

**HIGH COURT OF TRIPURA
AGARTALA
RSA No.4 of 2022**

Sri Sailesh Paul

Son of Late Surendra Chandra Paul
Resident of village Deolia Tilla,
Dhalabil, P.O. – Khowai Tea Garden,
P.S.- Khowai, District – Khowai, Tripura.

----- Appellant-plaintiff

Versus

1. Sri Ranjit Paul @ Moran Paul,

2. Sri Sanju Paul

3. Sri Samarjit Paul,

All sons of Late Radha Govinda Paul
and all are residents of village Deolia Tilla,
Dhalabil, P.O. – Khowai Tea Garden,
P.S. – Khowai, District – Khowai, Tripura.

----- Respondents-defendants

For Appellant(s)	:	Mr. D. Bhattacharya, Sr. Adv, Mr. S. Das, Adv, Mr. S. Saha, Adv.
For Respondent(s)	:	Mr. S. Lodh, Adv.
Date of hearing	:	01.04.2024
Date of delivery of Judgment & Order	:	23.04.2024
Whether fit for reporting	:	NO

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

This appeal is preferred challenging the judgment dated 27.08.2021 and decree dated 24.09.2021 delivered by Learned District Judge, Khowai District, Tripura in connection with T.A. No.9 of 2019. By the said judgment, Learned District Judge

partly modified the judgment of the Learned Trial Court dated 20.03.2019 in connection with Case no. T.S. No.39 of 2016.

2. Heard Learned Senior Counsel, Mr. D. Bhattacharya assisted by Learned Counsel Mr. Samar Das for the appellant and also heard Learned Counsel Mr. S. Lodh for the respondent.

3. Before coming to the conclusion of this appeal, let us project the subject matter of dispute amongst the rival parties for which this present appeal cropped up.

4. The present appellant as plaintiff has filed a suit before the Court of Learned Civil Judge, Sr. Division, Khowai, Tripura for declaration of right, title and interest, recovery of khas possession and also for decree of permanent injunction.

5. The gist of the case filed by the appellant-plaintiff, in short, is that the appellant-plaintiff purchased suit land measuring 0.38 acres under Mauja Dhalabil, Khowai vide registered sale deed no.1-324 dated 23.02.1993 and accordingly got his name mutated and the said land was purchased by him from one Sukhomoy Paul on consideration amount of Rs.15,000/- and after purchase, the appellant-plaintiff constructed his dwelling house on the said land. The respondent-defendants requested the plaintiff to allow them to reside therein as permissive possessor since 1994 and on 21.02.2016, the appellant-plaintiff requested the defendants to vacate for his own need when they sought for two months time but ultimately they did not vacate the same and thereafter, on 22.04.2016, when the appellant-plaintiff again asked the

respondent-defendants to vacate the same that time they refused to do the same and finally the appellant-plaintiff filed the suit.

6. The respondent-defendants contested the suit by filing written statement and submitted that the description of a purchased land as reflected in the deed of the appellant-plaintiff was erroneous due to incorporation of different plot nos. including the land of the respondent-defendant's father Radha Gobinda Paul and the same was done by the appellant-plaintiff by instructing the scribe/deed writer and the appellant-plaintiff deceitfully/applying fraud obtained the signature of vendor therein. It was further submitted that originally the suit land along with other lands was belonging to one Sukhamoy Paul and their father was possessing the suit land for last 40years by purchasing the same from one Sukhamoy Paul against payment of Rs.50,000/- as consideration price though formal deed was executed on 24.01.2006. The contesting defendants denied the plea of permissive possession on the suit land rather they stated that after the death of Radha Gobinda Paul, the respondent-defendants have possessing the same as their own land having title therein through inheritance. It was further submitted that after getting summons of the suit, they had sent one notice to Sukhamoy Paul. When Sukhamoy Paul, in turn, informed them in writing that actually he had sold out the land of CS plot no.-213 to the respondent-plaintiff and CS plot no.380 to Radha Gobinda Paul(since dead).

