence is

tendered and once the document has been admitted in evidence and marked as an exhibit, the objection that it should not have been admitted in evidence or that the mode adopted for providing the document is irregular cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit. The latter proposition is a rule of fair play. The crucial test is whether an objection, if taken at the appropriate point of time, would have enabled the party tendering the evidence to cure the defect and resort to such mode of proof as would be regular. The omission to object becomes fatal because by his failure the party entitled to object allows the party tendering the evidence to act on an assumption that the opposite party is not serious about the mode of proof. On the other hand, a prompt objection does not prejudice the party tendering the evidence, for two reasons: firstly, it enables the court to apply its mind and pronounce its decision on the question of admissibility then and there; and secondly, in the event of finding of the court on the mode of proof sought to be adopted going against the party tendering the evidence, the opportunity of seeking indulgence of the court for permitting a regular mode or method of proof and thereby removing the objection raised by the opposite party, is available to the party leading the evidence. Such practice and procedure is fair to both the parties. Out of the two types of objections, referred to hereinabove, in the latter case, failure to raise a prompt and timely objection amounts to waiver of the necessity for insisting on formal proof of a document, the document itself which is sought to be proved being admissible in evidence.

24. This Court in the opinion written by *S.H. Kapadia, J. in Dayamathi Bai v. K.M. Shaffi: (2004) 7 SCC 107* has similarly held that objection as to the mode of proof falls within procedural law. Therefore, such objections could be waived. Moreover, objection is to be taken before the document is marked as an exhibit and admitted in Court."

14. On perusal of the same, it appears that it was the duty of the respondent-defendants to raise objection on the

admissibility on documents when the evidence was recorded, but they failed to do so. So, this plea cannot be taken before this High Court at this belated stage. Now, regarding transfer of the suit land through Exhibits-1, 2 and 3 as submitted by Learned Counsel for the appellants at the time of hearing, the observation of the Learned First Appellate Court that the suit land was transferred without any consent of the Collector was not correct, because the allotment of land was given to the vendors as per Tripura Land Revenue & Land Reforms (Allotment of Land) Rules, 1962 in favour of the vendors of the appellant-plaintiffs, not in accordance with the Allotment of Land Rules, 1980. But the Learned First Appellate Court, without any basis came to the observation in para Nos.25 and 26 of the judgment that the suit land was transferred without written consent of the Collector in view of Rule 12(1)- Allotment of Land Rules, 1980. In this regard, I have perused the documentary evidence on record.

15. On perusal of Exhibits-4 and 5, it appears that the suit land was allotted in the name of the vendors of the appellant-plaintiffs as per Allotment Rules, 1960. Now for the sake of convenience, I would like to refer herein below the relevant provision of Section 14 of The Tripura Land Revenue and Land Reforms Act, 1960, Rule 15(1)(i) of The Tripura Land Revenue & Land Reforms (Allotment of Land) Rules, 1962 and the relevant provision of Rule 12 of The Tripura

Land Revenue and Land Reforms (Allotment of Land) Rules, 1980 which reads as under:

Section 14 of The Tripura Land Revenue and Land Reforms Act, 1960:

"14. Allotment of Land.- (1) The Collector may allot land belonging to the Government for agricultural purposes or for construction of dwelling houses, in accordance with such rules as may be made in this behalf under this Act; and such rules may provide for allotment of land to persons evicted under section 15.

(2) The [State Government] shall have power-

(a) to allot any such land for the purpose of an industry or for any purpose of public utility on such conditions as may be prescribed, or

(b) to entrust the management of any such land or any rights therein to the gram panchayat of the village established under any law for the time being in force.

(3) The rules under sub-sections (1) and (2) for allotment of land shall provide for giving preference to the members of the co-operative farming societies formed by marginal farmers, landless agricultural labourers, jumias and members of the Scheduled Tribes and Scheduled Castes in allotting land."

Rule 15(1)(i) of The Tripura Land Revenue & Land Reforms (Allotment of Land) Rules, 1962:

"15. An allotment of land under sub-section (1) of section 14 shall be subject to the following conditions, namely-

(i) the land shall not be transferred by the allottee within ten years from the date of allotment, without the written consent of the Collector:

Provided that the land may be mortgaged to a co-operative society, a co-operative bank or land mortgage bank or the Government without such consent;"

Rule 12 of The Tripura Land Revenue and Land Reforms (Allotment of Land) Rules, 1980:

"12. Conditions of allotment.-(1) Any allotment of land under sub-section (1) of section 14 and in accordance with these rules, shall be further subject to the following conditions and also the conditions specified in the allotment order which shall be, as nearly as possible, in the form at Appendix 'B':

(i) The land will be heritable but not alienable without the written consent of the Collector granted on the recommendation of the Advisory Committee that may be set up by the Government."

