

**HIGH COURT OF TRIPURA
AGARTALA**

RSA No.33 of 2022

1. Sri Matilal Debnath (73)

S/O- Lt. Abani Mohan Debnath

2. Sri. Jagat Lal Nath @ Jagat Lal Debnath (68)

S/O- Lt. Abani Mohan Debnath

3. Sri. Chandra Lal Nath @ Chandra Lal Debnath (63)

S/O- Lt. Abani Mohan Debnath

All are the resident of Gouri Sankarpur, P.O.-Dasda
P.S- Kanchanpur, Dist- North Tripura

.....**Plaintiffs-Appellants**

Versus

On the basis of the order dated
21.03.2023, passed in I.A.03 of 2023 in
the said appeal Legal Representatives of
Respondent No.1 are incorporated in the
causetitle as follows-

1(A). Mrs. Sampa Nath

W/O- Lt. Rajkumar Debnath

1(B). Miss. Susmita Debnath

D/O- Lt. Rajkumar Debnath,

(being minor represented by her mother and next friend
Smt. Sampa Nath)

All are the resident of Gouri Sankarpur, P.O.-Dasda, P.S.
Kanchanpur, Dist.- North Tripura.

2. Sri. Ganesh Debnath

3. Sri. Swapan Debnath

4. Sri. Tapan Debnath

5. Sri. Tapas Debnath@Tapu

All are the sons of Lt. Joy Gopal Debnath
All are the resident of Gouri Sankarpur, P.O.-Dasda
P.S-Kanchanpur, Dist-North Tripura

..... **Defendants-Respondents**

6. President / Chairman

Swasti Samabaya Samiti Ltd.
Kanchanpur, North Tripura.

.....**Proforma-Respondent**

For Appellant(s)	:	Mr. S. M. Chakraborty, Sr. Adv, Mr. S. Noatia, Adv.
For Respondent(s)	:	Mr. S. Lodh, Adv, Mr. S. Majumder, Adv.
Date of Hearing	:	09.05.2024
Date of delivery of Judgment and Order	:	14.05.2024
Whether fit for Reporting	:	NO

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

This second appeal under Section 100 of C.P.C. is filed challenging the judgment dated 09.03.2022 and the decree dated 14.03.2022 passed in Title Appeal No.14 of 2019 by Learned District Judge, North Tripura, Dharmanagar. By the said judgment, Learned District Judge was pleased to uphold the judgment dated 13.05.2019 and decree dated 17.05.2019 passed by Learned Civil Judge, Senior Division, Dharmanagar in Title Suit No.02 of 2018.

02. Heard Learned Senior Counsel, Mr. S. M. Chakraborty assisted by Learned Counsel, Mr. S. Noatia for the appellant and also heard Learned Counsel, Mr. S. Lodh assisted by Learned Counsel Mr. S. Majumder appearing on behalf of the respondent-defendants. Before entering into the merit of the appeal, let us discuss the subject matter of the dispute cropped up amongst the parties. The present appellants as plaintiffs filed one suit for declaration and for injunction before the Court of Learned Civil Judge, Senior

Division, North Tripura, Dharmanagar for land measuring 0.60 acres as mentioned in schedule of the plaint.

03. According to the appellant-plaintiffs, the suit land was originally belonged to Swasti Samabaya Samiti Limited, Kanchanpur and as per rules and regulations of Swasti Samabaya Samiti Limited, the father of the appellant-plaintiffs namely Late Abani Mohan Debnath and the uncle of the appellant-plaintiffs namely, Late Joy Gopal Debnath(father of the principal defendants) became the owner of land under Swasti Samabaya Samiti Limited, Kanchanpur, North Tripura and as per mutual partition, both the fathers of the appellant-plaintiffs and the father of the principal-defendants had been possessing their respective landed property without any interference from each other. In the year 1992, the father of the appellant-plaintiffs died and after his death the appellant-plaintiffs have/had been possessing suit land without any interference. During last settlement operation, for maintaining good relation, the lands of the respective parties had been demarcated by posting pillars in presence of the parties. But the uncle of the appellant-plaintiffs wanted to keep it as a joint property although the father of the appellant-plaintiffs and Joy Gopal Debnath took all steps for recording the landed property in separate Khatians and Swasti Samabaya Samiti Limited issued no objection certificate for creating Khatians separately in their favour. The appellant-plaintiffs submitted

