

**HIGH COURT OF TRIPURA
AGARTALA**

RSA No.03 of 2022

Sri Gopal Dey,
S/O. Late Nagendra Kumar Dey
R/O. M.B.C Nagar, PS:- Belonia
District:- South Tripura

.....Plaintiff Appellant

Versus

- 1. Sri Lal Mohan Dey,**
S/O. Lt. Khitish Ch. Dey of M.B.C Nagar,
PS:- Belonia, South Tripura (Since dead)
- 1a. Sri Harihar Dey,**
S/O. Lt. Lal Mohan Dey,
- 1b. Sri Khokan Dey,**
S/O. Lt. Lal Mohan Dey,
- 1c. Sri Prankrishna Dey,**
S/O. Lt. Lal Mohan Dey,
- 1d. Smt. Upasana Dey,**
W/O. Bipul Dey,
D/O. Lt. Lal Mohan Dey,

All are residents of M.B.C Nagar
PS:- Belonia, South Tripura
[Principal defendant respondents No.1a to 1d are the legal heirs of Late
Lal Mohan Dey]

.....Defendant Respondents

- 2. Smt. Niharbala Dey,**
W/O. Late Nagendra Kr. Dey (Since dead)
- 3. Sri Chandan Dey,**
S/O. Late Nagendra Kr. Dey
- 4. Sri Keshab Dey,**
S/O. Late Nagendra Kr. Dey
- 5. Smt. Ujjala Dey,**
D/O. Late Nagendra Kr. Dey
- 6. Smt. Sajali Dey,**
D/O. Late Nagendra Kr. Dey
- 7. Sri Goutam Dey,**
S/O. Late Haradhan Dey
- 8. Sri Litan Dey,**
S/O. Late Haradhan Dey (Since dead)

.....Plaintiff's Pro-Respondents

On the death of Respondent No.9 Renu Bala Dey, W/O. Late Haradhan Dey substituted by her legal heirs:-

9(a). Smt. Arati Dey (Das),

W/O Late Maran Das,
Resident of Santir bazaar, R.K. Ganj,
(Near Shanti Ashram) P.O. & P.S.- Santir Bazar,
Dist- South Tripura, Tripura, PIN-799144.

9(b). Smt. Malati Dey (Paul),

W/O. Sri Madhusudan Paul,
Resident of Sonamura, Kathaliya,
(Near Kathaliya Bazar) P.O. & P.S.- Kathaliya,
District-Sepahijala, Tripura, PIN-799132.

10. Smt. Bijali Dey,

W/O Paliton Dey,
{Resident no.3 to 10 are the legal heirs of deceased
Niharbala Dey}
All are R/O. Vill-M.B.C Nagar, P.O. & P.S.:- Belonia,
District:- South Tripura.

.....Proforma Defendant Respondents.

For Appellant(s)	:	Mr. Ratan Datta, Adv,
For Respondent(s)	:	Mr. S. M. Chakraborty, Sr. Adv, Ms. P. Chakraborty, Adv.
Date of Hearing	:	22.07.2024
Date of delivery of Judgment and Order	:	29.07.2024
Whether fit for Reporting	:	YES

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

This appeal is directed against the judgment and decree dated 29.09.2021 and 01.10.2021 respectively of the Learned First Appellate Court, Belonia, South Tripura in connection with case No.T.A.No.14 of 2019 whereby and where under the Learned First Appellate Court also affirmed the judgment dated 15.03.2019 and consequential decree

thereof delivered by Learned Civil Judge (Junior Division), Belonia, South Tripura in T.S. No.20 of 2008.

02. Heard Learned Counsel, Mr. Ratan Datta for the appellant and also heard Learned Senior Counsel, Mr. S. M. Chakraborty assisted by Learned Counsel, Ms. P. Chakraborty for the contesting respondents. Before entering into the merit of this appeal, let us project the subject matter of dispute amongst the rival parties at first. The appellant as plaintiff and other pro-respondents filed a suit bearing No.T.S.20 of 2008 against the respondent-defendants for declaration of right, title and interest and for recovery of possession over the suit land before the Court of Learned Civil Judge (Junior Division), Belonia, South Tripura.