16. From the aforesaid rules, it appears that in The Tripura Land Revenue & Land Reforms (Allotment of Land) Rules, 1962, there was a bar that the land under allotment could be transferred after ten years without any permission from the Collector, but if the allotment was made as per The Tripura Land Revenue and Land Reforms (Allotment of Land) Rules, 1980, in that case, there was a clear bar that without the permission of the Collector, there is no scope to transfer any land to any person, but here in the given case, it appears that Learned First Appellate Court in para Nos.25 and 26 observed that the allotment of land was given to the vendors of the appellant-plaintiffs as per The Tripura Land Revenue and Land Reforms (Allotment of Land) Rules, 1980, which in my considered view was nothing proper but misconception of law and as such the same cannot be accepted.

17. Learned Counsel for the respondent-defendants, in course of hearing of argument submitted that regarding

confirmation of possession, the appellant-plaintiffs could not produce any evidence on record to grant decree in their favour. It is the settled position of law that in a suit for declaration of right, title, interest and for permanent injunction, the plaintiffs not only should prove his title over the suit land but at the same time should adduce evidence in support of his possession over the suit land from which he or she is threatened to be evicted. In this regard, I would like to discuss herein below the evidence on record of the parties.

18. From the side of appellant plaintiffs, one Krishna Gopal Saha, one of the appellants was examined as PW1. In his examination-in-chief in affidavit said Krishna Gopal Saha took the plea that they have purchased the land measuring 1.84 acres from the legal heirs of Sukhendu Datta(since dead) by a Title Deed dated 15.06.2011 and they also purchased land measuring 3.40 acres from one Prafulla Kumar Majumder by two separate registered Sale Deeds dated 15.06.2011 and got delivery of possession of the said land immediately after purchase and on 05.08.2012, the respondent-defendants tried to dispossess them from the suit land and thereafter, on several occasions also, for which they filed the suit.

Said PW1 in course of his examination-in-chief relied upon certain documents which were marked as

Exhibits-1 to 5. During cross-examination by the contesting respondent-defendants Nos.9 and 10, he has specifically admitted that in the plaint they did not mention when and in favour of whom the allotment of the suit land was made and nothing is mentioned in Exhibits-1, 2 and 3 that the suit land was an allottee land. He also admitted that they did not make any application for correction of Khatian due to objection raised.

During cross-examination by defendant Nos.1 to 8, he stated that before purchasing of the suit land, they have collected all the information in respect of the suit land and the original owner of the suit land was one Sukhendu Datta and after his death his legal heirs. He further admitted that there is a cremation ground on the western side of the suit land. Nothing more came out relevant from his cross-examination.

19. PW2, Jatan Mallik in his examination-in-chief in affidavit supported the version of the appellant-plaintiffs in the plaint.

During cross-examination by defendant Nos.9 and 10, he stated that he used to work as a rubber tapper in the rubber garden of Krishna Gopal Saha. He could not say the quantum of the suit land. He also admitted that the suit land was bounded by the East by Pramod Kr. Bhowmik, by West-

Haradhan Das, Manoranjan Das, by North-Supti Sarkar and Jyoti Prabha Sarkar, by South- Jhandu Debi.

During cross-examination by defendant Nos.1 to 8, he admitted that there is a cremation ground on the western side of the suit land and the boundary of land of some tribal people was on the eastern side of the suit land.

20. To substantiate the defence, the respondent-defendants have adduced three witnesses.

DW1 Anjurai Debbarma, in his examination-in-chief in affidavit supported his version made in the WS.

During cross-examination he stated that he was not acquainted with the plaintiffs of the case. The suit land is measuring 12/13 kanis. He was unable to say dag number and khatian number of the suit land. He also could not say whose name is incorporated in the khatian during revisional survey.

21. Similarly, DW2 Sibud Dey in his examination-in-chief in affidavit tried to support the version of the contesting respondents in their WS.

During cross-examination by the appellant-plaintiffs he admitted that he was not acquainted with the plaintiffs of the case and the suit land is comprising 10/11 kani of land and he also could not say the crux of the suit of the plaintiffs.

22. Similarly, DW3 Sudhir Debbarma in his examination-in-chief in affidavit tried to support the version of the respondent-defendants in their WS.

During cross-examination he stated that his house was situated 2 km away from the suit land. He could not say the description of the suit land also could not say whose name was recorded in the khatian during revisional survey.

These are the synopsis of the evidence on record of the parties in respect of determination of issues framed by Learned Trial Court.

23. The respondent-defendant Nos.1 to 5, 7 and 8 in their WS denied the assertions of the appellant-plaintiffs in their plaint and the respondent-defendants Nos.9 and 10 took the plea that the suit land was belonging to the Government of Tripura and since from the year 1970, one Bishakha Rishi Das and respondent-defendants Nos.1 to 8 took possession of the suit land and since then they have been possessing the suit land, but beyond their back, Government of Tripura allotted the suit land in favour of Sukhendu Datta (since dead) and Prafulla Kumar Majumder but no possession was given to them. It was further submitted that said Bishakha Rishi Das and the defendants Nos.1 to 8 planted rubber trees, collected rubber latex from the suit land and later on, Bishakha Rishi Das by a unregistered Deed transferred portion of the suit land to

respondent-defendant No.10, Bhulu Chakraborty who used to cultivate the same by engaging defendant No.1 as tapper and used to collect latex from the part of the suit land.