one petition under Section 43 (1) of TLR & LR Act, 1960 before the settlement authority and after hearing vide order dated 22.02.1996 ordered that hal dag nos. 5150, 5081, 5084/8796 and 5083 total land measuring 0.60 acres be recorded in the name of the appellant-plaintiffs under Swasti Samabaya Samiti Limited and accordingly, said land was recorded in the name of the appellant-plaintiffs in equal share in Khatian No.393/374. After the death of said Joy Gopal Debnath, the respondent-defendants started creating disturbance to grab the suit land for which so many conciliation meeting took place in presence of the authority of Swasti Samabaya Samiti Limited but the issue could not be settled. Even by the intervention of legal aid clinic at Satnala, the dispute also could not be resolved. On 06.03.2018 the appellant-plaintiffs went to the suit land to give boundary fencing over a portion of the suit land, that time the respondent-defendants came and threatened the appellant-plaintiffs not to do any work. Again on 27.03.2018, when the appellant plaintiffs went to the suit land to do some works over a portion of the suit land, that time the respondent-defendants came near the suit land and asked the plaintiffs not to do any work over the suit land and threatened the plaintiffs with dire consequences. On hearing hue and cry, the neighbouring persons appeared that time the respondent-defendants fled away. Hence, the plaintiffs having right, title and interest over the suit land filed the suit for a decree of perpetual injunction. The respondent-

defendants contested the suit by filing one written statement. In the written statement, they took the plea that said Akhil Chandra Debnath, the deceased grandfather of the appellant-plaintiffs and the principal-defendant-respondents along with the fathers of the present parties namely Abani Mohan Debnath (since dead) and Joy Gopal Debnath (since dead), were the owners in possession of land measuring 0.83 acres under Khatian No.684 and 820 under Mouja and Tehsil-Dasda, Revenue Circle-Kanchanpur in equal share i.e. 3.61 acres each. During the life time Akhil Chandra Debnath, he sold land measuring 0.12 acres to one Umesh Malakar and 0.28 acres to one Girish Malakar from his own share portion and after that said Akhil Chandra Debnath transferred land measuring 2.95 acres to his younger son Joy Gopal Debnath, i.e. the deceased father of the principal defendant-respondents. Said Akhil Chandra Debnath also transferred land measuring 0.26 acres from his own share to his elder son namely Abani Mohan Debnath, the deceased father of the plaintiff-appellants. Later on, in the year 1977, the Swasti Samabaya Samiti Limited, Kanchanpur opened a record of right in favour of Joy Gopal Debnath, i.e. the deceased father of the principal-defendants for total land measuring 6.56 acres and another record of right was also created in the name of Abani Mohan Debnath, the deceased father of the plaintiff-appellants for a total land measuring 3.87 acres. Later on, the father of the plaintiff-appellants sold land measuring 2.05 acres and 1.45 acres to one Mati

Lal Saha, son of Late Khetra Mohan Saha of Dasda from his total land measuring 3.87 acres. It is also stated by the principal-respondent-defendants that their father Late Joy Gopal Debnath and none of the defendant-respondents had any knowledge about the filing of petition by the plaintiff-appellants under Section 43(1) of TLR & LR Act, 1960 before the Settlement Authority as neither of the father of the principal-defendant-respondent, Late Joy Gopal Debnath nor the principal defendant-respondents received any notice from the Revenue Authority in connection with that petition. Hence, by the written statement, the contesting respondent-defendants prayed for dismissal of the suit costs.

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

- 1. Whether the suit is maintainable in its present form and nature?**
- 2. Whether there is any cause of action for filing the suit?**
- 3. Whether the plaintiffs are entitled to get decree perpetual injunction over the suit land?**
- 4. What other relief/relieves the parties are entitled to get under law and equity?**

05. The appellant-plaintiffs in support of their case, adduced two witnesses, PW1 and PW2 and also proved some documents as already stated. On the other hand, the principal-defendant-respondents examined two witnesses namely, Tapan Debnath as DW1 and one Brajendra Nath as DW2 and also relied upon some documents which were also marked as exhibits:

Witnesses of the appellant-plaintiffs:

1. PW1- Matilal Debnath
2. PW2- Dhirendra Das

Exhibits of the appellant-plaintiffs:

1. Exhibit-1: Certified copy of Khatian No.393/374 under Mouja Daska Laxmipur, TK-Dasda.
2. Exhibit-2: Khatian issued by Swasti Samabaya Samiti Limited for land measuring 0.60 acres.
3. Exhibit-3: Allotment order issued Swasti Samabaya Samiti Limited in the name of appellant-plaintiffs for land measuring 0.60 acres.
4. Exhibit-4: Order of Settlement Authority in connection with case No.118 under Section 43 (1) of TLR & LR Act.
5. Exhibit-5: Certified copy of tracemap.
6. Exhibit-6: Certified copy of order dated 26.11.2013, 10.12.2013 and 07.01.2014 issued by District Collector, North Tripura, Dharmanagar in connection with case No.Rev/Revision22/2013 u/s.95 of TLR & LR Act, 1960.