03. It was the case of the appellant that his predecessor Nagendra Kr. Dey and other pro-respondents and the plaintiff, Gopal Dey were the owners in possession of 1.24 acres of land recorded in Khatian No.325 and 557 and after the death of said Nagendra Kr. Dey, the appellant-plaintiff and other pro-respondents being the heirs became the owner and possessor of the suit land. It was also alleged that on 08.12.2007, the defendant forcefully entered into some portion of land measuring 0.38 acres and thus, dispossessed the plaintiff and other pro-respondents from the said land. The plaintiff and other pro-respondents requested the defendant on several occasions to vacate his

possession over the suit land, but he refused. Thereafter, the said plaintiff and other pro-respondents approached the Local Panchayat and thereafter to the Legal Service Authority at Belonia for resolution of the dispute. But the defendant did not accept the settlement and thereafter, the present appellant and other pro-respondents as plaintiffs filed the case for declaration of right, title and interest and for recovery of possession. In the said suit, the defendant-respondents appeared and contested the same by filing written statement, denying the case of the plaintiff-appellant and also submitted that the suit suffers from non-joinder of necessary parties and it was further submitted that the said defendant and plaintiff, Gopal Dey purchased 40 decimals of land from the father of the plaintiffs and after disposal he had left no land for his survivors. Thereafter, plaintiff, Gopal Dey also disposed of 40 decimals of land to one Pintu Dey by an unregistered deed. But that fact was suppressed. So, the contesting defendant by his written statement prayed for dismissal of the suit land with costs.

04. It is to be noted here that initially, Learned Civil Judge, Junior Division on the pleadings of the parties framed issues and after conclusion of trial by a judgment dated 21.09.2010 dismissed the suit and against the judgment, one appeal was framed by the plaintiff-appellant vide Title Appeal No.19 of 2010 before the Court of Learned Additional

District Judge, South Tripura, Belonia and by judgment dated 15.06.2011, the judgment of the Learned Trial Court was set aside and the suit was remanded back with certain directions.

05. After remanding back the case record from the Learned First Appellate Court, Learned Trial Court below framed further issues afresh:

"i) Whether the suit is maintainable in its present form?

ii) Whether the suit land is covered by the Khatian of the plaintiffs or by the purchased deed of the defendant?

iii) Whether the plaintiffs are entitled to get a decree declaring their title over the suit?

iv) Whether the plaintiffs are entitled to get a decree for recovery of possession of the suit land?

v) Whether the plaintiffs are entitled to get any other relief/reliefs, if so up to what extent?"

06. In order to prove the case, the plaintiff appellant, Gopal Dey was examined as PW-1 and one Sri. Kantilal Dey as PW-2 and certain documents were exhibited in this case which are as follows:

A) PLAINTIFFS WITNESSES:-

PW-1 Gopal Dey,

PW-2 Kantilal Dey,

B) PLAINTIFFS EXHIBITS:-

Exbt.1: Allottee Khatian No.325,

Exbt.2: Finally published Khatian No.557.

07. During the period of subsequent trial, the respondent-defendant inspite of allowing opportunity could not adduce any oral/documentary evidence on record in support of his defence. Although in the earlier suit, four witnesses were adduced by the said respondent-defendant and certain documents were exhibited which were marked as Exhibit-A to Exhibit-D:

A) DEFENDANT WITNESSES:-

DW 1- Lal Mohan Dey,

DW 2- Babul Majumder,

DW 3- Narayan Majumder,

DW 4- Pintu Dey,

B) DEFENDANT EXHIBITS:-

Exbt. A: Unregistered sale deed,

Exbt. B: Signature of plaintiff no.4 on the sale deed,

Exbt. C: Sale deed no.I-2195 of 1996,

Exbt. D: Certified copy of same deed no.I-2194 of 1991.

