

**HIGH COURT OF TRIPURA
AGARTALA**

RSA No.19 of 2023

Sri Pramesh Chandra Das,
Son of late Paresh Chandra Das,
aged about 79 years,
resident of Bagbassa,
Sub-Division, P.O. & PS: Dharmanagar,
District: North Tripura

-----**Plaintiff-Appellant** (s)

Versus

1. Sri Manik Das,
Son of late Parendra Das,
Resident of Sanicherra,
P.S. Churaibari, District: North Tripura

2. Sri Gobinda Das,
Son of late Parendra Das,
resident of Sanicherra, P.S. Churaibari,
District: North Tripura

-----**Defendant-Respondents** (s)

For Appellant(s)	:	Mr. Sankar Lodh, Adv.
For Respondent(s)	:	Mr. Dipankar Sharma, Adv.
Date of Hearing	:	21.02.2025
Date of delivery of Judgment and Order	:	27.02.2025
Whether fit for Reporting	:	YES

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

This appeal under Section 100 of CPC is preferred challenging the judgment dated 02.02.2023 and decree dated 04.02.2023 delivered by Learned District Judge, North Tripura, Dharmanagar in connection with Case No. Title Appeal No.26 of 2018. By the said judgment and decree the Learned first appellate court has reversed the judgment dated 16.07.2018 and decree dated 31.07.2018

delivered by Learned Civil Judge (Sr. Division), North Tripura, Dharmanagar in connection with Case No. Title Suit (Eviction) 01 of 2015.

02. Heard Learned Counsel Mr. S. Lodh appearing on behalf of the appellant-plaintiff and also heard Learned counsel Mr. D. Sharma appearing on behalf of the defendant-respondents.

03. Before proceeding with the merit of appeal let us discuss about the subject matter of dispute amongst the rival parties. The appellant-plaintiff on 07.05.2015 filed a suit for declaration and for recovery of possession against the defendant-respondents before the Learned Civil Court (Sr. Division) in respect of the suit land measuring 0.21 acres as mentioned in the schedule of the plaint recorded under finally published khatian No.85 under Mouja Bagbassa, Tehsil-Sanicherra, Revenue Circle & Sub-Division-Dharmanagar alleging inter alia that the appellant-plaintiff was/is of the suit land along with other lands by virtue of purchased through registered sale-deed vide No.1-1631 dated 09.04.1985. After purchase of the suit land the plaintiff-respondents took possession of the suit land and applied for mutation along with other landed properties and ultimately the said landed properties including the suit land have been mutated in the name of appellant-plaintiff in Khatian No.85 under Mouja-Bagbassa. According to the appellant-plaintiff the suit land is a viti (tilla) type of land,

so for the purpose of construction of residential unit therein he started to make improvement of the suit land by cutting soils etc and also by producing fruit bearing trees therein. The respondent-defendants with a view to grab the suit land on 01.08.2015 in the morning at about 10.00 a.m. when the appellant-plaintiff and his persons were repairing the bamboo fencing on the boundaries of the suit land that time the defendant-respondents along with some other anti-social forcibly/most illegally entered into the suit land by breaking the bamboo fencing on the southern boundary of the suit land and severed some valuable trees and plants like Mango, Jackfruit, Banana etc. Thereafter the respondent-defendants started to construct a hut on the suit land despite objection raised by the appellant-plaintiff and his workers and after that the respondent-defendants forcefully constructed a bamboo fencing with tin roof hut measuring 8 cubits (North to South) x12 cubits (East to West) to the northern portion of the suit land within a period of 15 days and subsequently converted the said hut with brick wall. On 15.03.2015 in the morning at about 10.00 am the appellant-plaintiff requested the defendant-respondents to vacate the suit land as the same was urgently needed for the own purpose of the appellant-plaintiff, but the defendant-respondents became angry and refused to vacate the suit land. After that the appellant-plaintiff reported the matter to the local elders but they

failed to mitigate the matter. Later on, the matter was brought to the notice of the Officer-in-charge of Churaibari Police Station in writing on 23.03.2015, but no action was taken. Hence the appellant-plaintiff filed the suit for declaration and for possession of the suit land.

04. The respondent-defendants after receipt of notice from the court appeared before the Learned Trial Court and filed written statement and also with the leave of the court filed amended written statement. In the written statement respondent-defendants denied all the assertions made by the appellant-plaintiff and pleaded that the respondent-defendants along with their brother Gopal Das had purchased some landed properties from the appellant-plaintiff vide registered deed bearing No.1-1877 dated 24.04.1990 which was recorded in Khatian No.189, Sabek Plot No.20 corresponding to Hal plot No.12 measuring 0.12 satak and a separate plot of land measuring 0.14 satak recorded in the same khatian under Sabek plot No.21(p) corresponding to Hal Plot No.13 in total land measuring 0.26 satak. Later on, the respondent-defendants and their brother Gopal Das got their purchased land mutated in their names under Khatian No.372, Touji No.363 of Mouja Bagbassa, Tehshil Kachari-Sanicherra, Sub-Division & Revenue Circle-Dharmanagar, vide MR No.75 of 1992. However, according to the respondent-defendants a part of sabek plot No.21 of Mouja-Bagbassa was acquired by

Government of Tripura for construction of public road under PWD Department. It was further pleaded that since purchase the respondent-defendants and their brother have/had been possessing the same land by constructing a building on the said plot of land and they have also running bakery business on a part of that land. It was further submitted that the respondent-defendants have not possessed any extra land beyond the purchased land which they purchased from the appellant-plaintiff. They also urged before the court to find out the actual possession of the suit land by appointing a survey commissioner and prayed for dismissal of the suit with costs. However, upon the pleadings of the parties following issues were framed:

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

(ii) Whether there is any cause of action for filing of the suit?