Witnesses of the respondent-defendants:

- DW-1: Tapan Debnath.
DW-2: Brajendra Nath.

Exhibits of the respondent-defendants:

- Exhibit A series: Certified copy Khatian Nos.393/177 (2 sheets).
- Exhibit B series: Certified copy of Khatian Nos.393/178(2 sheets).
- Exhibit C series: Certified copy of Khatian Nos.393/179 under Mouja- Dasda, Laxmipur, Tehesil-Dasda, Revenue Circule-Kanchanpur (1 sheet).
- Exhibit D series: Certified copy of Khatian Nos.393/375 (2 sheets).
- Exhibit E series: Certified copy of Khatian Nos.393/376 (2 sheets).
- Exhibit F (SO) series: Copy of Parcha bearing No.684 Jer, 820, Jer 1914 under Mouja-Dasda, Laxmipur, Tehesil- Dasda, standing in the name of Akhil Chandra Debnath, on behalf of Swasti Samabaya Samiti Limited showing three persons namely, Ram Manik Debnath, Abani Mohan Debnath and Joy Gopal Debnath in equal shares.

06. Finally, after taking evidence and on hearing of arguments, Learned Court below by judgment dated 13.05.2019 dismissed the suit filed by the appellant-

plaintiffs. The operative portion of the order of the Learned Trial Court runs as follows:

"In the result, it is hereby held that there is no cause of action in this suit and suit is also not maintainable in its present form.

Although plaintiffs got ownership and ROR for 60 satak of and but practically after deduction they are not owner of 60 satak of land and at best they are owner of 37 satak of land for which permanent injunction cannot be granted against the defendants as because plaintiffs do not have right over total 60 satak of land shown in the schedule of plaint. Plaintiff failed to establish their legal right and also exclusive possession for 60 satak of land for which relief of perpetual injunction cannot be granted.

Therefore, plaintiffs are not entitled to get any perpetual injunction over the suit land against the defendants and plaintiffs are not entitled to get any other relief.

Thus the suit is dismissed on contest with cost.

Sheristadar is to prepare the decree of dismissal in the light of the above order."

07. Challenging that judgment, the appellant-plaintiffs again preferred an appeal before the Court of Learned District Judge, North Tripura, Dharmanagar which was numbered as Title Appeal No.14 of 2019 and after hearing both the sides, Learned First Appellate Court by judgment dated 09.03.2022 dismissed the appeal and uphold the judgment of the Learned Trial Court. The operative portion of order of the Learned First Appellate Court runs as follows:

"In view of the aforesaid discussion and findings this title appeal preferred by the plaintiff-appellants under Section 96 of the Code of Civil Procedure read with Order 41 of CPC is hereby dismissed on contest being devoid of any merit.

The judgment dated 13-05-2019 followed by the decree dated 17-05-2019 passed by Ld. Civil Judge (Senior Division), North Tripura, Dharmanagar, Court No.1, in Title Suit No. 02 of 2018 are hereby affirmed.

The parties of this suit shall have to bear their own costs.

Senior Sheristadar is hereby directed to draw an appellate decree within 15 days from the date of pronouncement of this judgment.

Send back the L. C. Record with a copy of this judgment to the Ld. Trial court.

Thus this appeal is disposed off on contest."

08. Before the High Court, at the time of admission of the second appeal by order dated 05.07.2022, the following substantial questions of law were framed:

"(i) Whether the learned courts below misread and misconstrued Exbt. 1, Exbt. 6, Exbt. B and Exbt. C?

(ii) Whether this court can mould the relief?"

