

IN THE HIGH COURT OF TRIPURA
AGARTALA

RSA No.30 of 2023

Smti Renubala Nath

wife of Shri Shib Charan Nath, a resident of Panisagar, P.S.
Panisagar, Dharmanagar, P.O. Panisagar, District North Tripura, PIN
799260

..... **Appellant(s)**

- V e r s u s -

(1) **Shri Bikash Ranjan Dutta**
son of late Amarendra Kumar Dutta

(2) **Shri Ajoy Dutta**
son of late Amarendra Kumar Dutta

(3) **Shri Ashim Dutta**
son of late Amarendra Kumar Dutta

All are resident of Panisagar, P.S Panisagar, Dharmanagar, P.O.
Panisagar, District North Tripura, PIN 799260

..... **Respondent(s)**

For the Appellant(s)	:	Mr. S.M. Chakraborty, Sr. Advocate. Ms. A. Pal, Advocate.				
For the Respondent(s)	:	None.				
Date of hearing	:	5th September, 2024.				
Date of delivery of Judgment & order	:	17th December, 2024.				
Whether fit for reporting	:	<table border="1"><thead><tr><th>YES</th><th>NO</th></tr></thead><tbody><tr><td></td><td>√</td></tr></tbody></table>	YES	NO		√
YES	NO					
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HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA

JUDGMENT & ORDER

The appeal arises out of the judgment dated 16.09.2023
passed by the learned Additional District Judge, North Tripura,
Dharmanagar in Title Appeal No.28 of 2016 by dismissing the appeal.

[2] The appellant (hereinafter referred to as the plaintiff)
instituted Title Suit No.24 of 2014 in the Court of the Civil Judge (Jr.
Division), Dharmanagar against the respondents (hereinafter referred

to as the defendants) praying for a perpetual injunction for restraining the defendants, their men and agents from entering into the suit land and from disturbing the possession of the plaintiff therein in respect of the land measuring 0.04 acres of Class-Nal recorded in the Khatian No.743 of Mouja- Panisagar falling within R.S. Plot No.1331, corresponding to old CS Plot No.531/1008(P) with the following boundaries:

North	: Self (plaintiff)
South	: Foot track of village.
East	: Biresh Das known as Biresh Sen
West	: Assam-Agartala Road

[3] The claim of the plaintiff is that she purchased the suit land from one Smt. Basana Rani Nath and others vide registered sale Deed No.1-3033 dated 15.12.2007 [Exbt.1 series] and since purchase she has been possessing the suit land peacefully. Khatian has also been mutated in her name. But on 15.05.2014, in the morning, the defendants threatened her not to cultivate the suit land and that they would cultivate the same after taking possession thereof. Similar incident, according to the plaintiff, occurred again on 26.05.2014 and therefore, she instituted the suit to protect her possession.

[4] The defendants contested the suit and according to them, the plaintiff did not purchase the suit land from Basana Rani Nath by above said sale deed. According to them, the suit land is not identifiable, for, in the trace map RS Plot No.1333 is situated at the

adjacent North of suit plot as per Khatian but as per trace map, RS plot No.9823 is situated at the adjacent North. They also contended that the purchased plot of the plaintiff bearing R.S. Plot No.1331 as per the map was situated far away from plot No.1330 and 1332 keeping so many plots existent in between without any basis, which further creates doubt about correctness of location of these plots in the trace map. It is also stated that the suit land was ancestral property of the defendants along with the co-sharers and they have been jointly possessing the suit land with other lands without any interruption from any corner. Their predecessor sold out 0.21 acres of land to one Bimal Sen which is situated adjacent eastern boundary of the suit land appertaining to plot No.9300. Accordingly, the land measuring 0.10 acres including the suit land which is situated adjacent west to the land of said Bimal Sen is still recorded in the name of the predecessor of the defendants.

[5] It is also contended by the defendants that the vendor of plaintiff has no right, title and possession in the land wrongly shown in the trace map as against plot No.1331. In this regard, the defendants have also submitted a petition to the SDM, Panisagar for correction of trace map which is still pending.

