

**HIGH COURT OF TRIPURA
AGARTALA
RSA 43 of 2022**

Debasish Paul,
son of Sri Hiran Chandra Paul,
resident of Bardowali, Madhyapara,
P.S. A.D. Nagar, District- West Tripura

---- Plaintiff-Appellant(s)

Versus

Shri Ratan Debnath,
son of late Joy Chand Debnath,
resident of Gholaghati (Noabari),
P.S. Takarjala, Sub-Division-Bishalgarh,
District-Sepahijala Tripura

----Defendant-Respondent(s)

For Appellant(s)	:	Mr. P. Roy Barman, Sr. Adv. Mr. K. Nath, Adv.
For Respondent(s)	:	Mr. D.R. Chowdhury, Sr. Adv. Mr. S. Sarkar, Adv.
Date of Hearing	:	15.03.2024
Date of Judgment & Order	:	04.04.2024
Whether fit for reporting	:	YES

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

Heard Mr. P. Roy Barman, learned senior counsel assisted by Mr. K. Nath, Learned counsel appearing for the plaintiff-appellant as well as Mr. D.R. Chowdhury, Learned senior counsel assisted by Mr. S. Sarkar, Learned counsel appearing for the defendant-respondent.

02. This appeal is preferred under Section 100 of CPC challenging the judgment dated 03.03.2022 and decree dated 11.03.2022 delivered by Learned District Judge, West Tripura, Agartala in connection with Title Appeal No.06 of 2019. By the said judgment, the

Learned District Judge has allowed the appeal of the appellant and has reversed the judgment dated 10.10.2018 and decree dated 13.11.2018 delivered by Learned Civil Judge, Senior Division, Court No.2, West Tripura, Agartala in Title Suit No.113 of 2016.

03. Before entering into the merit of the appeal, let us project the subject matter of dispute amongst the parties. The present appellant as plaintiff filed a suit before the Court of Learned Civil Judge, Senior Division, Court No.2, West Tripura, Agartala for a decree of recovery of possession under Section 34 of the Specific Relief Act. The gist of the case of the appellant-plaintiff was that the suit land measuring 0.225 acres appertaining to khatian No.23685 under mouja-Badharghat, Sub-Division-Sadar of West Tripura is owned by one Paritosh Saha and the said Paritosh Saha entered into an agreement with the plaintiff-appellant to sell the suit land along with some other lands and in this regard, he executed a Deed of Agreement vide No.1-4424 dated 12.06.2013 with the plaintiff-appellant and it was registered. In the agreement it was mentioned that the price of the suit land shall be Rs.12,37,500/- and in the agreement it was also mentioned that Sri Paritosh Saha received Rs.10,00,000/- out of the aforesaid amount and the balance amount of Rs.2,37,500/- only is to be paid by the plaintiff-appellant to him. The said Paritosh Saha in spite of receipt of money did not execute and register the sale deed in favour of the appellant-plaintiff in spite of his repeated requests and demands and his willingness to pay the balance amount to him. Finding no other alternative way the appellant-plaintiff filed the Title Suit bearing No.184 of 2013 for specific performance of agreement against Sri Saha and the suit was decreed on 17.04.2014. During pendency of the suit, it came to the knowledge of the appellant-plaintiff that said Paritosh Saha may dispose of the suit property for which the appellant-plaintiff published notices in the newspaper on

11.10.2013, 17.11.2013, 19.11.2013 and 20.11.2013 informing that the suit property should not be purchased by anybody. However, to establish his right, the appellant-plaintiff as a precaution also filed a petition for temporary injunction in the aforesaid Title Suit bearing No.184 of 2013 and the said case was registered as Civil Misc.151 of 2013. After hearing, Learned Court passed an order of injunction restraining said Paritosh Saha from disposing of the suit property till finalization of the suit. But said Saha inspite of injunction order disposed of the suit property to the respondent-defendant Ratan Debnath violating the provisions of Section 52 of the Transfer of Property Act. Thereafter, the appellant-plaintiff filed an execution case bearing No.Execution(T)15 of 2014 against said Sri Saha as well as the present respondent-defendant and both of them contested the execution case and the Learned Court by order dated 12.03.2015 directed for execution and registration of sale deed in favour of the appellant-plaintiff and the same was done by Senior Sheristadar of the District Judge's Court, West Tripura, Agartala as the said owner in spite of order of the Court did not turn up. It was further asserted that the appellant-plaintiff took possession of the suit property on 24.04.2015 but on 25.05.2015 the respondent-defendant forcefully dispossessed the appellant from the suit land and took possession of the suit land and also managed to obtain khatian bearing No.23685 most illegally. After that the appellant-plaintiff filed the suit for recovery of possession of the suit land.

