

**HIGH COURT OF TRIPURA
AGARTALA
RSA 06 of 2022**

Sri Manindra Debnath,
son of late Man Mohan Debnath,
resident of Joypur, P.O. Agartala,
P.S. West Tripura, District : West Tripura

----- Plaintiff-Appellant(s)

Versus

Sri Ajit Goswami,
son of late Kalipada Goswami,
resident of Joypur, P.O. Agartala,
P.S. West Agartala

-----Respondent(s)

For Appellant(s)	:	Mr. Raju Datta, Adv.
For Respondent(s)	:	Mr. H.K. Bhowmik, Adv.
Date of Hearing	:	06.03.2024
Date of Judgment & Order	:	13.03.2024
Whether fit for reporting	:	YES

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

Heard Mr. Raju Datta, Learned counsel appearing for the appellant-plaintiff as well as Mr. H.K. Bhowmik, Learned counsel appearing for the respondent-defendant.

2. This appeal has been filed under Section 100 of CPC challenging the judgment dated 23.08.2021 delivered by Learned District Judge, West Tripura, Agartala in connection with Title Appeal No.30 of 2018. By the said judgment, the Learned District Judge affirmed the judgment and decree dated 26.07.2018 delivered by

Learned Civil Judge, Senior Division, Court No.2, West Tripura, Agartala in connection with Case No.Title Suit No.51 of 2015.

3. Before proceeding with the merit of the appeal, let was revisit the subject matter of dispute cropped up 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 seeking a decree of declaration of right, title and interest over the suit land as mentioned in Schedule-A of the plaint and also a decree for recovery of possession over the suit land as mentioned in Schedule-B of the plaint. According to the appellant-plaintiff on 11.02.1997 the plaintiff purchased land measuring 0.20 acres i.e. 10 gandas vide registered Sale Deed bearing No.1-840 dated 11.02.1997 from one Sukumar Debnath and got possession of the same and was enjoying the said land by way of cultivation. He also got finally published khatian for the said land. The respondent-defendant having adjacent land to the plaintiff on 07.07.2013 at about 9.00 a.m. along with some other persons created obstruction against the appellant-plaintiff and did not allow him to enter into his land and forcefully took possession of land measuring 3 gandas and 2 karas as mentioned in Schedule-B of the plaint. Thereafter, in the 3rd week of August, 2013 and in the 1st week of July, 2014 and on 10.05.2015 when the appellant-plaintiff again tried to enter into the suit land that time again the respondent-defendant raised obstruction and lastly on 07.06.2015 the appellant-plaintiff noticed that the respondent-defendant was making preparation for digging a pond therein.

4. The respondent-defendant contested the suit by filing written statement wherein he asserted that the appellant-plaintiff purchased 10 gandas of land and on the same day he also purchased

25 gandas of land from the said vendor and both the lands are adjacent to each other. But the plaintiff actually got possession of 6 gandas 2 karas of land and the remaining 3 gandas and 2 karas of land covered under C/S Plot No.4910(P) was recorded in the name of State P.W.D. Department in khatian No.6/29. It was further asserted that in the year 1967 by notification dated 26.06.1967 the State Government acquired some portion of land along with other lands from the different joteders including land measuring 3 gandas 2 karas appertaining to C/S Plot No.4910(P) which was mentioned in Schedule-B of the plaint but said 3 gandas 2 karas according to the respondent-defendant already acquired by the State Government. It was further asserted that he is in possession of 25 gandas of land and he never acquired any portion of land belonging to the appellant-plaintiff. Hence, he prayed for dismissal of the suit with costs. Upon the pleadings of the parties following issues were framed by the Learned Trial Court below.

- (i) Is the suit maintainable in its present form and nature ?**
- (ii) Whether the plaintiff has right, title and interest over the suit land?**
- (iii) Whether the plaintiff is entitled to the decree for declaration of the title and recovery of khash possession of the suit land?**

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

"A) Name of the plaintiff-appellant's Witnesses :-

**PW-1- Shri Manindra Debnath
PW-2- Tinku Debnath
PW-3- Ajit Debnath**

B) Plaintiff's Exhibits :

- 1) Original Sale Deed vide No.1-840 dated 11.02.1997 (in 3 sheets) marked as Exbt.1.**
- 2) Exbt.2- Original Khatian vide No.6860, 2321, 2914/1, 2914/2, 2914/3, 2914/4 and 2914/5 of Mouja-Ramnagar, marked as Exbts.2, 3, 4, 5, 6, 7 & 8.**
- 3) Original Hal Maps dated 23.12.2014 and 20.04.2015 marked as Exbt.9 & 10.**