[6] During trial, the plaintiff examined herself as PW-1 and also examined other 2[two] witnesses, namely Sri Arabinda Debnath and Sri Anathbandhu Das as PW-2 and PW-3 respectively and also

proved few documents into the evidence, such as, her title deed, Khatian No.743 and certified copy of trace map.

[7] The defendant No.1, Sri Bikash Ranjan Dutta examined himself as DW-1 and other two witnesses, namely Sri Dayamay Datta and Sri Manna Dey as DW-2 and DW-3 respectively. He also proved the copy of his application dated 30.05.2014 submitted before the SDM, Panisagar for correction of the map, certified copy of demarcation report dated 14.02.2014 and another enquiry report dated 06.04.2015 submitted by DCM, Panisagar. The plaintiff noted her objection regarding proving of said documents.

[8] The learned trial court thereafter, dismissed the suit vide judgment dated 13.06.2016 though the said court held that the suit was maintainable with a valid cause of action. The main reason for dismissing the suit by the learned trial court was that as per her purchased deed as well as the description of the suit land given in plaint schedule, on the northern side of the suit land, her own land was reflected whereas in her mutated Khatian No.743[Exbt.2], name of one Bichitra was shown on the northern side of the suit land as against Plot No.1333 and in the trace map on the northern side of the suit land, Plot No.9823 was mentioned. Therefore, according to the learned trial court, there was a serious error committed by the Revenue Authority in preparing the said Khatian and the trace map and therefore the purchased land of the plaintiff has become virtually non-existent.

[9] The plaintiff, thereafter, preferred Title Appeal bearing No.28 of 2016 and the Learned First Appellate Court allowed the said appeal vide judgment dated 25.03.2017 by setting aside the judgment and decree of the learned trial court and simultaneously, restrained the defendants, their men and agents from entering into the suit land by issuing perpetual injunction. At that time, before the learned First Appellate Court, one corrected Khatian No.743 was also submitted by the plaintiff, in which necessary correction was made by the Revenue Authority by indicating the plaintiff's land on the northern side of the suit land by deleting the name of said Bichitra therefrom. Based on said document, though not proved into evidence, learned First Appellate Court decreed the suit.

[10] The defendants, thereafter, filed second appeal bearing RSA No.20 of 2017 before this Court and this Court vide judgment dated 26.04.2021 allowed the appeal and remanded the matter for fresh decision by the learned First Appellate Court with the following observations:

"The first appellate court shall first afford an opportunity to the appellants to file their response to the petition for accepting additional evidence [Khatian No. 743, as corrected] and thereafter, on hearing, whether the said document would be accepted in the record of evidence, will be decided by the first appellate court. On affording opportunities of hearing to the parties, the first appellate court [District judge, North Tripura, Dharmanagar] shall decide the appeal, preferably within a period of 6 months from the date of receiving the records.

The respondent herein is given liberty to amend the petition filed under Order XLI Rule 27 of the CPC, if it is so required.

In terms of the above, this appeal stands allowed with the order of remand."

[11] In terms of the judgment of this Court, learned First Appellate Court allowed the petition of the plaintiff for adducing additional evidence and thereafter one certified copy of corrected Khatian No.743 and another certified copy of the Khatian No.2406 were proved into evidence as Exbt.1-1 and Exbt.2-1 respectively.

[12] The learned First Appellate Court, thereafter, heard the parties afresh and by the impugned judgment dismissed the appeal as stated above. One of the grounds for such dismissal of the appeal is that as per the purchased deed of the plaintiff, she purchased 0.04 acres of land from CS Plot No.1008 corresponding to RS Plot No.1331 whereas in her mutated Khatian her purchased land has been shown against CS Plot No.531/1008 and not CS Plot No.1008 alone. The learned First Appellate Court also took exception of the fact that the plaintiff purchased a part of RS Plot No.1331 as per her deed whereas in her mutated Khatian, the whole of said RS Plot No.1331 was maintained without making any butted plot therefrom. The learned First Appellate Court also observed that as per the original mutated Khatian of the plaintiff, name of one Bichitra was existent on the northern side but later on it was deleted by incorporating the name of plaintiff herself but she could not show any document as to how and why such changes were made by the Revenue Authority. The learned First Appellate Court also noted that the plaintiff had failed to identify her purchased land with any reliable and convincing evidence and also expressed his doubt about correctness of the trace map. Learned First