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

- i) Is the suit maintainable in its present form and nature?**
- ii) Has the plaintiff cause of action to institute this suit?**
- iii) Has the plaintiff right, title and interest over the suit land?**
- iv) Is the story of possession of the plaintiff over the suit land and his dispossession therefrom true? If so, is the plaintiff entitled to keep possession of the suit land?**
- v) Is the plaintiff entitled to get a decree as prayed for?**
- vi) What other relief or reliefs the plaintiff is entitled to?**

8. To substantiate the issues, both the parties have adduced oral/documentary evidence on record which are reproduced hereinbelow:

Plaintiff's witness:

- i) PW-1 : Sri Sailesh Ch. Paul**
- ii) PW-2 : Sri Sailen Ch. Paul**
- iii) PW-3 : Sri Sukhamoy Paul**

Plaintiff's Exhibits:

- i) Ext.-1 : Certified copy of finally published khatian bearing no.568 of Mouja-Dhalabil, Tehsil-Dhalabil and Sub-division and Revenue Circle-Khowai.**
- ii) Ext.-2 : Certified copy of map of Mouja-Dhalabil no 27 sheet no1**
- iii) Ext.-3 : Certified copy of old khatian bearing no 568 of Mouja-Dhalabil, Tehsil-Dhalabil and Sub-division and Revenue Circle-Khowai**
- iv) Ext.-4 : Original registered sale deed no 1-324 dated 23.02.1993**
- v) Ext.-4/1(series) : Signature of the vendor Sri Sukhamoy Paul (PW 3) on the original registered sale deed no 1-324 dated 23.02.1993**
- vi) Ext.-5 : Original revenue payment receipt dated 15.02.1993 for the suit land**

Defendant's witness:

- i) DW-1 : Sri Ranjit Paul**
- ii) DW-2 : Sri Jiban Biswas**
- iii) DW-3 : Sri Manik Kr Biswas**

iv) DW-4 : Sri Jogesh Ch Debnath

Defendant's Exhibits:

- i) Ext.-A : Original sale deed bearing no. 1-209 dated 24.01.2006
- ii) Ext.-A/1 : Signature of the Sri Manik Kr. Biswas (DW 3) on the original registered sale deed no 1-209 dated 24.01.2006
- iii) Ext.-A/2 : Signature of the Sri Jogesh Ch Debnath (DW 3) on the original registered sale deed no 1-209 dated 24.01.2006
- iv) Ext.-B : Certified copy of the Khatian no 364 of Mouja-Dhalabil, Tehsil, Revenue Circle and Sub-Division-Khowai
- v) Ext.-C(i) : Original death certificate of Lt. Radha Gobinda Paul
- vi) Ext.-C(ii) : Original survival certificate of the deceased Radha Gobinda Paul
- vii) Ext.-D : Original survival certificate of the deceased Shefali Paul
- viii) Ext.-E : Reply dated 11.11.2016 by the vendor of the suit land of notice by Ld Advocate of the defendant side to the vendor

9. Finally on conclusion of trial, Learned Trial Court decreed the suit in favour of the appellant-plaintiff by judgment dated 20.03.2019. For the sake of convenience, I would like to refer hereinbelow the operative portion of the judgment/order of the Learned Court below:

ORDER

"As a result it is declared that the plaintiff has right, title and interest over the suit land and it is directed that the defendants be evicted therefrom and also perpetual injunction is granted preventing the defendants and their men and agents from disturbing the peaceful possession of the plaintiff upon the suit land.

Hence, the suit is decreed on contest with cost.

Prepare decree accordingly and put up for signature within fourteen days from today, latest on 03.04.2019.

The judgment is given under my hand and seal of this Court on this the 20th day of March, 2019."