04. The respondent-defendant after receipt of notice contested the suit by filing written statement denying the assertions of the appellant-plaintiff in the plaint. It was further pleaded that the suit filed by the appellant-plaintiff was not maintainable as the same was barred by the provision of Section 47 of CPC. The respondent-defendant further pleaded that the said Paritosh Saha and the defendant entered into an

unregistered Deed of Agreement on 28.04.2013 and it was executed on 27.12.2013 and as per said agreement, Sri Saha agreed to sell the suit property to the respondent-defendant for an amount of Rs.35,00,000/- and the respondent-defendant accordingly paid the said amount to Sri Paritosh Saha by three demand drafts. It was further submitted that on 27.12.2013 the respondent-defendant entered into an unregistered Deed of Agreement for purchase of the suit land with said Paritosh Saha. The appellant-plaintiff for illegal gain published notices in the newspaper on several dates and the transfer of the suit land to the respondent-defendant by said Paritosh Saha does not fall within the purview of the Transfer of Property Act and not hit by Section 52 of the Transfer of Property Act. It was further submitted that the decree passed in T.S.184 of 2013 and execution case thereafter vide Ex(T)15 of 2014 are nullity and not enforceable in the eye of law. It was further submitted that the suit land is under peaceful possession of the respondent-defendant and finally the respondent-defendant by WS prayed for dismissal of the suit with costs.

05. 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 suit is barred by limitation ?**
- iii) Whether the plaintiff got any cause of action to institute this suit ?**
- iv) Whether the plaintiff has right, title and interest over the suit land ?**
- v) Whether the Plaintiff is entitled to get recovery of possession over the suit land by evicting the defendant on removing his hut at the costs of the defendant ?**
- vi) Whether the Plaintiff is entitled to get a decree as prayed for ?**
- vii) To what other relief/relief(s), the parties are entitled according to law ?"**

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

"In order to prove the claim, plaintiff examined two number of witnesses, namely-

(1) Sri Debasish Paul (plaintiff) – as P.W.1

(2) Sri Dilip Kumar Banik – As P.W.2

The following documents were also exhibited by plaintiff side in support of his claim in the suit :

1) Computerized khatian vide no.23685 of Mouja-Badharghat in one sheet-(Exbt.1).

2) Certified copy of judgment in TS 184/13 and decree in 12 sheets (Exbt.2/A to 2/L).

3) Certified copy of order passed in Misc.(Inj.)151/13, dated 12.11.2013 in three sheets (Exbt.3/A to Exbt.C).

4) Certified copy of registered Sale Deed vide No.1-1992, dated 24.03.2014 in 11 sheets (Exbt.A to Exbt.4/K).

5) Certified copy of order, passed in Exe(T)15/14, dated 12.03.2015 in 4 sheets (Exbt.5/A to 5/D).

6) Original registered Sale Deed vide No.1-2419, dated 21.03.2015 in 8 sheets (Exbt.6/A to Exbt.6/H).

7) Certified copy of order, passed in Misc.(Exe)06/15, dated 28.03.2013 in 4 sheets (Exbt.7/A to Exbt.7/D).

8) Certified copy of Agreement for sale vide no.1-4424, dated 12.06.2013 in 8 sheets (Exbt.8/A to 8/H).

Defending the suit, the defendant side has also examined four number of witnesses, namely-

(1) Sri Ratan Debnath, defendant-as D.W.1

(2) Sri Ranjit Kr. Saha-as D.W.2

(3) Sri Kshitish Debnath-as D.W.3 and

(4) Smt. Pramila Debnath-as D.W.4

The following documents were also exhibited by the defendants side against the claim of the plaintiff :

1) Photo copy of registered Sale deed bearing no.1-1992, dated 24.03.2014, consisting of 8 sheets after comparing with the original copy of the same lying with record bearing no.M.S.29/2015 (Exbt.A).