(iii) Whether the plaintiff has right, title and interest over the suit land?

(iv) Whether the plaintiff is entitled to get the decree for recovery of possession of suit land by evicting the defendants No.1, 2 & 3 and their persons therefrom by demolishing and abolishing the constructions made by the defendants at the costs of them and by removing electricity connection installed therein?

(v) Whether the defendants are entitled to get a decree declaring that the defendants have right, title, interests and possession over the suit land vide registered sale deed executed by the plaintiff dated 24.04.1990?

(vi) To what other relief/reliefs the parties are entitled?

05. To substantiate the issues both the parties have adduced oral/documentary evidence on record which are as follows:

(A) Plaintiff's Exhibits:-

- i. Exbt.1- Copy of the registered sale deed bearing No.1-1631 dated 09.04.1985 in 10 sheets, certified by the Copying Department of the Court.
- ii. Exbt.2 – Copy of the Khatian bearing No.85 of Mouja-Bagbassa, Tehshil-Sanicherra, Revenue Circle and Sub-Division Dharmanagar, certified by the Copying Department of the Court.
- iii.Exbt.3 – Copy of the trace map of Mouja-Bagbassa No.22 sheet No.1, certified by the Copying Department of the Court.

(B) Defendants' Exhibits:-

- i. Ext A (SO)- The original registered sale deed bearing No.1-1877 dated 24.04.1990 in four sheets.
- ii. Ext B- The certified copy of khatian bearing No.372 of Mouja-Bagbassa, Tehshil-Sanicherra, Revenue Circle and Subdivision Dharmanagar, in two sheets.
- iii. Ext C- The certified copy of the trace map of Mouja-Bagbassa No.22 sheet No.1, appertaining to Dag No.12, 13/1855

(C) Ext.s produced by witness : Nil.

(D) Court Ext.s : Nil.

(E) Plaintiff's Witness:

- (i) P.W.1 : Sri Pramesh Chandra Das
- (ii) P.W.2 : Sri Haridas Sinha
- (iii) P.W.3 : Md Rahamat Ali

(F) Defendants' witnesses:

- (i) D.W.1: Sri Govinda Das
- (ii) D.W.2 : Sri Gopal Das
- (iii) D.W.3 : Sri Satyajit Malakar

(G) Court's Witnesses: Nil

06. Finally on conclusion of trial Learned Trial Court decreed the suit in favour of the appellant-plaintiff. The operative portion of the judgment and order dated 16.07.2018 runs as follows:

"As a result it is declared that the plaintiff has right, title and interest over the suit land as clarified in the analysis above and it is directed that the defendants and their persons shall be evicted therefrom abolishing all the constructions made by the defendants therein and the same shall be restored with the plaintiff."

07. Challenging that judgment the defendants of the original suit as appellant preferred an appeal before the court of Learned District Judge, North Tripura, Dharmanagar

which was numbered as Title Appeal No.26 of 2018 and after prolonged hearing Learned First Appellate Court by judgment dated 02.02.2023 and decree dated 04.02.2023 was pleased to set aside the judgment and decree of the Learned Trial Court. The operative portion of the judgment of the Learned First Appellate Court runs as follows:

"10. In view of the aforesaid discussion and findings, the appeal preferred by the defendant-appellants under Section 96 of the Code of Civil Procedure read with Order 41 of CPC is hereby allowed.

The impugned judgment dated 16.07.2018 followed by the impugned decree dated 31.07.2018 passed by Ld. Civil Judge (Senior Division), Dharmanagar, North Tripura, Court No.2, in Title Suit (Eviction) 01 of 2015 are hereby set aside.

The parties shall have to bear their own costs.

Senior Sheristadar is hereby directed to draw an appellate decree within 15 days from the date of pronouncement of this judgment.

This Title Appeal is accordingly disposed off on contest.

Send back the L.C. Record along with a copy of this judgment to the Ld. Trial court."

08. Being dissatisfied with the judgment of the Learned First Appellate Court the original plaintiff as appellant has preferred this appeal before the High Court. However, at the time of admission of appeal by order dated 12.04.2024, the following substantial questions of law were formulated:

(i) Whether the amendment of plaint as made by the appellant vide order dated 01.03.2024 will operate retrospectively leading the judgment of the First Appellate Court perverse.

(ii) Whether the impugned judgment of the First Appellate Court was perverse for non application of provision of Order XXVI Rule 9 CPC by itself or even by resorting to the provision of Order XLI Rule 23 CPC.