C) Defendant's Witnesses :-

DW-1- Shri Ajit Goswami
DW-2- Sukumar Debnath
DW-3- Md. Abu Taher Miah

D) Defendant's Exhibits :-

- 1) Original registered Sale Deed vide no.1-839 dated 11.02.1997 in 5 sheets marked as Exbt.A/1 to A/5.**
- 2) Computerized khatian vide no.5449 of Mouja-Ramnagar marked as Exbt.B.**
- 3) Computerized Khatian vide No.6/29 of Mouja-Ramnagar marked as Exbt.C.**
- 4) Notification of Govt. of Tripura dated 26.06.1967 in 3 sheets marked as Exbt.D/1 to D/3."**

6. Finally, on conclusion of the trial and also after hearing of argument of both the sides Learned Trial Court below by judgment dated 26.07.2018 dismissed the suit of the appellant-plaintiff. The operative portion of the judgment dated 26.07.2018 runs as follows :

"In the result, the suit is dismissed on contest without cost.

Accordingly, plaintiff is not entitled to the decree for declaration of title and recovery of khash possession of the suit land in the suit.

So, the suit is hereby disposed of without cost."

7. Challenging the judgment, the plaintiff-appellant preferred an appeal under Section 96 of CPC before the Court of Learned District Judge, West Tripura, Agartala and the Learned District Judge, West Tripura, Agartala after hearing arguments of both the sides vide judgment dated 23.08.2021 also dismissed the appeal of the appellant-plaintiff upholding the judgment of Learned Trial Court. For the sake of convenience, the operative portion of judgment and order of the Learned First Appellant Court is mentioned herein below :

"So far claim of the plaintiff-appellant that the defendant-respondent dispossessed him from the suit land as shown in Schedule-'B', the same is not sustainable as there is no evidence to establish the said plea and the defendant-respondent has successfully placed before the Ld. Trial Court that he is in possession of 25 gandas of land, which he purchased from said Sukumar Debnath.

In view of the aforesaid findings, I find no error in the impugned judgment and decree of the Ld. Trial Court passed in T.S. 51 of 2015.

Accordingly, this Title Appeal is dismissed.

The judgment and decree dated 26th July, 2018, passed by Ld. Civil Judge (Sr. Division), Court No.2, West Tripura, Agartala is upheld and affirmed. Prepare the decree accordingly. This Title Appeal stands disposed of on contest with cost."

8. Being aggrieved with the judgment, the said appellant again preferred this second appeal under Section 100 of CPC before the High Court. At the time of admission of appeal by order dated 03.02.2022 following substantial question of law was formulated:

"(I) Whether the learned Trial Court and the Appellate Court are justified in giving a finding without framing an issue and under apprehension without there being no evidence with regard to whether the Government has acquired the portion of land which is the subject matter of the dispute ?"

9. In course of hearing of arguments, Mr. Raju Datta, Learned counsel appearing for the appellant-plaintiff submitted that both the Court's below did not consider for holding survey commission for identification of the disputed property for which both the Learned Courts below committed serious error in deciding the issue and ultimately dismissed the suit and the appeal of the appellant.

10. Learned counsel for the appellant-plaintiff further submitted that without considering the documentary evidence on record just on the basis of oral evidence dismissed the suit of the plaintiff. So, Learned counsel urged for setting aside the judgment of the First Appellate Court and submitted for remanding back the case record to the Learned Trial Court for appointment of survey commissioner for identification of the suit land.

11. On the other hand, Mr. H.K. Bhowmik, Learned counsel appearing for the respondent submitted that both the Learned Courts below gave concurrent findings and there is no perversity in the judgment of the First Appellate Court because according to Learned counsel, all though the appellant-plaintiff purchased 10 gandas of land by registered deed of instrument but practically he got possession of

lesser quantum of land. So, just to occupy the land of the respondent-defendant he has filed this fabricated suit.

12. Learned counsel further submitted that the Learned trial Court below after considering the oral and documentary evidence on record dismissed the suit and the Learned First Appellate Court also after hearing both the sides came to the observation that there was no merit in the appeal filed by the appellant for which the Learned First Appellate Court dismissed the appeal upholding the judgment of Learned Trial Court.

Considered.

13. I have heard detailed argument of both the sides and gone through the records of Learned Court below including the oral and documentary evidence on record. Admittedly, in this case, the appellant-plaintiff and the respondent-defendant purchased land from the common vendor namely Sukumar Debnath. The appellant-plaintiff purchased land measuring 20 satak (10 gandas) and the respondent-defendant purchased land measuring 50 satak (25 gandas).

14. Now, if we go through the title deeds of both the rival parties it appears that at the time of execution of sale deed the original vendor in his recital specifically stated that from land measuring 77 satak he has disposed of land measuring 20 satak (10 gandas) to the appellant-plaintiff and sold land measuring 25 gandas to the respondent-defendant. If it is so, then still he had left 7 more sataks in his record. The appellant-plaintiff before the Trial Court produced Exbt.2 from which it appears that those purchased land has been recorded in the khatian during draft publication and also during the final publication of record of rights.

