

**HIGH COURT OF TRIPURA
AGARTALA**

RSA No.16 of 2023

1. Smti Maya Rani Rudra Paul

W/o:- Lt. Rohini Kumar Rudra Paul

2. Smti Ruma Rani Rudra Paul

D/o:- Lt. Rohini Kumar Rudra Paul

3. Smti Jhuma Rani Rudra Paul

D/o:- Lt. Rohini Kumar Rudra Paul

4. Sri Rajat Kanti Rudra Paul

S/o:- Lt. Rohini Kumar Rudra Paul

All are resident of Chebri, P.O:- Chebri

Sub-Division:- Khowai, District:- Khowai Tripura.

.....Appellant(s).

Versus

1. Smti Sephali Acharjee

W/o:- Lt. Radha Ranjan Acharjee

2. Smti Subhra Acharjee

D/o:- Lt. Radha Ranjan Acharjee

3. Sri Rajat Acharjee

S/o:- Lt. Ranjit Acharjee

4. Sri Raktim Acharjee

S/o:- Lt. Rabindra Acharjee.

All are resident of Chebri, P.O:- Chebri

Sub-Division:- Khowai, District:- Khowai Tripura.

.....Respondent(s).

For Appellant(s)	:	Mr. Sisir Chakraborty, Advocate.
	:	Mr. U. Das, Advocate.

For Respondent(s)	:	Mr. D.R. Chowdhury, Senior Advocate.
	:	Mr. S. Sarkar, Advocate.

Date of Hearing	:	26.02.2024
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Date of Judgment	:	23.04.2024
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Whether fit for reporting	:	NO
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_B_E_F_O_R_E_
HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA

_J_U_D_G_M_E_N_T_

The appeal arises out of the judgment dated 23/03/2023 and consequent decree thereof passed by Ld. District Judge, Khowai in Title Appeal No.12 of 2019 whereby the suit of the predecessor of plaintiff-appellants was dismissed.

[2] Original plaintiff Rohini Kr. Rudra Paul (hereinafter referred as Plaintiff) who is the predecessor of present appellants filed the suit bearing Title Suit No.10 of 2017 in the Court of Ld. Civil Judge (Jr. Division) Khowai, Khowai Judicial District stating that his father Lt. Barada Charan Rudra Paul purchased "A" Schedule land of the plaint on 09.09.1987 from Lt. Radha Ranjan Acharjee who was the predecessor of original defendant-respondent Nos.1 & 2. On the same date, the plaintiff also purchased "B" Schedule land from said Lt. Radha Ranjan Acharjee by a separate registered sale deed. Thereafter in the year 2016, the plaintiff purchased "C" Schedule land from one Ratna Acharjee which is situated adjacent to Khowai-Teliamura Road on the western side of that road.

[3] Admittedly, there is also a pathway (D- Schedule land) running from said Khowai-Teliamura Road towards west nearby the "B" Schedule land bearing plot No.2258 on its northern side. The Plaintiff i.e. predecessor of present appellants alleged that when he had purchased said "A" Schedule land, said pathway was

the only way of ingress and egress on that plot and he used said pathway till January of 2017, but when "C" Schedule land was purchased by him in the year 2016, an opening passage was made through "C" Schedule land for access to "A" Schedule land through said opening passage from Khowai-Teliamura Road and in January, 2017 suddenly, the defendant-respondents or their representatives started claiming that said pathway under Schedule D was on their jote land and thereby they closed down the gate of the plaintiff abutting to said pathway by giving fence. Along with the plaint, the plaintiff also submitted one sketch map indicating location of each schedule of land and said path under "D" Schedule land and also location of lands of some other persons in the vicinity.

[4] The defendant-respondents, in their written statement, however, challenged the assertion of the original plaintiff that "C" Schedule land was situated adjacent to Khowai-Teliamura Road rather, according to them, it was the "B" Schedule land of the plaintiff through the middle portion of which there was/is a passage connecting to said Khowai-Teliamura Road and the same was being used by the plaintiff since his purchase of "A" Schedule land as the pathway for access to the "A" Schedule land. Plaintiff claimed that pathway as public pathway and sought for a declaration that the pathway under "D" Schedule was the pathway for public use and the plaintiff could not be prevented from using the same, but the defendants denied the said claim of the plaintiff that the pathway under "D" Schedule was a public pathway rather it was their jote land and said pathway was being used for access

to "C" Schedule land of plaintiff which was located far way from "A" Schedule land.

