

**HIGH COURT OF TRIPURA
AGARTALA
RSA No.24 of 2022**

1. Sri Dipak Kumar Paul

S/o Late Thakur Chand Paul,

2. Smt. Binapani Paul,

W/o. Sri Dipak Kumar Paul,
Both are residents of Math Chowmuhan,
College Road, Agartala,
P.O.-Agartala College, P.S. East Agartala,
District-West Tripura

----- The Defendant Respondent Appellants

Versus

1. Sri Chayan Pal,

S/O. Lt. Thakur Chand Paul,

2. Smt. Supta Pal,

W/O. Sri. Chayan Pal,
Both are resident of 'Gitanjali Apartment',
H.G.B. Road, Agartala,
P.O.- Agartala, P.S.-West Agartala,
District- West Tripura.

-----The Plaintiff Appellant Respondents

For Appellant(s)	:	Mr. D. R. Chowdhury, Sr. Adv, Mr. S. Sarkar, Adv.
For Respondent(s)	:	Mr. S. M. Chakraborty, Sr. Adv, Ms. P. Chakraborty, Adv.
Date of hearing	:	31.05.2024
Date of delivery of Judgment & Order	:	20.06.2024
Whether fit for reporting	:	YES

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

This appeal under Section 100 of CPC is preferred
challenging the judgment dated 07.04.2022 and decree dated

30.04.2022 passed by Learned Addl. District Judge, Court No.2, West Tripura, Agartala in connection with case no.TA No.10 of 2019. By the said judgment, Learned 1st Appellate Court has reversed the judgment dated 30.11.2018 and decree dated 15.12.2018 delivered by Learned Civil Judge (Sr. Division), Court No.3, West Tripura, Agartala in connection with case no.T.S. No.52 of 2014.

2. Heard Learned Senior Counsel, Mr. D. R. Chowdhury assisted by Learned Counsel Mr. S. Sarkar for the appellant-defendant and also heard Learned Senior Counsel Mr. S. M. Chakraborty assisted by Learned Counsel Ms. P. Chakraborty for the respondent-plaintiffs.

3. Before coming to the conclusion of this appeal, let us project the subject matter of dispute amongst the rival parties for which this present appeal cropped up.

4. The present respondent as plaintiff has filed a suit before the Court of Learned Civil Judge, Sr. Division, West Tripura, Agartala which was numbered as T.S. No.52 of 2014. In the said suit, the main contention of the respondent-plaintiffs was that the suit is the land measuring 0.0230 acres appertaining to khatians No.125 and 126 comprised in old C.S. plots no.16214/53886 and 16214/53885 corresponding to revisional plots No.406 and 405 at mouja Agartala sheet no.19 described more particularly in the schedule hereunder written and is hereinafter referred as the suit land. The plaintiffs are the husband and wife. The defendant no.1 of the main suit is the

full blooded brother of plaintiff no.1 and defendant no.2 is the wife of the defendant no.1. The father of the plaintiff no.1 Thakur Chand Paul(since dead) and his cousin brother Madhav Chandra Paul (since dead) were joint owners in possession of land measuring 0.120 acre corresponding to 6 gandas 12 dhurs including the suit land during their lifetime appertaining to old khatian no.5915 within the old C.S. plot no.16214 at Mouja Agartala sheet no.19 where the father of the plaintiff no.1 and his cousin brother had been in joint possession by constructing dwelling house therein and by residing in the dwelling house with their family members. Thereafter, the father of the plaintiff no.1 and his cousin brother Shri Madhav Chandra paul made partition of the said land by metes and bounds and the partition was effected by a registered deed of partition bearing no.1-7512 dated 03.04.1958 and by that deed of partition, land measuring 4 gandas including the suit land was allotted to the share of the father of the plaintiff no.1. The father of the plaintiff no.1 died intestate on 14.09.1993 leaving behind the plaintiff no.1 and the defendant no.1 and two other sons namely Shri Sukumal Paul and Shri Shyamal Paul and two daughters namely Smti. Mukul Paul and Smti. Manju Paul and widow Smti. Anjali Paul as his legal heirs and on the death of father of the plaintiff no.1 his right, title and interest over the said land devolved upon his legal heirs by way of inheritance.