2) Photo copy of registered Sale deed bearing no.1-1993, dated 24.03.2014, consisting of 10 sheets after comparing with the original copy of the same lying with record bearing no.M.S.29/2015 (Exbt.B).

3) Computer generated copy of Khatian bearing no.23681 of Mouja & Tahshil-Badharghat, Revenue Circle-Dukli, Sub-Division-Sadar consisting of one, (Exbt.C) and ;

4) Computer generated copy of Khatian bearing no.23685 of Mouja & Tahshil-Badharghat, Revenue Circle-Dukli, Sub-Division-Sadar consisting of one, (Exbt.D).

5) Signatures of DW-2 Sri Ranjit Kumar Saha in two sale deed (Exbt.A/2 and Exbt.B/2).

The Court also examined Sri Sajal Chakraborty as C.W.1 and exhibited his signatures as scribed in two sale deeds bearing no.1-1992 dated 24.03.2014 and Sale deed bearing no.1-1993, dated 24.03.2014 (Exbt.A/1 and Exbt.B/1)."

07. Finally, after hearing arguments of both the sides and on conclusion of trial Learned trial Court below decreed the suit in favour of the appellant-plaintiff by judgment and order dated 10.10.2018. For the

sake of convenience, I would like refer herein below the relevant portion of the order of Learned trial Court which is as follows :

"In the result, this suit is hereby decreed on contest without costs.

It is hereby declared that plaintiff has the right, title and interest over the suit land and thereby, is entitled for decree for recovery of the possession of the suit land by way of evicting the defendant from the suit land and by removing the standing hut and all obstructions therefrom.

The defendant is hereby, directed to hand over the vacant possession of the suit land mentioned in schedule-2 of the plaint to plaintiff within 2(two) months from the date of this judgment and order, failing which, plaintiff is at liberty to file execution case for the same before the court.

Thus, the suit is disposed of on contest.

Sheristadar is hereby directed to prepare decree accordingly and put up the same before me within 15(fifteen) days latest by 26.10.2018.

Record be consigned to the Record Room after lapse of the appeal period in due compliance."

08. Challenging that judgment, the defendant as appellant preferred an appeal before the Court of Learned District Judge, West Tripura, Agartala under Section 96 of CPC and the Learned District Judge, West Tripura, Agartala after hearing arguments of both the sides allowed the appeal reversing the judgment and decree of the Learned trial Court in Title Appeal No.06 of 2019. For the sake of convenience, I would also like to mention herein below the operative portion of the order of the Learned First Appellate Court which reads as under :

"In the result, this appeal filed by the defendant appellant stands allowed. As a consequence, the Judgment and Decree dated 10.10.2018 and 13.11.2018 respectively passed by the Learned Civil Judge (Senior Division), Court No.2, West Tripura, Agartala in Title Suit No.113 of 2016 is set aside and the said Title Suit No.113 of 2016 is dismissed accordingly.

Prepare the appellate decree accordingly.

This Title Appeal stands disposed of on contests.

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

Enter the result in the relevant register as well as in the CIS."

Being aggrieved and dissatisfied with the judgment and decree of the Learned First Appellate Court, the plaintiff as appellant has

preferred this appeal under Section 100 of the CPC before the High Court.

09. At the time of admission of appeal by order dated 04.01.2023, the following substantial question of law has been formulated which reads as under :

“(i) Whether the learned Appellate Court misunderstood and misapplied Section 52 of the Transfer of Property Act, 1882 ?

(ii) Whether the decree suffers from the principle of *lis pendence* ?”

10. At the time of hearing, Mr. P. Roy Barman, Learned senior counsel appearing for the appellant-plaintiff submitted that considering the oral/documentary evidence on record, the Learned trial Court delivered the judgment in favour of the appellant but the Learned first appellate Court misinterpreting and misconstruing the factual and legal aspects reversed the finding of the Learned trial Court.