They also took the plea that the transfer was made without any permission of the Collector, so, it was barred in view of the Rule 12(1) of The Tripura Land Revenue and Land Reforms Rules, 1980, but surprisingly in support of the contention, the respondent-defendants could not adduce any documentary evidence on record nor proved any unregistered Deed also not produced any oral/documentary evidence on record that they have cultivated rubber plants on the suit land.

24. I have also gone through the evidence on record of the parties. According to the appellant-plaintiffs, after purchase, they got possession over the suit land and posted pillars for clear identification of the same.

25. On the other hand, the respondent-defendants in support of their contention adduced three witnesses, although in their examination-in-chief, they stated that the suit land was under their possession i.e. the defendants but from their evidence, it cannot be conclusively said that they are possessing the suit land since long back, because the witnesses of the respondent-defendants, in course of their cross-examination could not give any proper identification of the suit land, nor they could give any account from when the

respondent-defendants are possessing the said land, even they also could not give any account as to how the respondent-defendants were possessing the suit land.

From the relevant khatian, it appears even in the column of possession, there is no any entry by the Settlement or Revenue Authority, which indicates that the respondent-defendants are/were possessing the suit land either as permissive possessor or as or as an unauthorized possessor.

26. Situated thus, on the face of evidence on record, it can easily be said that the respondent-defendants in support of their possession over the suit land failed to adduce any conclusive oral/documentary evidence on record to substantiate their defence. Even as alleged by them, they adversely possessed the suit land. In this account also they have failed to adduce any cogent evidence on record. Learned Trial Court below at the time of delivery of the judgment, failed to consider all those aspects and came to the conclusion that the appellant-plaintiffs have failed to establish their right, title and interest and possession over the suit land, which in my considered view the same was erroneous.

27. Admittedly, in the plaint, the appellant-plaintiffs did not state that their vendors got allotment of the suit land. Even the Title Deeds i.e. Exhibits-1, 2 and 3 are also

silent that the vendors of the appellant-plaintiffs got allotment of the said land from the Government. But for that, it cannot be said that the appellant-plaintiffs did not acquire any right, title and interest over the suit land. Further on perusal of Exhibits-4 and 5, it appears that the suit land was allotted in favour of the vendors of the appellant-plaintiffs in view of the Tripura Land Revenue and Land Reforms Rules, 1962 not under Allotment of Land Rules 1980. Because if we go through both the aforesaid allotment rules, it appears that in Rule 15(1) of the Allotment of Land Rules 1962, there was a bar that the land shall not be transferred by the allottee within ten years from the date of Allotment without the written consent of the Collector.

28. Thus, it is clear that within ten years from the date of allotment of land, there was no scope on the part of the vendor to transfer any land to any other person. Here in the case at hand, if we assume that the land was allotted prior to 1980 in pursuance of the Allotment of the Land Rules, 1962, in that case, within ten years, it was under legal obligation by the original vendors not to transfer the suit land within ten years. In this case, on perusal of Exhibits-1, 2 and 3, it is clear that those Title Deeds were executed in the year 2011 i.e. long after the date of allotment of land to the vendors of the appellant-plaintiffs.

29. So, the findings of Learned First Appellate Court that the vendors of the appellant-plaintiffs have violated Rule 12(1) of the Allotment of Land Rules 1980 was not correct which cannot be legally accepted and also cannot be sustained in the eye of law. More so, there is/was no any contrary evidence on record that the said allotment accorded in favour of the vendors of the appellant-plaintiffs was cancelled at any point of time. The substantial question of law is accordingly answered in favour of the appellant-plaintiffs of this appeal.

30. Thus, in my considered view the vendors of the appellant-plaintiffs did not violate any provision of the allotment rules under the Allotment of Land Rules, 1962. Thus, the findings of the Learned First Appellate Court that the vendors of the appellant-plaintiffs violated Rule 12(1) of the Allotment of Land Rules 1980 was not correct and proper and misconception of law, for which it appears that the judgment of both the Courts below suffers from perversities and accordingly, the interference of the Court is required.

31. In the result, the appeal filed by the appellant is hereby allowed on contest. The judgment and decree dated 07.02.2022 and 17.02.2022 respectively delivered by Learned District Judge, West Tripura, Agartala in connection with case No.T.A.42 of 2017 confirming the judgment and

decree dated 22.06.2017 and 06.07.2017 respectively delivered by Learned Civil Judge, Senior Division, Court No.2, West Tripura, Agartala in T.S.136 of 2012 is hereby set aside. The right, title and interest and possession of the appellant-plaintiffs over the suit land is hereby declared and accordingly, it is confirmed. The respondent-defendants and their men and agents are hereby restrained from entering into the suit land permanently, until otherwise then in due course of law.

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**
Purnita

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