5. After that plaintiff no.1 and his co-sharers amicably partitioned their aforesaid joint property and the partition was

effected by registered deed of partition no.1-3525 dated 19.08.1995 whereby land measuring 1 ganda 13 dhurs was allotted to the share of the mother of the plaintiff no.1 Smt. Anjali Paul and land measuring 1 kara 2 krantas was allotted to the share of the plaintiff no.1 and the plaintiffs got land measuring 1 kara 1 kranta 10 dhurs from the mother of the plaintiffs no.1 out of her share by a registered deed of Gift no.1-3602 dated 01.07.1998 and at the same time plaintiffs purchased land measuring 2 karas 2 krantas 3 dhurs from the defendant no.1 by a registered deed of sale no.1-2548 dated 19.05.1998 and at the same time, the plaintiff no.1 also sold land measuring 1 kara 15 dhurs out of his share to the defendant no.1 by another registered sale deed dated 19.05.1998 and the aforesaid land got by the plaintiffs from different sources was surveyed in the last revisional survey and settlement operation within the periphery of R.S. Plots No.406 and 405 and recorded in the name of the plaintiffs in khatian no.125 and 126 with total area of land measuring 0.0230 acre which was the suit land of the present suit. The plaintiffs have been in open, peaceful, actual and exclusive possession of the same by constructing dwelling house therein and by residing in their suit land with their family members without any obstruction from any quarter. The defendants have had no right, title, interest or possession over the same. The defendant no.1 is the owner of land adjacent south and west of the suit land appertaining to Khatian no.176 and 175 within the

periphery of R.S. Plot No.410 and 409 at Mouja Agartala sheet no.19 by purchase and by inheritance where the defendants have been residing permanently by constructing dwelling house and there was no boundary dispute between the suit land and the land of the defendants. For maintaining privacy of the dwelling house of the plaintiffs and for its safety and security, boundary wall was necessary to be constructed between the suit land and land of the defendants and for that purpose, plaintiffs took attempt for construction of boundary wall on the southern side of the suit land on 1st June, 2014 at 10 a.m. and at that time the defendants raised serious objection against the construction of boundary wall without any reason and because of strong resistance from the defendants the plaintiffs could not proceed with the construction work and thus compelled to abandon the construction work at very initial stage giving rise to the cause of action for institution of the suit.

6. According to the plaintiffs of the main suit, the plaintiffs have been in possession of the suit land by constructing dwelling house and by residing therein without any obstruction and the defendants having no right, title and interest or possession therein. At the same there is no boundary dispute between the suit land and the land of the defendants and as such the plaintiffs have right to construct boundary wall between the suit land and the dwelling house of the defendants and the defendants have no right to create obstruction in the construction of boundary wall and as such in view of the

obstruction created by the defendants in the construction of boundary wall, the plaintiffs are entitled to a decree for perpetual injunction restraining the defendants from interfering with the construction of boundary wall as aforesaid. The cause of action for the suit arose on 1st June 2014 when the defendants raised objection against the construction of boundary wall and in the subsequent period. The plaintiffs thereafter prayed before the Court to pass a decree for permanent/perpetual injunction restraining the defendants and their men, agent, representatives or any other person/persons acting on their behalf from creating obstruction at the time of construction of boundary wall by the plaintiffs on the western and southern side of the suit land and in any way from interfering with the construction work of the boundary wall.

7. For the sake of convenience, the schedule of the suit land as mentioned in the plaint is narrated below:

SCHEDULE

SUIT LAND

All that piece or parcel of land within the district of West Tripura at Agartala, under East Agartala, Tehasil office at Mouja Agartala, Sheet No.19, appertaining to Khatians No.125 & 126 comprised in old CS Plots No.16214/53886 & 16214/53885 corresponding to revisional plots no.406 & 405.

North by – Dwelling house of Sri Tapan Banik.

South by – Dwelling house of the defendants.

East by – Vacant land of Sukomal Pal and pathway.

West by – Dwelling house of the defendants.