10. Being dissatisfied with the judgment, the respondent-defendants preferred an appeal under Section 96 of CPC before the Court of Learned District Judge, Khowai Tripura and the Learned District Judge vide judgment dated 27.08.2021 and decree dated 24.09.2021 partly modified the judgment of the Learned Trial Court. For the sake of convenience, I would like to refer hereinbelow the operative portion of the judgment of Learned First Appellate Court:

ORDER

"On the basis of the discussion made above, the right, title and interest of the plaintiff in the suit land is declared according to its boundary description, and the survey plots as mentioned in the Schedule of the plaint will have no bearing in the decree.

The plaintiff is entitled to recovery of possession of the suit land based on its boundary description from the defendants through due process of law.

It is stated by the parties that already decree of Ld. Trial Court was executed, however, liberty is granted to the defendants to pray for restitution of possession of the suit land in their favour in the proper Forum, if at all any property was taken out from their possession beyond the suit land as decreed today, and in that case said Ld. Court will appoint a Survey knowing Commissioner to locate the suit land by its boundary description and possession of excess land, if any, taken out from the possession of the defendants will be restored to them. Needless to say, the cost of Survey Commissioner will be borne by the defendants.

In view of distinctive nature of dispute, no cost is awarded to any of the parties.

Appeal is disposed of on contest.

Prepare decree accordingly within the stipulated period.

Send down the L.C. Record along with a copy of this judgment and decree.

Enter the result in the relevant register."

11. Being dissatisfied with the judgment of the Learned First Appellate Court, the plaintiff as appellant again preferred this appeal under Section 100 of CPC before this Court. At the time of admission of appeal vide order dated 17.02.2022, the following substantial questions of law were formulated:

- i) Whether the findings of the Ld. Appellate Court that no decree should be passed based on the survey plot as given in the purchased deed is sustainable?*
- ii) Whether the modification of the decree of the Ld. Trial Court made by the Ld. Appellate Court is sustainable in law as the same is based on misreading of the evidence (especially Exhibit 3 and Exhibit 4) on record?*

12. At the time of hearing of argument, Learned Senior Counsel, Mr. D. Bhattacharya referred para 9 of the judgment of the Learned First Appellate Court and submitted that the observation of Learned First Appellate Court compelled the appellant-plaintiff to prefer this appeal before this Court because the appellant-plaintiff purchased the suit land through Exhibit-4 from one Sukhamoy Paul wherein it was mentioned that the appellant-plaintiff purchased land from old CS plot nos.213/380/300/³⁸¹/₁₅₀₉ corresponding to hall CS plot nos.396/1300/1301/1298. The settlement authority without any basis omitted said plot no.380 at the time of mutation and the Learned First Appellate Court at the time of delivery of judgment came to an observation that when there are contradictions regarding survey plot nos. and boundary descriptions then it is the settled position of law that decree can

be passed on the basis of boundary description but according to Learned Senior Counsel that was not the prayer of the appellant-plaintiff in the plaint. Rather the appellant-plaintiff on the basis of his title deed sought for declaration of right, title and interest along with recovery of possession and permanent injunction but Learned First Appellate Court misconstrued the factual position and came to an erroneous finding. Learned Senior Counsel further submitted that by this time, the decree has been executed and the respondent-defendants have filed an application for appointment of Survey Commissioner. Now, the respondent-defendants are trying to grab the land of the appellant-plaintiff since Old CS plot no.-380 was omitted from the Khatian of the appellant-plaintiff. So, Learned Senior Counsel prayed for allowing this appeal by setting aside the judgment of the Learned First Appellate Court.

In course of hearing of argument, Learned Senior Counsel Mr. D. Bhattacharya also referred the evidence of said Sukhamoy Paul (vendor) who stood as witness PW-3 on behalf of the appellant-plaintiff and in his deposition he stated that he did not sell any plot from plot no.380 to the appellant-plaintiff which was nothing but a false statement because in the deed, the said plot no. was clearly mentioned. So, Learned Senior Counsel urged for setting aside the judgment of the Learned First Appellate Court for the observation made in para 9 of the judgment.