08. Thereafter, on conclusion of trial, the Learned Trial Court below by judgment and decree dated 15.03.2019 dismissed the suit of the plaintiff-appellant. For the sake of convenience, I would like to refer herein below the operative portion of the judgment/order of the Learned Trial Court (Second judgment) which runs as follows:

"[13] In the result, the instant suit preferred by the plaintiffs against the defendant is hereby dismissed without cost.

[14] Thus the suit stands disposed of on contested.

[15] Prepare decree accordingly and put its signature within 14 days from today."

09. Challenging that judgment, the plaintiff-appellant preferred appeal before the Court of Learned District Judge, South Tripura, Belonia and Learned District Judge by judgment dated 29.09.2021 passed in Title Appeal No.14 of 2019 dismissed the appeal filed by the appellants. For the sake of convenience, I would like to refer herein below the operative portion of the Learned First Appellate Court which is as follows:

"[14] In the result, I find no merit in the appeal to interfere with the judgment and decree passed by the learned trial Court in Case No. T.S. 20 of 2008. Therefore, the appeal merits rejection which I hereby do.

[15] Prepare appellate decree accordingly."

10. Challenging that judgment, the appellant has preferred this Second Appeal before this Court. At the time of admission of appeal, by order dated 31.03.2022, this Court framed the following substantial question of law:

"Can only ROR of the Plaintiff supersede his Title Deed for determining title where as the title deed (Purchase Deed, Exhibit-C) exhibited without objection?"

11. At the time of hearing of argument, Learned Counsel for the appellant first of all drawn the attention of the Court referring para No.3 of the initial plaint filed before the Learned Court and submitted that in said para No.3, it was asserted that the defendant after purchasing of 0.44 acres of land all on a sudden on 08.12.2007 forcefully

dispossessed the plaintiffs from 0.38 acres of land on the eastern side as mentioned in Schedule-A of the plaint which is the suit land of that suit.

Thereafter, Learned Counsel further drawn the attention of the Court referring para No.10 of the written statement filed by the respondent filed before the Learned Trial Court, wherein the respondent specifically stated that on 27.12.1991 by a registered deed, the defendant purchased 44 decimals of land from Nagendra Kr. Dey out of 88 decimals of land from Hal Plot No.1851/1852 which was situated on the southern side of the said land and the boundary of the said land was surrounded by North- Allotted land of Nagendra Kr. Dey by South- Kshitish Dey, by East- Lal Mohan Dey and by West- Road.

Learned Counsel for the appellant, further submitted that as per plaint, the suit land was appertaining to Khatian No.325 but the purchased land of the defendant was appertaining to Khatian No.86 which are totally different.

Learned Counsel for the appellant further drawn the attention of the Court that after remanding back of the suit, the Learned Trial Court framed the following issue:

“Whether the suit land is covered by the Khatian of the plaintiffs or by the purchased deed of the defendant?”

12. Learned Counsel for the appellant drawn the attention of the Court referring para No.5 of the judgment and submitted that after framing of issue, Court appointed Survey Commissioner to conduct inspection of the suit land. Accordingly, the Survey Commissioner submitted report in this case and the report was accepted by this Court as no objection was raised by the parties before the Learned Trial Court below and Learned Trial Court in deciding aforesaid issue in the last part of issue, specifically stated that the suit land was not covered by the purchased deed of defendant. But the Learned Court below without considering the report of the Survey Commissioner came to the observation that the plaintiff had no valid title over the suit land and dismissed the suit, which needs to be interfered with. Learned Counsel further submitted that the grounds of Second Appeal have been clearly mentioned in the memo of appeal.