Inside this boundary land measuring 0.0230 acres classified as homestead.

8. The defendants in obedience to the notice issued appeared before the Court and contested the suit by filing

written statement. The defendants side by their written statement stated that there is no cause of action to file the suit by the plaintiffs against the defendants and hence, the same is liable to be dismissed in limine and the instant suit is barred by the principles of estoppels, waiver and acquiescence. It was further submitted that the plaintiffs having no valid right, title or possession on the suit land and as such there was no basis for granting a decree of perpetual injunction. It was further submitted by the defendant that although in Khatian nos.125 & 126, the total land has been recorded as 0.0230 acre, but in fact it is measuring 0.0244 acres, i.e. land measuring 0.0034 acres is more than the recorded land in the khatian. Thus, the extra more land measuring 0.0034 acres is the pathway as mentioned in the registered deed of partition vide no.1-3525 dated 19.08.1995 which is of the joint/ejmali path. A case was filed under Section 95 of the TLR & LR Act, 1960 for avoiding the said anomaly and for settling the dispute by correcting the record of right and the map which is registered as Revenue case no.125 of 2014 and still pending before the learned Revenue Court. During revisional survey operation, the record of right of RS Plot no.409 corresponding to CS Plot No.16214/53879 and RS Plot No.410 corresponding to CS Plot No.16214/53893 was wrongly recorded and for correction of such wrong/mistake, a Revenue case no.209/12 was filed before the District Collector, West Tripura, Agartala and after proper field inquiry, such wrong was corrected by the District Collector by its order dated

06.07.2012 in Revenue Case No.209/12. After field inquiry made in this case by the revenue authority, the map has also been corrected showing plot no.406 and part of plot no.405 as existing road which is the ejmali (joint) road used by all the legal heirs of Lt. Thakur Chand Pal, the father of the plaintiff no.1 and the defendant no.1, since long back, as also mentioned in schedule-8 of the Family Partition Deed No.1-3525 dated 19.08.1995 executed by the then all the co-sharers including the plaintiff no.1 and the defendant no.1 and the suit land includes the said ejmali road and in the building plan of the plaintiffs also, the aforesaid ejmali road has been shown by the plaintiffs as Gali Road, which cannot be denied. So, finally the defendant by the written statement prayed for dismissal of the suit with costs.

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

- i) Whether the suit is maintainable in its present form and nature?**
- ii) Whether the plaintiffs have been possessing the suit land without any interruption since partition of the joint properties effected by registered deed of partition no.1-3525 dated 19.08.1995?**
- iii) Whether the defendants raised objection against the construction of boundary wall on 01.06.2014?**
- iv) Whether the plaintiffs are entitled to decree of perpetual injunction, as prayed for?**
- v) Whether the parties are entitled to any other relief/reliefs?**

10. To substantiate the issues, the plaintiffs have adduced only one witness and relied upon some documents which were marked as exhibits. On the other hand, the defendants have

adduced only one witness and relied upon five documents which were also exhibited.

Plaintiff's witness:

- i) PW-1 : Sri Chayan Paul

Plaintiff's Exhibits:

- i) Ext.-1 : The certified copy of registered deed of partition No.7512, dated 03.04.1958 executed by Sri Thakur Chand Paul & Sri Madhab Ch. Paul.
- ii) Ext.-2 : The original registered deed of partition No.3525 dated 19.08.1985 executed by Smt. Anjali Paul and others.
- iii) Ext.-3 : The original deed of gift No.1-3602 dated 01.07.1998 executed by Smt. Anjali Paul.
- iv) Ext.-4 : The registered sale deed No.1-2548 dated 19.05.1998 executed by Sri Dipak Paul in favour of Smt. Sukta Paul and PW-1.
- v) Ext.-5 : The certified copy of Khatian No.125 of Mouja Agartala, Sheet No.19.
- vi) Ext.-6 : The certified copy of Khaitan No.126 of Mouja Agartala, Sheet No.19.
- vii) Ext.-7 : The original settlement map.