13. On the other hand, Learned Counsel Mr. S. Lodh appearing on behalf of the respondent-defendants submitted that on the basis of title deed and on the basis of ROR, Learned Trial Court decreed the suit in favour of the appellant-plaintiff and similarly, the Learned First Appellate Court on the basis of title deed affirmed the decree of the Learned Trial Court with certain modification but the Learned First Appellate Court decreed the suit land on the basis of boundary description in place of survey plot nos. and there is no anomaly in this regard but according to Learned Counsel, the appellant without any basis has preferred this appeal and by this time, the decree has been executed and furthermore, the present respondent-defendants are not claiming the land of the appellant-plaintiff. Rather the appellant is trying to grab the land of respondent-defendants. So, Learned Counsel finally urged for dismissal of this appeal with costs.

14. In course of hearing, Learned Counsel for the respondent referred one citation. In **Chumar v. Narayanan Nair** dated 25.10.1985 reported in **1985 SCC OnLine Ker 246** at para 4 Hon'ble High Court of Kerala observed as under:

"4. * ** It has to be remembered that where on a construction of a document transferring title to hold a property, it is clear that the intention of the parties was to transfer a parcel of land within well defined boundaries, any erroneous statement or omission to state survey number, should be rejected as falsa domonstratis."**

15. I have heard arguments of both the sides and gone through the records of Learned Courts below including the

exhibited documents relied upon by the parties. It appears to me that one Sukhamoy Paul, son of Thakurdhan Paul was the owners in possession of land measuring 0.41 acres of khatian no.364 jote no.361 under Mauja-Dhalabil and the aforesaid land measuring 0.41 acres was recorded in the name of said Sukhamoy Paul in the following manner in the ROR:

Old CS plot nos.	Revisional CS plot nos.	Classification	Quantum
213 part	396	Lunga	0.22
380 part	1300	Vastu(tilla)	0.12
300 part	1301	Bhita(tilla)	0.05
$\frac{381}{1509}$ part	1298	Lunga	0.02

Now, from the aforesaid land measuring 0.41 acres/shataks of land said Sukhamoy Paul sold land measuring 0.38 acres to the appellant-plaintiff vide registered deed bearing no.1-324 dated 23.02.1993. For the sake of convenience, I would like to mention hereinbelow the description of land sold by said Sukhamoy Paul in favour of the appellant-plaintiff as mentioned in the schedule of the deed:

Description of Land:

Pargana-Birchandrapur, PS-Khowai, Tehsil-Dhalabil, Khatian no.-364, Jote no.-361 within this CS plot nos.-213/380/300/ $\frac{381}{1509}$ corresponding to hall CS plot nos.396/1300/1301/1298 **bounded by north-Rajendra Deb, South Rabi Naik East Nagendra Biswas West Ashwini Banik** within this boundary land measuring 0.38 shataks(19 gandas).

On the basis of the title deed, the appellant-plaintiff applied for mutation. Accordingly, vide mutation case no.73/94, the mutation authority allowed mutation in favour of the

appellant-plaintiff and a separate ROR was prepared in his name in khatian no.568 under Mouja-Dhalabil, Tehsil-Khowai with the following following descriptions of land:

Old CS plot nos.	Revisional CS plot nos.	Classification	Quantum
213 part	396	Lunga	0.22
380 part	1300	Vastu(tilla)	0.12
300 part	<u>1301</u>	Bhita(tilla)	0.04
	4060		

Thus, from the above, it appears that the mutation authority at the time of allowing mutation, on the basis of physical possession omitted mutation from old CS plot no. 381 part corresponding to hall plot no.1298 and finally, on 1509 conclusion of trial, Learned Trial Court decreed the suit in favour of the appellant-plaintiff which was challenged by the respondent-defendants.