[5] During trial, from the side of plaintiff, total 5(five) witnesses including the original plaintiff were examined and some documents were also proved into evidence but the defendants did not adduce any evidence either oral or documentary. Ld. Trial Court decreed the suit by declaring said pathway under "D" Schedule to be public pathway and mandatory injunction was issued directing the defendants to remove the obstruction created by them raising the fence and closing the gate of the plaintiff meant for going to "D" schedule land from "A" Schedule land. The relevant portion of the observations and decisions of Ld. Trial Court regarding issue Nos.(iii),(iv) & (v) are extracted below for useful reference.

"Issue No.iii

On perusal of the plaint, the examination-in-Chief of the PWs it appears that the plaintiff is the owner and in peaceful possession of the three plots of lands Schedule A,B and C in the same vicinity which is also supported by documentary evidence in the form of Ext.2, Ext 3, Ext 5, Ext 6 and Ext.7 and this is also admitted by the defendants in their W/S. It further appears that the Khowai-Teliamura road is on the eastern border of the schedule C land, and from the said Khowai Teliamura Road passes a pathway towards the west connecting as many as twelve/thirteen houses/families. Until 2016 (when the schedule - C land was purchased) the plaintiff had only one opening from the schedule A land i.e. one pathway in the north. Only from 2016 after the purchase of the schedule land there has been one opening through the Schedule C land in the east. The plaintiff, for egress and ingress of the schedule A land until 2016 use the only path

opening on the pathway on the north of the plot. It is only after the acquisition of the Schedule C land the plaintiff can use the other way opening on the Teliamura road. The opening of Schedule A land on the pathway has been used by the plaintiff since 1987. Further, it is also evident from the Settlement Map of Mouja Chebri (Ext.4) that the plaintiff uses the pathway mentioned in D schedule of the plaint to ingress and egress into his home stead.

Further, nothing material emerged which can prevail over the documentary evidence adduced by the plaintiff.

Accordingly issue No.iii is decided in the affirmative.

Issue No.iv & v

On perusal of the pleadings, the examination-in-Chief of the PWs it appears that the pathway (D Schedule land) although constructed in the jote land but it has been used as a public pathway. As many as 12/13 families used the said pathway to reach their respective houses from the Khowai-Teliamura road. Moreover, in August 2015 Government spent more than Rs.71,000/- on the development of the pathway by engaging MGNREGA workers. This assertion of the plaintiff is also supported by all the P/Ws and also by the documentary evidence in the form of Exbt.1 (original copy of RTI information dated 07.03.2017) where it is found that for the formation of T.K. road to Maloy Acharjee's house, word No.2 under Paschim Chebri GP Rs.71074/- was spent. Further, it is evident from Exbt.8 (Certified copy of Khatian No.652/1-4) that the said Maloy Acharjee and the defendants are the relatives and they were the joint owners of the land. It also appears from record that In January 20017, Suddenly, the defendants and their representatives and associates claimed that the pathway is on their jote land and shall not be allowed to be used by the plaintiff through the opening from the Schedule A land and in order to stop the use on the opening, the defendants and their family members have closed the gate by raising a fencing. Though the pathway is constructed on the jote land but it has been used as a public pathway. As many as 12/13 families use the said pathway to reach their respective houses from the Khowai-Teliamura road. Thus, the defendants

cannot obstruct or prevent the plaintiff and his family from using the pathway for their free movement. The plaintiff and his family have been using the pathway for their movement from Schedule A and to Schedule C land for more than 30 years continuously without any obstruction. The pathway in spite of being a part of the jote land it virtually becomes a public pathway for common use. When all can use it and which is also admitted by the defendants in their w/s and hence the use by the plaintiff shall not create any difficulty for the defendants and hence, they have no right to obstruct the movement of the plaintiff through the pathway using the opening from Schedule A."

[6] In appeal, Ld. First Appellate Court, however, set aside the said judgment and decree based on the following observations:

"The key word under Section 39 of Specific Relief Act is "Obligation". Section 2 (a) of Specific Relief Act, speaks of Obligation. Primarily it means every duty enforceable by law. In the instant case the plaintiff-respondents has to show that the defendant-appellants has a legal obligation to allow free movements from scheduled "A" land. "Convenience" of any party and 'legal obligation' as define under Section 2 (a) of Specific Relief Act are two separate issues. May be the raising of the fencing as alleged by the plaintiff-respondents caused inconvenience and hardship to the plaintiff-respondents but he is to show that the respondents have legal obligation to allow him to use the path-way through the opening of "A" scheduled land of the plaintiff-respondents. The plaintiff-respondent admitted that the path-way is a jote land. From Exbt.4 i.e. the map it appears that the suit land (the path-way) is far away from "C" scheduled land of the plaint, which was purchased in 2016.