Defendant's witness:

- i) DW-1 : Sri Dipak Kr. Paul

Defendant's Exhibits:

- i) Ext.-A : The original copy of petition under RTI for supplying building plan of the plaintiffs dated 19.10.2013 and supplying of the said building plan by the letter dated 30.10.2013 by the AMC.
- ii) Ext.-B : The certified copy of settlement map of Mouja Agartala, Sheet No.19(Part)
- iii) Ext.-C : The petition U/S 95 of the TLR & LR Act, pending Revenue Case No.125 of 2014.
- iv) Ext.-D : The certified copy of the order dated 06.07.2012 passed by the District Collector in Revenue Case No.209 of 2012, U/S 95 of the TLR & LR Act along with present map of the suit land and report of DCM.
- v) Ext.-E : The certified copies of Khatian Nos.689, 157, 126, 125, 176 & 175.

11. And finally on conclusion of trial, the Learned Trial Court below by judgment dated 30.11.2018 dismissed the suit.

The operative portion of the judgment/order of the Learned Trial Court runs as follows:

ORDER

"In the result, the suit of the plaintiffs is dismissed with costs.

Accordingly, the instant suit is disposed of on contest with costs.

The Shrestadar of the Court is hereby directed to prepare the decree and to place it before me for my signature within fifteen days from the date of passing of this judgment.

Enter the result in the concerned Trial Register.

Announced.

Record to be consigned to D.R.R."

12. Challenging that judgment, the plaintiffs of the original suit preferred an appeal before the Court of Learned District Judge which was transferred to the Court of Learned Addl. District Judge, Court no.2 in due course of time and the Learned 1st Appellate Court by judgment dated 07.04.2022 and decree dated 30.04.2022 reversed the judgment of the Learned Trial Court. For the sake of convenience, I would like to refer hereinbelow the operative portion of order of the Learned 1st Appellate Court dated 07.04.2022 which runs as follows:

ORDER

"In the result, the appeal stands allowed on contest with costs. The judgment and decree so passed by Trial Court in TS 52 of 2014 stands set aside. The respondents are perpetually restrained from creating any sort of obstruction at the time of construction of boundary wall by the appellants on the western and southern side of the suit land and also from interfering with the construction work of such boundary wall.

To feel contrive for their (respondents) reproachable conduct there is no order as to costs.

Prepare decree accordingly.

Send back the L.C. record along with a copy of this judgment.

This appeal stands disposed off on contest.

Enter the result.

Record be consigned to DRR.”

13. Being dissatisfied with the said judgment of the Learned 1st Appellate Court, the defendants of the original suit as appellants have preferred this second appeal before this Court.

At the time of admission of appeal by order dated 31.05.2022, the following substantial question of law was framed by this Court:

i) Whether learned First Appellate Court in allowing the appeal of the plaintiff appellant respondents fail to appreciate that the suit land i.e. the homestead land of the plaintiff appellant respondent which is the part of RS Plot Nos.405 only and where the common/ejamali pathway consists the part of plot No.405 & 406 and there passed the judgment wrongly?”

14. In course of hearing, Learned Senior Counsel Mr. D. R. Chowdhury assisted by Learned Counsel Mr. S. Sarkar appearing for the appellants submitted that in para no.5 of the written statement filed by the defendants in the original suit, it was specifically stated that CS plot no.405 was a bigger plot than C.S. plot no.406 and CS plot no.409 is bigger than C.S. plot no.410 i.e. the homestead land. He also referred Ext.2 i.e. the original registered deed of partition no.1-3525 dated 19.08.1985 executed by Smt. Anjali Paul and others and submitted that in the said document in schedule 8, there was clear indication about the alleged pathway. He further referred para 6 of the written statement filed by the defendants in the

main suit and submitted that in the said para, it was clearly mentioned about the alleged pathway. He also referred Ext.3 i.e. the gift deed and submitted that in the said document also, there was clear indication of the pathway which the respondent-plaintiffs have suppressed and referring Ext.4 i.e. the sale deed bearing no.2548, he also drawn the attention of the Court that in the said deed also, there was clear indication of pathway on the southern side but the respondent-plaintiffs suppressing everything has filed the suit without any basis. Learned Senior Counsel further submitted that the said pathway has not been shown in the settlement record for which the confusion has created but the plaintiffs with an ulterior motive tried to erect his boundary wall over the pathway and with an ulterior motive had filed the suit for which the Learned Trial Court rightly delivered the judgment in favour of the defendant-appellants but the Learned 1st Appellate Court without going through the exhibited documents reversed the finding of the Learned Trial Court for which the interference of this Court is required and urged for allowing this appeal dismissing the judgment and decree delivered by the Learned 1st Appellate Court.