16. Now, according to respondent-defendants, said Sukhamoy Paul through Exhibit-B, Exhibit-A sold out 0.12 shataks of land to Radha Gobinda Paul, son of Late Mahananda Paul being the predecessor of the present respondent-defendants. On perusal of Exhibit-A, it appears that the vendor at the time of transfer of land measuring 0.12 acres of land in the year 2006 narrated the description of land as follows:

Description of land purchased by predecessor of the respondent-defendants:

Paragana-Birchandranagar, P.S – Khowai, T.K.-Dhalabil, Khatian no.-364, touji-217 within CS plot no-380 bounded by **north-R. Deb, South-Sukhomaoy Paul east Ranjit Paul West – Rasta.**

Thus, from the contents of the deed, it appears in the year 2006 said Sukhamoy Paul sold out land measuring 0.12 acres(6 gandas) to the predecessor of the respondent-defendants. Now, whether said Sukhamoy Paul have had any authority to sell any land from CS plot no.380 is a different matters in issue which was not the case of the appellant-plaintiff and the respondent-defendants herein. Further, it appears that the boundary descriptions of both the purchased lands are/were totally different.

17. Furthermore, if said Sukhamoy Paul transfers any land beyond his ownership from old khatian No.364 after disposal of 0.38 acres of land in favour of the appellant in the year 1993 then the respondent-defendants shall have the liberty to take proper recourse of law against Sukhamoy Paul if they so desires and furthermore, said Sukhamoy Paul in the year 2006 transferred 0.12 acres of land to the predecessors of the respondent-defendants. There is no any evidence on record that they sought redress in any forum against said Sukhamoy Paul.

18. Here, in the suit, we are only confined to the suit land and it appears that the appellant-plaintiff has been able to establish his valid right, title and interest over the suit land and for that the Learned Court below rightly decreed the suit in favour of the appellant-plaintiff and the Learned First Appellate Court also confirmed the decree in favour of the appellant-plaintiff on the basis of boundary description not on the basis of the CS plot nos.

To counter the case of the appellant-plaintiff, the respondent-defendants could not adduce any cogent oral/documentary evidence on record before the Learned Trial Court.

19. Furthermore, as already stated on the basis of purchase vide mutation case no.73/94 the purchased land of the appellant-plaintiff was mutated by the appropriate authority. The appellant-plaintiff also did not challenge that order of mutation and as per mutation, he got land measuring 0.38 acres i.e. the land purchased by him from Sukhamoy Paul and from the contents of the deed, it appears that the vendor in the deed has clearly given the boundary of the land sold to the appellant-plaintiff which contained different plot nos. i.e. old CS plot no.213 corresponding to R.S. plot no.-396, old CS plot no.380 part corresponding to R.S. plot no.1300, old CS plot no.300 part corresponding to R.S. plot no.1301/4066 and I do not find any ambiguity to the recording of aforesaid land on the basis of boundary description in favour of the appellant-plaintiff. So, in my considered view, the Learned First Appellate Court rightly delivered the judgment and furthermore, Learned First Appellate Court specifically mentioned in the judgment that as the decree was executed and if it is found that any land of the respondent-defendant is given in possession to the appellant-plaintiff beyond the suit land then through the Survey Commissioner, land be identified and if required, excess land be restored to the respondent-defendants.

So, on perusal of the judgment of the Learned First Appellate Court, I do not find ambiguity in the judgment rendered by the Learned First Appellate Court and furthermore, before this Court also, the appellant has failed to satisfy the grounds for allowing the appeal showing any infirmity and perversity in the judgment of Learned First Appellate Court. The substantial questions of law are accordingly answered.

20. In the result, the appeal filed by the appellant-plaintiff stands dismissed being devoid of merit. The judgment of the Learned First Appellate Court dated 27.08.2021 and consequential decree dated 24.09.2021 is hereby upheld and accordingly it is affirmed.

Prepare decree accordingly.

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

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

JUDGE

SABYASACHI
BHATTACHARJEE
Deepshikha

Digitally signed by SABYASACHI
BHATTACHARJEE
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