09. Learned Senior Counsel, Mr. S.M. Chakraborty assisted by Learned Counsel, Mr. S. Noatia on behalf of the appellant-plaintiffs submitted that in this case although both the Courts below gave concurrent findings but the Learned Trial Court at the time of delivery of judgment did not consider the documentary evidence relied upon by the appellant-plaintiffs and came to an erroneous observation and dismissed the suit. He submitted that the suit filed by the appellant-plaintiffs was only for injunction and on the basis of documentary evidence on record, the Learned Trial Court could grant decree applying Section 91 of the Evidence Act. He also referred the relevant provisions of Order 7, Rule 7 and Order 18, Rule 18 of CPC and submitted that the judgment of the Learned Court below suffers from infirmities, as such this cannot be sustained and the judgment of the Learned First Appellate Court was nothing but the replica of the judgment given by the Learned Trial Court. He also

referred another provision of Section 43 (3) of TLR & LR Act and finally, urged for allowing this appeal by setting aside the judgments of the Learned Courts below. Learned Senior Counsel in addition to his submission further submitted that from the judgment of the Learned Trial Court, it appears that in the operative portion of the judgment, Learned Trial Court below came to an observation that the appellant-plaintiffs was the owners in possession of the land measuring 0.37 acres, so, in that case he could grant a part decree but without doing so, most illegally and being misconstrued the legal position wrongly dismissed the suit. Finally, he also made an alternative submission before this Court to grant a decree for land measuring 0.37 acres as observed by Learned Trial Court.

10. On the other hand, Learned Counsel, Mr. S. Lodh representing the respondent-defendants submitted that when there is cloud over the title of the appellant-plaintiffs, there is no scope to grant any decree of injunction in favour of the appellant-plaintiffs. Furthermore, according to Learned Counsel, Mr. S. Lodh, for want of cause of action, the suit was not maintainable, so, Learned Counsel for the respondent-defendants fairly submitted that both the Courts below gave concurrent findings which were proper, lawful, reasonable and reasoned one, so at this stage, there is no scope on the part of this Court to interfere with the judgment

delivered by the Learned First Appellate Court and urged for dismissal of this appeal with costs.

11. In course of hearing of argument, Learned Counsel for the respondent-defendants also referred one citation reported in **(2021) SCC OnLine SC 675** dated 07.09.2021 wherein in para Nos.10 and 11, Hon'ble the Apex Court observed as under:

"10. The short question that falls for consideration before us is:

Whether the learned Single Judge of the High Court was right in holding that the suit simpliciter for permanent injunction without claiming declaration of title, as filed by the plaintiff, was not maintainable?

11. The issue is no more res integra. The position has been crystalised by this Court in the case of *Anathula Sudhakar v. P. Buchi Reddy (dead) by LRs.* in paragraph 21, which read thus:-

21. To summarise, the position in regard to suits for prohibitory injunction relating to immovable property, is as under:

(a) Where a cloud is raised over the plaintiff's title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction, is the remedy. Where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with the plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter.

(b) As a suit for injunction simpliciter is concerned only with possession, normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. But in cases where de jure possession has to be established on the basis of title to the property, as in the case of vacant sites, the issue of title may directly and substantially arise for consideration, as without a finding thereon, it will not be possible to decide the issue of possession.

(c) But a finding on title cannot be recorded in a suit for injunction, unless there are necessary pleadings

and appropriate issue regarding title (either specific, or implied as noticed in *Annaimuthu Thevar [Annaaimuthu Thevar v. Alagammal, (2005) 6 SCC 202]*). Where the averments regarding title are absent in a plaint and where there is no issue relating to title, the court will not investigate or examine or render a finding on a question of title, in a suit for injunction. Even where there are necessary pleadings and issue, if the matter involves complicated question of fact and law relating to title, the court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.

(d) Where there are necessary pleadings regarding title, and appropriate issue relating to title on which parties lead evidence, if the matter involved is simple and straightforward, the court may decide upon the issue regarding title, even in a suit for injunction. But such cases, are the exception to the normal rule that question of title will not be decided in suits for injunction. But persons having clear title and possession suing for injunction, should not be driven to the costlier and more cumbersome remedy of a suit for declaration, merely because some meddler vexatiously or wrongfully makes a claim or tries to encroach upon his property. The court should use its discretion carefully to identify cases where it will enquire into title and cases where it will refer to the plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case.”

12. Referring the same, Learned Counsel submitted that since there was cloud over the title of the appellant-plaintiffs, so, the Learned Trial Court below rightly dismissed the suit filed by the appellant-plaintiffs which has been rightly uphold by the Learned First Appellate Court.

13. I have heard rival submission of Learned Counsels for the parties. There is no dispute on record that the appellant-plaintiffs filed the suit only for injunction simpliciter and the quantum of the suit land was shown to be 0.60 acres

and in two schedules (1st schedule 0.04 acres+ 1st schedule 0.56 acres)= in total 0.60 acres.