Appellate Court also even proceeded to hold that the defendants were the owners of the suit land and the executants of the sale deed of the plaintiff had no title or possession in the suit land. Learned First Appellate Court also observed that the suit for injunction *simpliciter* was not maintainable as in the written statement the defendants denied the right, title and interest and possession of the plaintiff in respect of the suit land and they in their evidence were able to show defects and to create cloud on the title of plaintiff in respect of the suit land and for all these reasons, the judgment of the trial court was affirmed by dismissing the appeal.

[13] Before this Court, the defendants despite service of notice did not appear to contest.

[14] Mr. S.M. Chakraborty, learned senior counsel appearing for the appellant argues that the defendants did not challenge the purchased deed of the plaintiff and nor even challenged the Khatian standing in her name and therefore, the defendants practically had no claim on the purchased land of the plaintiff but despite the same, the suit of the plaintiff was dismissed and such dismissal was affirmed by the Learned First Appellate Court. Learned senior counsel further contends that the issue of maintainability was decided by the learned trial court in favour of the plaintiff, but despite no appeal was preferred by the defendants regarding said decision, learned First Appellate Court most illegally held that the suit was not maintainable. According to Mr. Chakraborty, learned senior counsel, nowhere the

defendants asserted that the boundary description of the purchased land of the plaintiff was wrong but despite the same, no decree was passed in her favour by the courts below. Even though it is settled position that even a rent trespasser is entitled to maintain the possession in the suit land unless evicted in due process of law, learned senior counsel argues, but in the present case despite the plaintiff having her supportive deed of title and the mutated ROR, her suit was dismissed. Learned senior counsel further contends that if there is any mistake in the trace map, the Revenue Authority is responsible for the same and it is their duty to rectify the defect but for that reason, the plaintiff cannot be deprived of her own property.

[15] Learned senior counsel in support of his contention, relies on a decision of the Apex Court rendered in ***A. Subramanian and another vs. R. Pannarselvam, AIR 2021 SC 821*** wherein it was observed that even a trespasser, who is in established possession of the property could obtain injunction. However, the matter would be different, if the plaintiff himself elaborates in the plaint about the title dispute and fails to make a prayer for declaration of title along with injunction.

[16] The plaintiff has claimed the suit land of 0.04 acre by way of purchase from one Smt. Basana Rani Nath vide registered sale deed No.1-3033 dated 15.12.2007 (Exbt.1/1). As per the said purchase deed, she purchased land of CS plot No.1008 corresponding

to RS plot No.1331 (part), Class-Nal of Mouja and Tehsil Panisagar with specific boundary which is as follows:

North-plaintiff

South-Village path/foot track

East- Biresh Das

West-Assam-Agartala road.

That boundary description completely tally with the boundary description of the suit land as given in the plaint. Based on said purchase, her name was mutated in Khatian No.743 (Exbt.2) wherein RS plot No.1331 was maintained against 0.04 acre of land in the name of the plaintiff. Learned courts below took exception of the same as to why a butted plot was not created from said RS plot No.1331 while mutating the name of the plaintiff. Similarly, as per the said purchase deed, RS plot No.1331 corresponds to CS plot No.1008 but in said mutated Khatian, a butted plot bearing No.531/1008 (part) was reflected. Both the courts below also took exception of creation of a butted plot with reference to such CS plots. Though no specific challenge was made by the defendants as to the ownership of the vendor Basana Rani Nath and others in respect of said plot, and even if there would be challenge of the defendants regarding such creation or non-creation of butted plots, proper forum for verifying the same is the Revenue Authority. The civil courts does not act as an Appellate forum of such Revenue Authority to verify the correctness of endorsing survey plot numbers of different lands.