15. On the other hand, Learned Senior Counsel Mr. S. M. Chakraborty assisted by Learned Counsel Ms. P. Chakraborty appearing on behalf of the respondent-plaintiffs first of all drawn the attention of the Court about the schedule of the suit land as mentioned in the plaint and submitted that the suit land comprises of C.S. plot no.406 and 405 pertaining to khatian

no.125 & 126 under Mouja Agartala sheet no.19. He further referred Ext.2 i.e. the deed of partition bearing no.1-3525 and in page no.5, Sri Chayan Paul has been shown as third party and Sri Dipak Paul i.e. the defendant of the original suit had been shown as sixth party. Thereafter, Learned Senior Counsel referred the third schedule boundary of said Ext.2 and submitted that the respondent-plaintiffs never claimed any land beyond the land as mentioned in schedule 3 of the said partition deed. Learned Senior Counsel thereafter also drawn the attention of the Court referring Ext.5 i.e. the Khatian no.125 standing in the name of one of the respondent-plaintiff Chayan Paul wherein against plot no.406, the classification of land is shown as Vastu/Nal and referring Ext.6 i.e. Khatian no.126 wherein against plot no.405, the classification of land is shown as Vastu/Nal and it was further submitted that the respondent-plaintiffs are/were the owner of said land belonging to C.S. Plot no.406 and 405 surveyed during revisional survey operation and they never claimed any land beyond the said recorded lands but the present appellant-defendants with an ulterior motive intended to grab the land of the respondent-plaintiffs. In this regard, he referred the provision of Section 43(3) of TLR & LR Act which provides as under:

"43.(3) Every entry in the record of rights as finally published shall, until the contrary is proved, be presumed to be correct."

Referring the same, Learned Senior Counsel submitted that that protection is given by the Legislature in respect of

khatian and that khatian never been challenged by the appellant-defendants before any other forum. So, the plea as taken by the appellant-defendants in this appeal cannot be sustained in the eye of law for which the Learned 1st Appellate Court rightly delivered the judgment in favour of the respondent-plaintiffs.

16. Learned Senior Counsel in course of hearing of argument also referred para no.6 of the written statement filed by the appellant-defendants in the main suit and submitted that in the said para, it was submitted that map was corrected showing plot no.406 and part of plot no.405 as the existing road but factually as per survey report, there was no such existence of any pathway at any point of time. So, the story as projected by the Learned Senior Counsel for the appellant-defendants is nothing but a fabricated and manufactured story. Learned Senior Counsel thereafter referred the order dated 06.07.2012 passed in connection with case no.Revenue case.209/2012 under Section 95 of TLR & LR Act which was marked as Ext.D. Referring the same, Learned Senior Counsel further drawn the attention of this Court that in the said order, it was clearly mentioned by the District Collector in respect of C.S. plot no.409 land measuring 0.0400 acres and against R.S. plot no.410 land measuring 0.0250 be shown and corrected also and in the said order also, there is no such indication in respect of C.S. plot no.405 & 406 belonging to the respondent-plaintiffs. Learned Senior Counsel again drawn the attention of