14. From the documentary evidence on record, as relied upon by the appellant-plaintiffs, it appears that the appellant-plaintiffs tried to show their possession in respect of the suit land i.e. measuring 0.60 acres. But from the oral evidence on record and after disposal of some landed properties by their predecessor and also from the cross-examination of the appellant-plaintiff No.1, Matilal Debnath as PW1, it appears that he himself admitted that his father sold land measuring 2.05 acre and 1.45 acres to one Matilal Saha out of total land measuring 3.87 acres of their predecessor. So, it is the admitted position that after disposal of 3.50 acres of land, they have got only land measuring 0.37 acres of land in their favour. Thus, it appears that Learned Court below rightly determined that the appellants had got clear possession of land measuring 0.37 acres after disposal of landed properties. But Learned Court below instead of granting a decree for the aforesaid land, dismissed the suit.

15. Learned Counsel, Mr. S. Lodh, appearing on behalf of the respondent-defendants did not submit anything in respect of said 0.37 acres of land but he submitted that the said land was not properly identifiable for which no relief was granted either by the Learned Trial Court or by the Learned First Appellate Court.

16. For the sake of convenience, I would like to refer herein below the relevant provision of Order VII, Rule 7 of CPC which provides as under:

Order VII, Rule 7:

"7. Relief to be specifically stated.—Every plaint shall state specifically the relief which the plaintiff claims either simply or in the alternative, and it shall not be necessary to ask for general or other relief which may always be given as the Court may think just to the same extent as if it had been asked for. And the same rule shall apply to any relief claimed by the defendant in his written statement."

17. Further, I would like to refer herein below the relevant provision of Order XVIII, Rule 18 of CPC which further provides as under:

Order XVIII, Rule 18

"Power of Court to inspect.—The Court may at any stage of a suit inspect any property or thing concerning which any question may arise [and where the Court inspects any property or thing it shall, as soon as may be practicable, make a memorandum of any relevant facts observed at such inspection and such memorandum shall form a part of the record of the suit]."

18. I would also like to refer herein below the provision of Section 91 of the Indian Evidence Act as referred by Learned Senior Counsel for the appellant-plaintiffs:

Section 91 of the Evidence Act:

"91. Evidence of terms of contracts, grants and other dispositions of property reduced to form of document. -- When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained."

19. After going through the aforesaid provisions of law and also the principle of judgment, laid down by the

Hon'ble Apex Court, relied upon by the Learned Counsel for the respondent-defendants, it appears to this Court the respondent-defendant at the time of hearing of arguments could not raise any cloud over land measuring 0.37 acres belonging to the appellant-plaintiffs. But at the same time, it also appears that the appellant-plaintiffs also could not give any proper schedule of the aforesaid quantum of land before the Learned Trial Court or to the Appellate Court even to this Court also. Although before this Court, the scope is very limited. Learned Court below could grant decree in respect of land measuring 0.37 acres but the Learned Trial Court failed to do so and the Learned First Appellate Court at the time of delivery of judgment also overlooked the said position and uphold the judgment of Learned Trial Court.

20. So, in my considered view, in exercise of the power conferred under Section 107 of CPC, the suit be remanded back to Learned Trial Court to arrange for demarcation of the said land measuring 0.37 acres belonging to the appellant-plaintiffs to avoid further multiplicity of proceedings by a Survey Knowing Commissioner appointed under the penal of District Court to identify the said land measuring 0.37 acres, the cost of which would be borne by the appellant-plaintiffs. The Commissioner shall measure the aforesaid land in presence of the parties.

21. In the result, the appeal filed by the appellant-plaintiffs is hereby allowed. The judgment and decree dated 09.03.2022 and 14.03.2022 respectively of the Learned First

Appellate Court, upholding the judgment and decree dated 13.05.2019 and 16.05.2019 respectively of the Learned Trial Court is hereby set aside. The suit is remanded back to the Learned Trial Court with a direction to arrange for measurement of 0.37 acres of land by appointing a Survey Knowing Commissioner/Person, the cost of which would be borne by the appellant-plaintiffs and the Survey Knowing Commissioner shall measure and identify the land in presence of both the rival parties and then shall pass a fresh judgment and decree based on the report of Survey Commissioner. The entire exercise shall be made within a period of four months from the date of receipt of a copy of the judgment of this Court.

Send down the LCRs along with a copy of the judgment to the respective Courts.

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

JUDGE