The plaintiff-respondent could not adduce any convincing evidence which shows that the appellant-defendants are duty bound i.e. has a legal obligation to allow the respondents to use the opening on a scheduled "A" land towards the path-way (scheduled "D"). So, the respondents cannot get a decree of mandatory injunction U/s. 39 of the Specific Relief Act.

ORDER

7. In the result, the appeal preferred by the appellants is allowed.

The Judgment and decree passed by the trial court in Title Suit No.10 of 2017 is hereby set aside."

[7] In the second appeal, following substantial questions of law was formulated by this Court:

"(i) Whether the findings of learned first appellate court are in accordance with the established principles of law of easement?

(ii) Whether the findings of learned first appellate court suffer from perversity?"

[8] Mr. Sisir Chakraborty, learned counsel representing the appellants submitted that all the purchased deeds and relevant Khatians were proved into evidence and Paschim Chebri Gram Panchayet also did certain maintenance work in the said disputed path by investing government money through MGNREGA scheme as it was being used by the general public and therefore, said fact amply suggested that "D" Schedule land was a public pathway. Mr. Chakraborty, learned counsel further argued that there was no alternative pathway for the plaintiffs for the use of "A" Schedule land.

[9] Mr. Chakraborty, learned counsel also contended that the sketch map as was annexed with the plaint was not challenged by the defendants in their written statement and same would reflect that the said pathway was necessary for the use of "A" Schedule of land by the plaintiffs. According to Mr. Chakraborty, learned counsel, sufficient evidences were led by the plaintiffs to

establish their claim and the plaintiffs had their easementary right to use of said pathway for proper utilisation of "A" Schedule land which was sold to the plaintiff by the predecessor of the defendant nos. 1 & 2 and, therefore, they had their obligation to provide all the facilities to the appellants or their predecessor for convenient enjoyment of said property under "A" Schedule. Mr. Chakraborty, learned counsel also relied on one decision of Hon'ble Supreme Court in ***Sree Swayam Prakash Ashramam & Anr. Versus G. Anandavally Amma & Ors., (2010) 2 SCC 689*** wherein at para 28 Hon'ble Supreme Court referred one paragraph of another decision of Calcutta High Court and the relevant paragraph is as below:

"... There could be no implied grant where the easements are not continuous and non-apparent. Now a right of way is neither continuous nor always an apparent easement, and hence would not ordinarily come under the rule. Exception is no doubt made in certain cases, where there is a 'formed road' existing over one part of the tenement for the apparent use of another portion or there is 'some permanence in the adaptation of the tenement' from which continuity may be inferred, but barring these exceptions, an ordinary right of way would not pass on severance unless language is used by the grantor to create a fresh easement."

[10] Mr. D R Chowdhury, learned Senior Counsel for the respondents, however, contended in vehemence that in the purchase deed of the plaintiff in respect of "A" Schedule land, there was no mention that said pathway was sacrificed for the use of public or for the plaintiff and ROR regarding "D" Schedule land

itself mentioned that it was a 'Ejmali' pathway and generally 'Ejmali' pathway signified that same was used jointly by the co-sharers or their successors. Mr. Chowdhury, learned Senior Counsel also argued that there were also other purchasers of lands from the defendants or their predecessors adjacent to "A" Schedule land but none of them had turned up to lodge any claim over said pathway as public pathway. Learned Senior Counsel further contended that both in the purchased deeds regarding "A" Schedule land and "B" Schedule land there was no mention that said pathway would be used by the plaintiff. According to him, the First Appellate Court was completely justified in dismissing the suit by way of setting aside the judgment and decree of the Trial Court.

