

**HIGH COURT OF TRIPURA
AGARTALA**

RFA 6 of 2024

Sri Swapan Chandra Das

---Petitioner(s)

Versus

Sri Dibakar Datta and 06 Ors.

---Respondent(s)

For Appellant (s)	:	Mr. D. Bhattacharjee, Sr. Advocate. Mr. Samar Das, Advocate.
For Respondent(s)	:	Mr. P. Datta, Advocate. Mr. Tanmay Debbarma, Advocate. Mr. D. Debnath, Advocate.
Date of hearing and date of judgment and order	:	28.01.2025.
Whether fit for reporting	:	No

**HON'BLE MR. JUSTICE T. AMARNATH GOUD
HON'BLE MR. JUSTICE BISWAJIT PALIT**

Judgment & Order (Oral)

(T. Amarnath Goud, J)

Heard learned counsel for the parties.

[2] This is an appeal under Section 96 of the Code of Civil Procedure 1908 against the judgment and order dated 16.01.2024 passed in TS 5 of 2021 by the learned Civil Judge Senior Division, Court No.1, Dhalai District, Ambassa.

[3] The case is brief is that the respondent no.1 filed one suit for a declaration to be a tenant and a prohibitory order regarding non eviction from the suit land by respondent nos. 2 to 7 being the land lord also, seek further decree for a permanent injunction against appellant, seek further decree for specific performance of an oral contract dated 13.06.2021, 17.06.2021 and 6.7.2021 to execute sale deed and also seek a decree for cancellation of registered sale deeds bearing no. 1-125 dated 13.07.2021 and 1-1 2 6 dated 13.07.2021. Defendant nos. 2, 4, 5, 6 and 7 filed written statement denying the assertion so made by the plaintiff. There was no agreement signed by the predecessor of the above respondents with respondents no.1. The sale of the suit land was voluntary and

respondent no. 1 never made any protest. It was specifically asserted that there was no oral contract after sale of the property the respondent handed over the possession on 13.7.2021 to the appellant but the respondent no.1 most illegally entered into the suit land on 02.09.2021.

[4] The appellant also filed written statement denying all the assertion so made by the respondent no. 1 and the appellant further states that in absence of any valid lease agreement enforceable under law the sale of the suit land are good and enforceable by law. The appellant purchase the suit property following all legal formalities. There was no oral contract ever heard by the appellant. The respondent no.1 adduced 4 witnesses and exhibited 9 nos. documents. Whereas, the appellant and respondent nos. 2 to 7 adduced 5 witnesses and adduced documentary evidences. After hearing the parties learned Court below announced the Judgment on 16.01.2024 by decreed the suit in favour of the plaintiff respondent No-1. Hence appellant i.e. defendant no-7 prefer this appeal.

[5] It is apparent from the record that the following issues were framed before the learned court below:

- i. *Whether the suit is maintainable in its present form and nature?*
- ii. *Whether the suit is barred by law of limitation?*
- iii. *Whether the plaintiff has settled possession over the suit lands mentioned at Schedule –A and Schedule B to the plain?*
- iv. *Any other relief/reliefs the parties to this suit are entitled?*

[6] After dealing with the issues, the learned court below passed the impugned order in the following manner:

12. In the result, the suit of the plaintiff is decreed in terms of the following:

a. Two numbers of registered sale deeds vide no. I-125 and I-126 both dated 13.07.2021 executed by and between Defendant nos. 1 to 4, Defendant no. 6 (including herself and for & on behalf of her minor daughter i.e. defendant no. 5) and defendant no. 7 are declared void, illegal and the registration of these deeds are hereby cancelled. As of sequel, these two sale deeds are set aside;

b. Plaintiff is entitled for a decree of specific performance of oral contract dated 13.06.2021. Defendant nos. 1 to 4 and Defendant no. 6 (including herself and for & on behalf of her minor daughter i.e. defendant no. 5) are directed to executed sale deed in favour of the plaintiff with regard to the sale of suit land covered under Schedule -A & Schedule B to the plaint;

c. Defendant no. 7 and/or his men, agent(s) is/ are hereby restrained from entering into the suit land and from disturbing peaceful occupation of the suit land by the plaintiff. Defendant no. 7 and/ or his men, agent(s) is/ are hereby further restrained from interfering the process of specific performance in between the plaintiff and defendant nos. 1 to 6.

[7] On course of his submission, learned counsel for the appellant has submitted before this court that learned court below has failed to appreciate that respondent no.1 made an assertion that there was a mutual oral agreement on 06.07.2021 between respondent no.1. and admittedly, the predecessor of the respondent No.2 to 7. But surprisingly in paragraph 3, the respondent no.1 categorically stated that on 13.06.2021 it was settled that legal heirs of original jotedar i.e. defendants no. 1 to 6 will sell the land to the plaintiffs as per the market rate after obtaining proper permission from the competent authority for sale of land of the minor share i.e, defendant no.5, defendant no. 1 to 6 will sell the land to the plaintiff and the plaintiff will continue the tenancy for next 2 years w.e.f. 01.09.2021 to 31.08.2023. If in the meantime, the defendant no.1 to 6 will collect the sale permission from the competent court from the share of minor from the joint property than they will execute the sale deed earlier in favour of the plaintiff before expiry of the lease period on 23.08.2023 is completely contradictory and found to the misrepresentation to illegal gain and thus the impugned judgment is required to be set aside.

[8] On the other hand, learned counsel appearing for the respondents has contended before this court that the impugned judgment and order as passed by the learned court below is just and proper and needs no interference from this court. Therefore, he further prayed to dismiss the appeal by confirming the impugned judgment and order judgment and order dated 16.01.2024 passed in TS

5 of 2021 by the learned Civil Judge Senior Division, Court No.1, Dhalai District, Ambassa.

[9] A fair reading of the impugned judgment and order draws the attention of this court to the issues framed and it is seen from the record that no issue has been framed with regard to the locus of the plaintiff on the point of specific performance by way of an oral agreement to sell the property to the plaintiff by the owner. There is also no issue on the point of sale deed that has been executed by the owners in favour of the purchaser, defendant no.7. No issue is also framed with regard to the status of the sale deed whether they are null and void and are liable to be cancelled or not and there is no issue with regard to the cancellation of the sale deed. Moreover, no issue is also framed with regard to the status of the owner and the purchaser of the land.

[10] In view of the same, this court is of the opinion that learned court below could have framed additional issues and dealt with them properly before passing any order. Therefore, we are of the opinion that the matter needs reconsideration and retrial has to be done by framing additional issues.

[11] In view of the above observation, the present appeal is allowed by setting aside the impugned judgment and order dated 16.01.2024 by the learned Civil Judge, Senior Division, Court No.1, Dhalai District. As a sequel, stay, if any, stands vacated. Pending application(s), if any, also stands closed.

B.Palit, J

T. Amarnath Goud, J

Dipak

**DIPAK
DAS**

Digitally signed by
DIPAK DAS
Date: 2025.02.07
12:24:34 +05'30'