15. Now, if we go through the documentary evidence on record of the respondent-defendant it appears that all though he purchased 25 gandas i.e. 50 sataks of land but initially, he got mutation for land measuring 43 sataks and for remaining land measuring 7 sataks he had filed one petition before the Learned District Collector, West Tripura, Agartala under Section 95 of TLR & LR Act and by order dated 29.05.2015 Learned District Collector passed an order for correction of record deducting land measuring 7 sataks from the khatian bearing No.2321 of the appellant-plaintiff from the Survey plot No.7126/9587. But the appellant-plaintiff in his pleading did not submit anything nor took any step for making District Collector as party in the suit.

16. There is also no conclusive evidence on record that he took any step for correction of record for the land measuring 7 sataks which was deducted from his khatian. Rather, from the oral evidence it appears that all though he has purchased 10 gandas of land but he got possession only for land measuring 6 gandas and 2 karas only and the remaining 3 gandas and 2 karas of land was either entered in the 'Nayonjoli' which was acquired by the Government or the same still lies under the possession of original vendor Sukumar Debnath because the respondent-defendant in his pleading or by his evidence specifically stated that he is possessing his purchased land and he does not have any claim land beyond his purchased land. There is also no evidence on record that the respondent-defendant is possessing any other land beyond his purchased land. In a suit for dispossession, the plaintiff should always prove that he was in possession of a particular land from which he was dispossessed.

17. Here in this case, before the Learned Court all though the appellant-plaintiff stated that he purchased land measuring 10 gandas from said Sukumar Debnath but failed to prove that he got possession over the suit land as mentioned in Schedule-B from which he was dispossessed by the defendant.

18. Situated thus, both the Learned Courts below came to the findings that the appellant-plaintiff is not entitled to relief for recovery of possession as mentioned in Schedule-B of the plaint. As already stated, the respondent-defendant did not deny the right, title and interest of the appellant-plaintiff in respect of 6 gandas 2 karas land but he submitted that remaining 3 gandas 2 karas land was acquired by the State Government. It is on record that in the year 1967, some portion of land was acquired by the Government for the purpose of embankment or 'Nayonjoli' from original Plot No.4910(P), along with other lands of different jote holders. Still a question will remain as to whether any land of the appellant-plaintiff has been acquired by the Government or not or 7 sataks land which discussed to have been not available within the purchased land of the appellant-plaintiff, in that case the same may still remain under the possession of the original vendor Sukumar Debnath. In this regard, none of the Courts below gave any findings, nor even the parties of the suit specifically the appellant-plaintiff highlighted anything before the Learned Court below. Because from 77 sataks of land, in respect of original plot No.4910, if any land is acquired from the original C/S plot, in that case, the same might have acquired either from the land of present appellant-plaintiff or from the original jotedar, Sukumar Debnath. In the given case, Sukumar Debnath hold 77 sataks of land in the aforesaid plot No.4910 and from that, he has disposed of 70 sataks

(20 + 50) sataks to the parties of this appeal. So, naturally, he should have left 7 sataks of land with him. But the present appellant-plaintiff, all though, purchased 20 sataks of land from said Sukumar Debnath but he is possessing 13 sataks of land. Meaning thereby, he got only possession of 13 sataks out of 20 sataks and the rest 7 sataks of his land has been entered in the 'Nayonjoli' and the original owner might have handed over possession of the said acquired land i.e. 7 sataks + 13 sataks in total 20 sataks keeping rest land measuring 7 sataks with him, for which the appellant-plaintiff shall have the liberty to take recourse of law against said Sukumar Debnath because there is no evidence on record that the appellant-plaintiff got any award/compensation for acquisition of land. Rather, there is evidence on record that as per notification of the year 1967 notice was issued to Sukumar Debnath and by this time, he might have received the award/compensation from the authority.

19. Under the facts and circumstances of the given case considering the evidence on record it appears to me that the Learned Trial Court below rightly dismissed the suit of the appellant-plaintiff for want of proper evidence on record and also the Learned First Appellate Court after appreciating the evidence on record rightly and reasonably uphold the judgment of the Learned Trial Court.

20. Thus, I find no infirmity in the judgment passed by First Appellate Court and thus the substantial question of law is accordingly answered.

In the result, the appeal filed by the appellant-plaintiff stands dismissed being devoid of merit and the judgment dated 23.08.2021 passed in Title Appeal No.30 of 2018 by the Learned District Judge, West Tripura, Agartala confirming the judgment dated

26.07.2018 delivered by Learned Civil Judge, Senior Division, Court No.2, West Tripura, Agartala in connection with Case No.Title Suit No.51 of 2015 is hereby upheld and accordingly it is affirmed.

Prepare the decree accordingly.

Send down the LCRs forthwith with copy of judgment.

JUDGE