[17] The main grievance of the defendants, as it appears from the pleading, is that the suit land was not identifiable in the trace map and the map was contradicting with the Khatian of the plaintiff with reference to Northern boundary land. According to them, as indicated earlier, as per the mutated Khatian No.743 (Exbt.2) at the northern side of purchase land of the plaintiff, RS plot No.1333 under possession of one Bichitra is reflected whereas as per the map of plot No.9823 it is shown on the northern side of said suit plot No.1331. Learned courts below were also impressed with such defence of the defendants while dismissing the suit. Before the First Appellate Court, one corrected Khatian bearing No.743 (Exbt.1-1) was also proved which manifests that said northern side of the suit plot was corrected and by deleting plot No.1333 standing in the name of Bichitra, same was substituted by plot No.9823 of the plaintiff. Learned First Appellate Court again took exception of the same as to why or on what basis such correction was made, though no document was placed by the defendants to show that against such correction made by the Revenue Authority they had challenged same in higher revenue forum. Nowhere the defendants in specific words have claimed that they are the owner of the said suit plot No.1331 rather they proved a letter of one DCM, Panisagar addressed to Sub-Divisional Magistrate, Panisagar (Exbt.C) wherein after scrutiny of the record, said Revenue Officer has mentioned that during revisional survey and settlement operation, the plotting of land of vendors of the plaintiff namely, Smt. Basana Rani Nath and others were done wrongly on CS plot

No.1093/6199 (part) which was supposed to be done on CS plot No.1008 and as such presently Renu Bala Nath is the owner of 0.04 acre of land as per her record against RS plot No.1331 (corresponding CS plot No.1008 of Khatian No.743) but in the map, said RS plot No.1331 has been plotted against CS plot No.1093/6199. Said Revenue Officer has also mentioned that the plaintiff is in physical possession of 0.04 acre of land which is part of said CS plot No.1008 and finally, he has suggested correction of the map. Said document has been relied on by the defendants themselves. Therefore, this Court is in agreement with the submission of Mr. Chakraborty, learned senior counsel that if any mistake has been committed by the Revenue Authority while drawing the map, the plaintiff, an innocent purchaser for valuable consideration, cannot be made sufferer for it.

[18] Both the Courts below have committed serious error in holding the land of the plaintiff as non-existent on the ground of such defect in the revenue map. As stated above, when the defendants have not in specific terms challenged such ownership of plaintiff in the suit land having derived by way of said purchase nor they have challenged the ownership of the vendors of the plaintiff in said suit plot No.1331, learned First Appellate Court has committed mistake in observing that a cloud has been created in the title of the plaintiff in respect of the suit land and therefore, the suit for injunction *simpliciter* is not maintainable.

[19] The defendants have also proved one of their petition dated 30.05.2014 (Exbt.A) addressed to SDM, Panisagar for correction of the map which is still pending for decision by SDM, Panisagar. In such a situation, plaintiff has her right to protect possession of her purchased land which contains specific boundary and plot number. But, in view of wrong recording in the map, she cannot be allowed to identify her land based on said map unless same is corrected by the Revenue Authority. Law is no longer *res integra* that suit land can be identified either by plot number or by its boundary and in the instant case, as stated earlier, there is no specific challenge regarding the correctness of boundary description of the purchased land of the plaintiff.

[20] In view of above, the appeal is allowed. Both the impugned judgments and decrees passed by learned First Appellate Court and by learned trial Court are set aside.

[21] The suit of the plaintiff is decreed with cost throughout in her favour.

The defendants and their men and agent are perpetually restrained from entering into the suit land and from disturbing peaceful possession of the plaintiff therein. However, identification of the suit land based on its survey plot number will not be effective unless the same is corrected by the Revenue Authority in due course. The defendants may approach the Revenue Authority for early correction of the same.

The appeal is accordingly disposed of.

Registry is to prepare decree accordingly.

Return the records of both learned First Appellate Court and learned Trial Court with copy of this judgment and decree.

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

JUDGE

Sujay /Rudradeep

RUDRADEEP BANERJEE

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