Learned Counsel for the appellant further drawn the attention of this Court that although the case was filed for recovery of 0.38 acres of land but the Survey Commissioner after physical inspection found 14 decimals of land wrongly/illegally occupied by the defendant. Accordingly, application for amendment for plaint was filed by the appellant but the Learned Court below rejected the said application. In this regard, Learned Counsel for the

appellant further referred the provision of Order II, Rule 2 of CPC and submitted that in view of the said provision, there was scope to grant decree for the land wrongfully occupied by the contesting defendant, but the Learned Trial Court below did not consider the said provision and referring the evidence of PW-1 during cross-examination, he stated that the said witness during his cross-examination specifically stated that the suit was filed for recovery of 7 gandas of land, but the Learned Trial Court below did not consider the same and dismissed the suit and the judgment of the Learned First Appellate Court was nothing but a replica of the judgment of the Learned Trial Court and finally, urged for allowing this appeal by setting aside the judgment and decree of the Learned First Appellate Court and referred few citations.

13. On the contrary, Learned Senior Counsel, Mr. S. M. Chakraborty assisted by Learned Counsel, Ms. P. Chakraborty drawn the attention of the Court that as submitted by Learned Counsel for the appellant, there was no subsequent development in the suit and the citations as referred by Learned Counsel for the appellant are not applicable in this case, because according to Learned Senior Counsel, the submission of Learned Counsel for the appellant cannot be treated as a subsequent development, rather it could be treated as correction of mistakes. Learned Senior

Counsel, Mr. S. M. Chakraborty also drawn the attention of the Court referring the provision of Order VII, Rule 3 of CPC and submitted that the appellant did not come to the Court with clean hands, because it was the duty of the appellant-plaintiff to give proper description of the suit land which the appellant failed to do so.

Further, Learned Senior Counsel for the respondent submitted that except the appellant, Gopal Dey, no other legal heirs of Nagendra Kumar Dey have/had any right, title and interest over the suit land, but the legal heirs of Nagendra Dey filed the suit without any basis and both the Courts below rightly came to the conclusion that the appellants could not establish their valid title over the suit land. So, the Learned Trial Court below rightly dismissed the suit which was finally affirmed by the Learned First Appellate Court and the present appellant could not prove any substantial question of law to be formulated in this appeal. So, Learned Senior Counsel urged for dismissal of this appeal with costs.

14. At the time of hearing of argument, both the parties have referred some citations for decision of this appeal. I have heard detailed argument of both the sides and gone through the records of the Learned Court below and perused the citations referred by Learned Counsel of the

parties. At the time of hearing, Learned Counsel for the appellant further submitted that although the appellant initially claimed for 38 decimals of land but after survey commission report which was accepted by the parties without any objection, they restricted their claim upto 14 decimals of land and abandoned their right over said 24 decimals of land. Accordingly, the appellant filed one application for amendment before the Trial Court and also to strike out the name of other plaintiffs who are/were not relevant for decision of the suit but that petition was rejected and at the time of filing examination-in-chief on affidavit before the Learned Court, the said fact was specifically asserted by the appellant. But that was not considered by the Learned Trial Court as well as by the Learned Appellate Court. Learned Counsel for the appellant also submitted that in view of the provision provided under Order II, Rule 2 of CPC, there was no bar on behalf of the appellant to restrict his claim for the said quantum of land measuring 14 decimals. Even, the appellant in course of his cross-examination specifically stated that his claim is only restricted to 14 decimals of land and the witnesses of the contesting respondent-defendants also admitted that the contesting respondent-defendants forcefully dispossessed the appellant-plaintiff from 14 decimals of land. So, Learned

Counsel urged for allowing this appeal and to pass decree only for 14 decimals of land only.

15. On the other hand, Learned Senior Counsel, Mr. S. M. Chakraborty assisted by Learned Counsel, Ms. P. Chakraborty for the respondent-defendants countered the submission made by the Learned Counsel for the appellant and submitted that as per Order VII, Rule 3 of CPC, the appellant did not come before the Court with clean hands for which the Learned Courts below rightly turned down the claim of the appellant.