11. Mr. Roy Barman, Learned senior counsel further submitted that the appellant-plaintiff in the suit for Specific Performance of Contract got decree against the original owner of the suit land, but he did not comply with the judgment of the Learned trial Court. Finally, the appellant-plaintiff filed one execution proceeding and in the execution proceeding, the present defendant and the original owner contested the same and as per the order of the execution proceeding, the suit deed was executed and registered in favour of the appellant-plaintiff by the Sheristadar of the Court and the possession was handed over at the time of execution and registration of deed. But, later on, the respondent-defendant in collusion with the original owner Paritosh Saha dispossessed the appellant-plaintiff from the suit land on 25.05.2015.

12. Mr. Roy Barman, Learned Senior counsel for the appellant-plaintiff further submitted that the original owner violating the order of injunction order of the Court executed the sale deed in favour of the respondent-defendant which was barred by the principle of *lis pendence*

under Section 52 of TP Act and furthermore, creation of khatian does not confer any title.

13. Mr. Roy Barman, Learned Senior counsel further submitted that in the execution proceeding also, the present respondent-defendant filed objection which was also dismissed by order dated 28.03.2016 in case No. Misc.(Exe)6 of 2015 and challenging that order, the respondent-defendant preferred an appeal which was also dismissed. So, considering all the aspects, the Learned trial Court decreed the suit in favour of the appellant-plaintiff. Furthermore, during pendency of the said suit and inspite of issuing injunction order by the Court said Paritosh Saha transferred the suit land to the respondent-defendant which was barred in view of the provision provided under Section 52 of TP Act. But the Learned first appellate Court misinterpreted and misconstrued the factual and legal aspects and ultimately came to an erroneous finding that no possession was given to the appellant-plaintiff. So, the question of dispossession does not arise and ultimately came to an observation that no possession was given to the appellant-plaintiff. Furthermore, the suit land was mutated in the name of respondent-defendant vide khatian No.23685 which remain un-rebutted. The appellant-plaintiff also did not challenge the order of mutation (Exbt.1) and disbelieved the story of possession and dispossession of the appellate-plaintiff and finally, reversed the finding of the Learned trial Court for which Learned Senior counsel urged for intervention of this Court by allowing the appeal setting aside the judgment of the First appellate Court and to uphold the judgment of the Learned trial Court.

14. Per contra, Mr. D.R. Chowdhury, Learned senior counsel appearing for the respondent-defendant submitted that as alleged by the appellant-plaintiff, the civil suit was filed against said Paritosh Saha but

the present respondent-defendant was not a party of the said civil suit for which the suit was suffering from defect of necessary party.

15. Mr. Chowdhury, Learned senior counsel further submitted that as relied upon by Learned trial Court Section 52 of TP Act would not apply in this case and furthermore, no possession was given to the appellant-plaintiff by the Court, even, no order was passed for handing over possession of the suit land to the appellant-plaintiff. So, the story of possession and dispossession as alleged by the appellant-plaintiff was nothing but a false and concocted story.

16. Mr. Chowdhury, Learned senior counsel further submitted that even the sale deed of the respondent-defendant was not challenged by the appellant-defendant to any other forum. So, according to Learned senior counsel for the respondent-defendant, Learned first appellate Court rightly and reasonably reversed the finding of the judgment of the Learned trial Court and urged for dismissal of the present appeal with costs.

17. I have heard detailed argument of both the sides and gone through the records of the Learned Court below very carefully. Here in this case, it is to be decided whether the judgment of the Learned first appellate Court is perverse or not. The detailed fact of the case has already been discussed earlier and now it is on record that the Learned trial Court below decreed the suit in favour of the present appellant-plaintiff which the Learned first appellate Court reversed. The crux question to be decided is that whether the appellant-plaintiff got possession of the suit land as per order of the Court or not and if the appellant got possession of the suit land then the next question will come regarding the fact of alleged dispossession. Learned counsel for the respondent-defendant strongly objected the submission made by Learned senior counsel for the appellant-plaintiff that no possession was

given to the appellant-plaintiff at any point of time rather the suit land was under peaceful possession of the respondent-defendant and he got the land mutated in his favour and khatian stands in his favour which has not been challenged by the appellant-plaintiff. Even, the deed of the respondent-defendant was also not challenged by the appellant-plaintiff. It is on record that during pendency of the suit filed by the appellant-plaintiff, the suit land was transferred by the original owner Paritosh Saha in favour of the respondent-defendant violating the order of injunction passed by the Court in connection with Misc. (Inj.)151 of 2013 dated 12.11.2013 for which the purchase of the respondent-defendant was barred by the provision of Section 52 of the Transfer of Property Act. Here, I would like to refer herein below the relevant provision of Section 52 of Transfer of Property Act which reads as under :