the Court referring the order dated 19.09.2018, 04.07.2018 and 17.11.2018 of the Learned Trial Court in the main suit and submitted that before the Learned Trial Court, the defendants have adduced only witness who was examined as DW-1 but in the judgment in internal page no.14, the Learned Trial Court have mentioned the name of DWs-1, 2 and 3 but factually no witnesses DW-2 or 3 were examined by the Learned Trial Court. Thus according to Learned Senior Counsel, the judgment of the Learned Trial Court was nothing but a total non-application of mind. Although those DW-2 and 3 submitted their examination-in-chief by way of affidavit but ultimately the appellant-defendants could not produce the said witnesses for their examination and cross-examination by the Learned Trial Court so no reliance could be placed upon their evidence. Lastly, also drawn the attention of the Court referring the enquiry report submitted by DCM and submitted that based on the said enquiry report, the District Collector passed order on 06.07.2012 and in respect of map, Learned Senior Counsel submitted that the said document is nothing but a fabricated document so no reliance could be placed upon that and finally referring the certified copy of the said trace map, Learned Senior Counsel submitted that the said trace map submitted by the appellant-defendant has been manipulated and referring the building plan of Shri Chayan Paul, Learned Senior Counsel submitted that from the building plan also, it is clear that within the suit land, there was no existence of any pathway at any

point of time rather it was the exclusive land under the ownership and possession of the respondent-plaintiffs of the suit and prayed for dismissal of this appeal upholding the judgment of the Learned 1st Appellate Court.

17. In course of hearing, Learned Senior Counsel appearing for the respondent-plaintiffs referred one citation. In **K. Devabalan and others v. M. Vijayakumari and others** dated 08.03.2006 reported in **(2020) 19 SCC 399** at para 4 Hon'ble the Apex Court observed as under:

"4. As far as second ground is concerned, we see no reason to interfere with the decision: AIR 2003 Ker 363 of the High Court. However, as far as the first ground is concerned, the validity of the marriage of Karunakaran Nadar and his wife Maria Augustine was never in dispute between the parties. The issue not having been raised, the High Court entirely exceeded its jurisdiction in holding that the marriage was invalid. That part of the order of the High Court is accordingly set aside. However, the second reasoning of the High Court is upheld. The High Courts decision is affirmed on the second ground alone."

Perused the said judgment of the Hon'ble Apex Court and it appears to this Court that the principle laid down by the Hon'ble Apex Court in the said case also may be applied in the present case.

18. I have heard detailed argument of both the sides and gone through the record of the Learned Courts below. It appears to this Court that there is no dispute on record in respect of the exhibited documents of either of the parties. Now, at the time of appreciation of evidence, Learned Trial Court below according to this Court, without any basis considered that the alleged pathway comprises the C.S. plot

no.406 and part of C.S. plot no.405 without any basis ignoring the relevant settlement ROR i.e. khaitans. Thus, came to a wrong observation and ultimately dismissed the suit because if we go through the exhibited documents i.e. Ext.D, Ext.E, Ext.5 and Ext.6, it is clearly mentioned that the present R.S. plot nos.406 & 405 was duly recorded in the name of respondent-plaintiffs by the settlement authority and also from the order of the District Collector, it is crystal clear that on the basis of prayer of the appellant-defendants, the District Collector passed an order in Revenue case no.209/2012 on 06.07.2012 wherein it was clearly mentioned in respect of C.S. plot no.409 and 410 and there was no whisper in respect of the suit land in the said order of the District Collector. Even that order also has not been challenged by the respondent-defendants to any other forum and from the site plan, it further appears that there was clear indication of pathway outside the CS plot. No.405 & 406, so, the plea of the defendants-appellants that the respondent-plaintiffs have tried to encroach the pathway beyond their recorded land of R.S. plot no.406 & 405 cannot be accepted in the eye of law and the District Collector also passed order based on the field enquiry report which also remains unchallenged by the respondent-defendants-appellants. So, in my considered view, Learned 1st Appellate Court rightly reversed the judgment of the learned Trial Court. The substantial question of law stands in favour of the respondent-plaintiffs of this appeal.

19. In the result, the second appeal filed by the appellant-defendants stands dismissed on contest being devoid of merit with costs. The judgment dated 07.04.2022 and decree dated 30.04.2022 delivered by Learned 1st Appellate Court i.e. Learned Addl. District Judge, West Tripura, Agartala in connection with case no.TA No.10 of 2019 is hereby upheld and accordingly it is affirmed.

Prepare decree accordingly.

Send down the LCRs alongwith a copy of this judgment.

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

JUDGE



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