16. Here for the sake of brevity, I would like to refer herein below the relevant provision of Order II, Rule 2 of CPC which provides as under:

Order II, Rule 2 of CPC:-

2. Suit to include the whole claim.-(1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

(2) Relinquishment of part of claim.- Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

(3) Omission to sue for one of several reliefs.- A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.

Explanation.- For the purposes of this rule an obligation and a collateral security for its performance and successive claims arising under the same obligation shall be

deemed respectively to constitute but one cause of action.

17. Further, in course of hearing of argument, Learned Counsel for the appellant referred few citations. In **Smti. Kameswari Saikia vs. Shri Sankarlal Sarkar** dated 25.09.1989 reported in **(1990) 1 GLR 234**, wherein, in para No.9 the Hon'ble Gauhati High Court observed as under:

"9. It is the duty of the court to take notice of events subsequent to the filing of the suit and would decree according to subsequent events, in a proper suit to avoid multiplicity of suit for the same subject matter between the same contesting parties and to save unnecessary expenditure to the parties and time of the court and to do complete justice between the parties. This can be done effectively at the appellate stage also."

18. In **Pasupuleti Venkateswarlu vs. The Motor & General Traders** dated 18.03.1975 reported in **AIR (1975) SC 1409**, wherein Hon'ble the Supreme Court in para No.4 observed as under:

"4. We feel the submissions devoid of substance. First about the jurisdiction and propriety vis-à-vis circumstances which come into being subsequent to the commencement of the proceedings. It is basic to our processual jurisprudence that the right to relief must be judged to exist as on the date a suitor institutes the legal proceedings. Equally clear is the principle that a suitor institutes the legal proceeding. Equally clear is the principle that procedure is the handmaid and not the mistress of the judicial process. If a fact, arising after the lis has come to court and has a fundamental impact on the right to relief or the manner of moulding it, is brought diligently to the notice of the tribunal, it cannot blink at it or be blind to events which stultify or render inept the decretal remedy. Equity justifies bending the rules of procedure, where no specific provision or fairplay is violated, with a view to promote substantial justice--subject, of course, to the absence of other disentitling factors or just circumstances. Nor can we

contemplate any limitation on this power to take note of updated facts to confine it to the trial Court. If the litigation pends, the power exists, absent other special circumstances repelling resort to that course in law or justice. Rulings on this point are legion, even as situations for applications of this equitable rule are myriad. We affirm the proposition that for making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities, the court can, and in many cases must, take cautious cognisance of events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed. On both occasions the High Court, in revision, correctly took this view. The later recovery of another accommodation by the landlord, during the pendency of the case, has as the High Court twice pointed out, a material bearing on the right to evict, in view of the inhibition written into S. 10 (3) (iii) itself. We are not disposed to disturb this approach in law or finding of fact.”

In addition to that, Learned Counsel for the appellant also referred the following citations:

(i) In **Ramesh Kumar vs. Kesho Ram** dated 30.09.1991 reported in **AIR (1992) SC 700** (relevant para Nos.4 & 5).

(ii) In **Sheshambal (Dead) Through LRS. vs. Chelur Corporation Chelur Building and Others** dated 17.02.2010 reported in **(2010) 3 SCC 470** (relevant para Nos.7 & 10).

(iii) **Ram Nibas Gagar (Dead) by L.Rs. vs Debojyoti Das and Others** dated 04.12.2002 reported in **AIR (2003) SC 632** (relevant para No.3)

(iv) **Dr. Susanta Ku. Das vs. Ouat** dated 20.05.2024, in the Hon'ble Orissa High Court. (Relevant para Nos.10, 11, 12, 13, 14).

Referring the said provision and citations, Learned Counsel for the appellant submitted that due to changed circumstances, Learned Trial Court ought to have grant decree for 14 decimals of land but the same was not considered by the Learned Trial Court and dismissed the suit which was affirmed by the Learned First Appellate Court.