**"52. Transfer of property pending suit relating thereto.-
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During the [pendency] in any Court having authority [within the limits of India excluding the State of Jammu and Kashmir] or established beyond such limits] by [the Central Government] of any suit or proceeding [which is not collusive and] in which any right to immoveable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose.

[Explanation.-- For the purposes of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or order, and complete satisfaction or discharge of such decree or order has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force.]"

18. Furthermore, on perusal of Exbts.6/A to 6/H it appears that at the time of execution of deed on 21.03.2015, the possession of the suit property was handed over to the appellant-plaintiff. More so, it also

appears that challenging the execution proceeding, the respondent-defendant filed an application under Order 21 Rule 98 to 101 of CPC which was also dismissed by order dated 28.03.2016 passed in Misc.(Exe)06 of 2015 and that order was also challenged to the appellate forum which also has been dismissed by the Learned Appellate Court. So, the plea of respondent-defendant that suit was defect of necessary party and the matter was beyond the knowledge of the respondent-defendant cannot be legally accepted.

19. Furthermore, the Learned First Appellate Court at the time of delivery of the judgment came to an observation that no possession was given to the appellant-plaintiff at the time of execution of deed which in my considered view Learned First Appellate Court misinterpreted in appreciating the evidence on record because on perusal of Exbt.6/A to 6/H it is crystal clear that at the time of execution and registration of the sale deed the suit property was handed over to the appellant-plaintiff and thereafter, he was dispossessed by the respondent-defendant. But the Learned First Appellate Court also came to the observation that since the khatian stood in the name of respondent-defendant, so, the presumption will go in favour of the respondent-defendant is also not tenable as per law and appreciated in view of established principles of law that khatian does not confer any title. In **Suraj Bhan & Ors. versus Financial Commissioner & Ors.** reported in **2007 Legal Eagle (SC) 451** the Hon'ble Apex Court in para-9 of that judgment observed as under :

"9. There is an additional reason as to why we need not interfere with that order under Article 136 of the Constitution. It is well settled that an entry in Revenue Records does not confer title on a person whose name appears in Record of Rights. It is settled law that entries in the Revenue Records or Jamabandi have only 'fiscal purpose' i.e. payment of land-revenue, and no ownership is conferred on the basis of such entries. So far as title to the property is concerned, it can only be decided by a competent Civil Court (vide Jattu Ram

v. Hakam Singh and Ors., AIR 1994 SC 1653). As already noted earlier, Civil Proceedings in regard to genuineness of Will are pending with High Court of Delhi. In the circumstances, we see no reason to interfere with the order passed by the High Court in the writ petition."

But the Learned First Appellate Court at the time of delivery of judgment did not consider all the legal and factual aspects and misinterpreted the legal provisions and ultimately reversed the finding of Learned trial Court which in my considered view Learned First appellate Court committed serious error and for that, the interference of the Court is required for meeting up of the principles of natural justice. The substantial questions of law framed are accordingly answered in favour of the appellant-plaintiff.

20. In the result, the appeal filed by the appellant-plaintiff is hereby allowed on contest with costs against the respondent-defendant. The judgment dated 03.03.2022 and decree dated 11.03.2022 delivered by Learned District Judge, West Tripura, Agartala in connection with Title Appeal No.06 of 2019 is hereby set aside. The judgment dated 10.10.2018 and decree dated 13.11.2018 delivered by Learned Civil Judge, Senior Division, Court No.2, West Tripura, Agartala in connection with Title Suit No.113 of 2016 is hereby upheld and accordingly it is affirmed.

The case is thus disposed of on contest.

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

Prepare the decree accordingly.

Send down the LCRs forthwith.

JUDGE