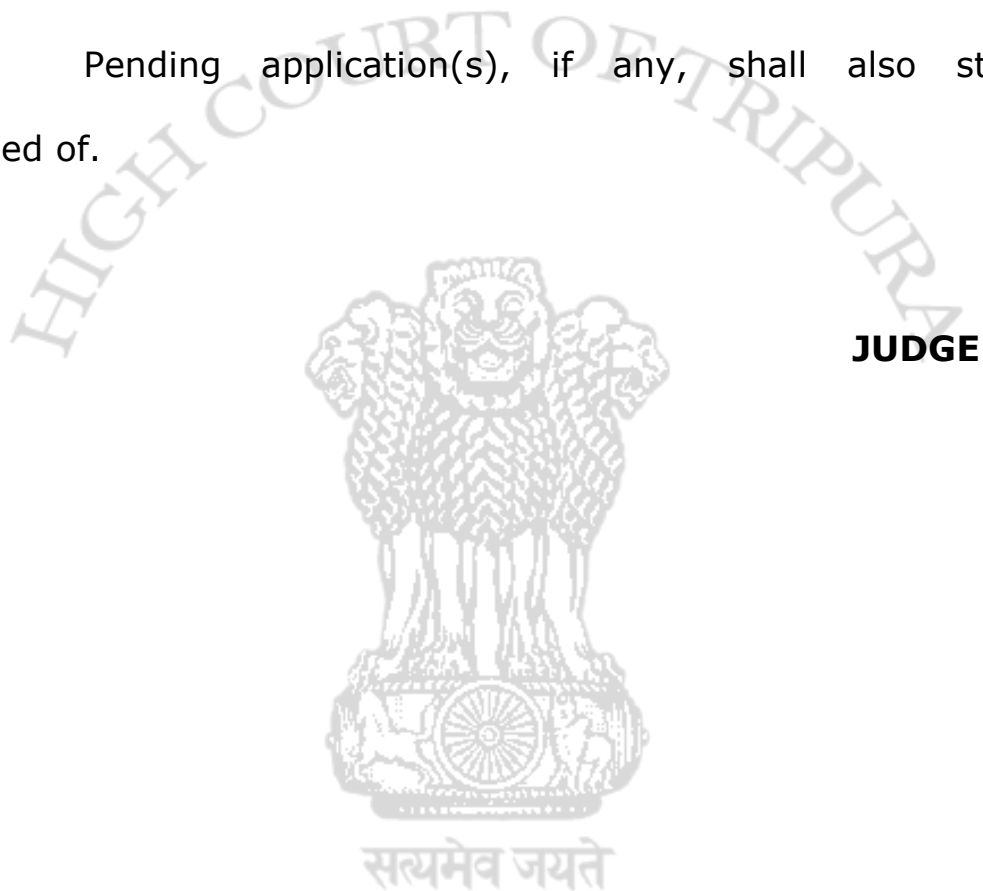
[11] On consideration of all the materials as available in the record, specially the plaint and the document like the map, it is found that there is mis-description of property in the plaint itself. The defendants have rightly asserted that "C" Schedule land is not adjacent to "A" Schedule land and, therefore, the assertion of the plaintiffs that after purchase of "C" Schedule land he got one opening way for access to Khowai-Teliamura Road from "A" Schedule land through said "C" Schedule land is completely incorrect. As per the hand sketch map as annexed with the plaint, "A" Schedule land is shown to be located just to the west of "B" Schedule land (and not "C" Schedule land) and as per the map of

the Revenue Department (Ext.4), the "A" Schedule plot No.2259 itself is located just adjacent to Khowai-Teliamura Road on the southern side of "B" Schedule land (and not on western side) intervened by another small plot. Similarly, plot No.2260 (not involved in this suit) is situated on the contiguous west of plot No.2258 of "B" Schedule land. There is no challenge by the plaintiff regarding any sort of incorrect preparation of map by revenue department. As per said Revenue Map, the plot No.2259 of "A" Schedule is not situated adjacent to said disputed path (D-Schedule land) and, therefore, there is no question of claiming any easementary right over the said path with reference to the use of "A" Schedule land. Wrong assertions have also been made in the plaint that "C" land is situated on the adjacent west of Khowai-Teliamura Road and that till said "C" schedule land was purchased, the plaintiffs had only one passage through said path from "A" schedule land. "C" schedule plot is located far away from "A" schedule land and said road. The sketch map as annexed with the plaint does also not coincide with the plaint's assertions. Moreover, admitted position is that at present there is an alternative passage of the plaintiff to go from "A" schedule land to said Khowai-Teliamura Road through said plot No.2258 under "B" Schedule land. As per the Khatian(Exbt.8), said suit path has been shown as 'Ejmalī' in the remark column and not any public pathway. Therefore, Ld. First Appellate Court committed no err in up-setting the judgment of the Trial Court.

In view of above, it is held that the appeal is devoid of any merit and accordingly, same is dismissed with cost in favour of the respondents.

Registry is to prepare the decree accordingly and to send back the LCR with copy of this judgment and decree.

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



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