19. On the other hand, Learned Senior Counsel for the respondents, in course of hearing of argument referred provision of Order VII, Rule 3 of CPC which provides as under and further submitted that the aforesaid provision was not complied with by the appellant:

Order VII, Rule 3 of CPC:

3. Where the subject-matter of the suit is immovable property.-Where the subject-matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it, and, in case such property can be identified by boundaries or numbers in a record of settlement or survey, the plaint shall specify such boundaries or numbers.

20. In addition to that Learned Senior Counsel also referred another citation of the Hon'ble Apex Court in **Subhaga and Others vs. Shobha and Others** dated 07.07.2006 reported in **(2006) 5 SCC 466**, wherein Hon'ble the Supreme Court in para No.6 observed as under:

"6. The High Court has also upheld the title claimed by the plaintiff over Plot No.1301/1 Ba. Once we accept the identification made by the Commissioner as was done by the first appellate court, it is clear that the plaintiff has the right to have the disputed construction removed and the well filled up. That a property can be identified either by boundary or by any other specific description is well established. Here the attempt had been to identify the suit property with reference to the boundaries and the Commissioner has identified that property with reference to such boundaries. Even if there was any discrepancy, normally, the boundaries should prevail. There was no occasion to spin a theory that it was necessary in this suit to survey all the adjacent lands to find out whether an encroachment was made in the land belonging to the plaintiff. In this situation, we are satisfied that the judgment and decree of the High Court calls for interference. We are also satisfied that the lower appellate court was justified in affirming the decree granted in favour of the plaintiff on the pleadings and the evidence in the case."

Referring the same, Learned Senior Counsel further submitted that the appellant could not give any clear description of the suit property so as to identify the same.

21. It is on record that initially on the suit of the appellant vide No.T.S.20 of 2008 judgment was passed by the then Learned Civil Judge, Junior Division, Belonia, South Tripura on 21.09.2010 and consequential decree was passed. Challenging that judgment, the appellant preferred appeal which was numbered as T.A. No.19 of 2010 and the then Learned Additional District Judge, Belonia, South Tripura, in the said appeal remanded back the suit with the following direction by judgment dated 15.06.2011. For the sake of convenience, I would like to refer herein below the operative

portion of the judgment/order of the then Learned First Appellate Court (Learned Additional District Judge, Belonia South Tripura), which runs as follows:

"10. For the reasons aforesaid, the impugned judgment and decree is set aside.

The suit is remanded to the court below. Learned court below on receipt of the case record shall readmit the suit under its original number in the register of civil suits. Learned court below shall frame the issue No.2 on the point as mentioned above and shall renumber the remaining issues. He shall thereafter appoint a Survey Commissioner to decide the newly framed issue No.2. Needless to say, as regards possession and dispossession of the suit land, the parties shall be entitled to adduce further evidence before the court below.

The evidence on record shall, subject to all just exceptions, be evidence during the trial.

The parties shall appear before the court below on 1.7.2011 for the purpose of receiving directions regarding the further proceeding of the suit."

22. After that, the Trial Court below framed five issues afresh with the following specific Issue No.2 as per order of the Learned First Appellate Court:

"ii) Whether the suit land is covered by the Khatian of the plaintiffs or by the purchased deed of the defendant?"

And in deciding that issue, Learned Trial Court below came to the conclusion that the suit land was not covered by the purchased deed of the defendant and in the judgment, it was also specifically mentioned in para No.5 that as per the direction of the Learned First Appellate Court, Survey Commissioner was appointed who submitted his report in the case and the report of Survey Commissioner was accepted by the Court in absence of any objection from

either of the parties. But in determining the suit, the Learned Trial Court in my considered view, ignored the said report of Survey Commissioner and ultimately, dismissed the suit which was affirmed by the Learned First Appellate Court. As already stated, to substantiate the issues both the parties have adduced their oral/documentary evidence on record. The appellant as PW-1 in his examination-in-chief in affidavit in para Nos.2, 3, 4, 8, 9 & 10 observed as under:

"2. I say that 27/12/1991 on payment of valuable consideration, I purchased .44 decimals of land from my father, which appertains to Mouja Madhya Bharat Chandra Nagar, previously under Maichara Tehsil Kachari; now under Chittamara Tehsil Kachari. Thus I seized and possessed of the same.

This is true to my knowledge.

3. I say that on the same date the defendant Lalmohan Dey purchased remaining .44 decimals of land from my father Late Nagendra Kumar Dey just on the eastern side of my purchased land.

This is true to my knowledge.

4. That I say that after purchasing those entire .44 decimals of land I applied for mutating my name in the Revenue Records, accordingly my name was entered in the Revenue Record by preparing a separate Khatian being the No 557.

This is true to my knowledge.

8. That I say that on 08.12.2007, the defendant who is a habitual land grabber pounced upon my land of and dispossessed me from at least .14 decimals of my purchased land. I tried to resist him, but he and other family members chased me away from legally purchased land. I informed the matter to the O/C of the Belonia Police Station, but no action was taken.

This is true to my knowledge.

9. I say that on that date the defendant also took dominion over .24 decimals of khas land from my possession. As those .24 decimals of land are khas land I have abandoned my claim over those .24 decimals of land.

This is true to my knowledge.

10. I say that I had also filed a prayer before the Sub-divisional Legal Service Authority to assist me for the recovery of my land. The defendant agreed to release those encroached upon land if on survey it was found that he has in possession of the land of the plaintiff. Accordingly Honourable Judge of the Temporary Lok Adalat appointed one Rash Behari Bhattacharjee and on making survey he found that .14 decimals of land from Plot No 1851/2363 my purchased land is in possession of the Defendant and he further observed that .24 decimals of khas land encroached upon by the defendant.

This is true to my knowledge."

During cross-examination said appellant PW-1 stated that the present suit is filed for recovery of 7 gandas of land.

23. PW-2 Kantilal Dey in his examination-in-chief in affidavit in para Nos.3, 4 & 6 observed as under:

"3. I say that my elder brother Lalmohan Dey. Although he has vast track of terrain producing rubber latex and paddies, till then this land grabbing attitude ends never. He has had an irrepressible lust for land and money.

This is true to my knowledge.

4. I say that on 08.12.2007 my elder brother Lalmohan Dey dispossessed my cousin brother Sri Gopal Dey from at least 7 to 8 gandas of land. It was apparently visible that, what my brother purchased from Late Nagendra Kr. Dey; he overlapped his purchased land and encroached upon the land of Gopal Dey.

This is true to my knowledge.

6. I say that perhaps on 20.08.2015 (the exact date I cannot now recollect), I was present, when a Survey Commissioner was surveying the land of Gopal Dey and Lal Mohan Dey; I was present there and found that from the eastern side of Gopal Dey's purchased land, Lal Mohan Dey encroached upon nearly .14 decimals of land.

This is true to my knowledge."

During cross-examination, he stated that Gopal Dey is the sole plaintiff of this suit and there were no other plaintiff in the suit and the Dag No. of the suit land is 2363.

Further stated that the present suit has been filed in respect of the land of the plaintiff, Gopal Dey and he was present at the time of measurement of the suit land. The respondent-defendant, Lalmohan Dey in course of his cross-examination stated that he shall have no objection if the suit is decreed in favour of Gopal Dey on his land.

24. I have also perused the report of Survey Commissioner. It appears that the contesting respondent-defendant was forcefully occupying 14 decimals of land belonging to the appellant-plaintiff. From the provision of Order II, Rule 2 of CPC, it also appears that the plaintiff of any case may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

25. This present appeal is preferred under Section 100 of CPC. In this regard, Hon'ble the Supreme Court of India in **Boodireddy Chandraiah and Others vs. Arigela Laxmi and Another** dated 17.09.2007 reported in **(2007) 8 SCC 155** in para No.12 observed as under:

"12. The principles relating to Section 100 CPC relevant for this case may be summarized thus:

(i) An inference of fact from the recitals or contents of a document is a question of fact. But the legal effect of the terms of a document is a question of law. Construction of a document involving the application of any principle of law, is also a question of law. Therefore, when there is misconstruction of a document or wrong application of a principle of law in construing a document, it gives rise to a question of law.

(ii) The High Court should be satisfied that the case involves a substantial question of law, and not a mere question of law. A question of law having a material bearing on the decision of the case (that is, a question, answer to which affects the rights of parties to the suit) will be a substantial question of law, if it is not covered by any specific provisions of law or settled legal principle emerging from binding precedents, and, involves a debatable legal issue. A substantial question of law will also arise in a contrary situation, where the legal position is clear, either on account of express provisions of law or binding precedents, but the court below has decided the matter, either ignoring or acting contrary to such legal principle. In the second type of cases, the substantial question of law arises not because the law is still debatable, but because the decision rendered on a material question, violates the settled position of law.

(iii) The general rule is that the High Court will not interfere with the concurrent findings of the courts below. But it is not absolute rule. Some of the well-recognised exceptions are where (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inference from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. When we refer to 'decision based on no evidence', it not only refers to cases where there is a total dearth of evidence, but also refers to any case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding."

26. Situated thus, it appears to this Court that both the Learned Courts below have erred in ignoring the facts of forceful occupation of 14 decimals of land by the respondent-defendant and since the respondent-defendant did not raise any objection over said 14 decimals of land, so, the appellant-plaintiff is entitled to get recovery of possession of the said land from the contesting respondent-defendant,

belonging to the appellant-plaintiff. The substantial question of law formulated, is accordingly answered.

27. Admittedly, the suit was filed for 38 decimals of land by the appellant-plaintiff, but later on he abandoned his claim for the rest 24 decimals of land, rather, restricted his claim upto 14 decimals of land and accordingly, the appellant-plaintiff filed a prayer for amendment of plaintiff before the Learned Court below which was dismissed by order dated 15.03.2019. So, after hearing both the sides and going through the citations referred by Learned Counsel for the appellant, it appears that this suit be remanded back to the Learned Court below with a direction to the appellant-plaintiff to submit a fresh prayer for amendment of plaint for land measuring 14 decimals (7 gandas) mentioning specific and clear boundary based on the report of Survey Commissioner and the Learned Court below shall pass a fresh judgment after allowing amendment of the application of the appellant-plaintiff on hearing both the sides. Learned Trial Court below may rely upon the earlier evidence on record, if not required to be recorded fresh evidence.

28. In the result, the appeal filed by the appellant-plaintiff is hereby allowed on contest. The judgment and decree dated 29.09.2021 and 01.10.2021 respectively of the Learned First Appellate Court, Belonia, South Tripura in

connection with case No.T.A.No.14 of 2019 as well as the judgment and decree dated 15.03.2019 passed by Learned Civil Judge, Junior Division, Belonia, South Tripura in connection with case No.T.S.No.20 of 2008 is hereby set aside. The suit be remanded back to the Learned Trial Court below with a direction upon the appellant-plaintiff to submit a fresh prayer for amendment of plaint in respect of 14 decimals of land mentioning clear description of the property and the Learned Court below shall after hearing both the sides, allow the petition and thereupon pass a fresh judgment and decree based on Survey Commissioner's Report and evidence on record within a period of three months from the date of receipt of the copy of this judgment. Both the parties shall accordingly appear before the Learned Trial Court below for further proceeding on 12.08.2024.

Send down the LCRs along with a copy of the judgment.

Prepare decree accordingly.

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

JUDGE

MOUMITA DATTA  Digitally signed by MOUMITA
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Date: 2024.07.30 18:16:26 +05'30'

Purnita