(iii) The appeal may also be heard on any other substantial question(s) of law at the time of hearing.

09. In course of hearing of argument Learned counsel Mr. S. Lodh appearing for the appellant first of all drawn the attention of the court that in the original plaint through bona fide mistake the appellant-plaintiff in para No.5 wrongly mentioned the date of dispossession from the the suit land as 01.08.2015 in place of 01.08.2014. But in this regard the appellant-plaintiff before the Learned Trial Court did not take any step for amendment of the plaint. However, during trial before the Learned Trial Court at the time of recording evidence the appellant-plaintiff rectified the error by adducing oral evidence and took the plea that the respondent-defendants dispossessed the appellant-plaintiff from the suit land on 01.08.2014 not on 01.08.2015. However, based on the evidence on record Learned Trial Court finally decreed the suit in favour of the appellant-plaintiff, but this fact was not appreciated and accepted by Learned First Appellate Court. So by the judgment dated 02.02.2023 Learned First Appellate Court reversed the judgment made by Learned Trial Court. It was further submitted that the said error was unintentional and there was no wilfull laches on the part of the appellant-plaintiff to quote the date as 01.08.2015 in place of 01.08.2014. However, before the High Court the appellant-plaintiff sought this relief and by order dated 01.03.2024 his

prayer for amendment was allowed by this court and accordingly plaint was amended. Learned counsel for the appellant further submitted that the appellant-plaintiff had a very good *prima facie* case and the Learned Trial Court below considering the oral/documentary evidence on record rightly decreed the suit in favour of the appellant-plaintiff, but the Learned First Appellate Court without any basis misinterpreted and mis-appreciated the evidence on record of the appellant-plaintiff and came to the observation that the Learned Trial Court at the time of delivery of judgment travelled beyond the pleading and finally reversed the decree of the Learned Trial Court for which the interference of the court is required.

10. On the other hand, Learned counsel for the defendant-respondents submitted that there was serious lapses on the part of the appellant-plaintiff and before the Learned Trial Court no step was taken by the appellant-plaintiff for amendment of plaint, even before the Learned First Appellate Court also no step was taken by the appellant-plaintiff in this regard. So the Learned First Appellate Court rightly reversed the judgment on the ground that at the time of delivery of judgment Learned Trial Court did not consider the said fact and also did not consider the evidence on record of the appellant-plaintiff properly and urged for dismissal of this appeal upholding the judgment of the Learned First Appellate Court. It was

further submitted that no substantial questions of law leans in favour of the appellant of this case so the appellant-plaintiff is not entitled to the relief in this appeal and further submitted that the appellant-plaintiff both by oral/documentary evidence on record failed to prove his right title and interest and possession over the suit land. So Learned First Appellate Court rightly reversed the judgment.

11. I have heard both the sides at length and perused the judgment of the Learned First Appellate Court as well as the Learned Trial Court. Admittedly, the appellant-plaintiff before the Learned Trial Court or to the Learned First Appellate Court did not take any step for amendment of the plaint in respect of the date when the appellant-plaintiff was alleged to be dispossessed by the respondent-defendants from the suit land. However, on the approach of the present appellant this High Court as already stated by the order dated 01.03.2024 was pleased to allow the application for amendment of plaint filed by the appellant-plaintiff and accordingly the plaint was amended. It is also the admitted position that before the Learned Trial Court the appellant-plaintiff at the time of evidence took the plea that he was dispossessed from the suit land by the respondent-defendants on 01.08.2014. From the evidence on record further it appears that the present respondent-defendants in course of their cross-examination did not take any defence to rebut the said date of alleged dispossession i.e. on 01.08.2014 in place of 01.08.2015. Now after the

amendment of the plaint by this High Court there remains nothing for the respondent-defendants that the date of cause of action was untrue. Although it is the admitted position that no such step in this regard was taken by the appellant-plaintiff either before the Trial Court or before the Learned First Appellate Court.

12. On perusal of the plaint submitted by the appellant-plaintiff before the Learned Trial Court it appears that the suit land comprised land measuring 0.21 acres appertaining to CS Plot No.13 of Khatian No.85 under Mouja Bagbassa, Tehshi Kachari Sanicherra, Revenue Circle-Dharmanagar. It is also the admitted position that the appellant-plaintiff through registered deed No.1-1631 dated 09.04.1985 purchased total land measuring 3 acres lunga, viti, bastu chara class of land from one Shri Niranjana Chandra Acharjee. Although the certified copy of the said document was marked as Exbt.1 before the Learned Trial Court and later on purchased land which comprised the suit land mutated in his name in Khatian No.85 under Mouja-Bagbassa. The appellant-plaintiff also relied upon the trace map which was marked as Exbt.3.

13. On the other hand, it was the case of the respondent-defendants that they purchased some landed property from the appellant-plaintiff vide registered deed bearing No. 1-1877 dated 24.04.1990 bearing holding No.76, Khatian No.189, Sabek Plot No.20 corresponding to Hal Plot No.12 land measuring 0.12 acres classified as lunga

and old CS Plot No.21(p) corresponding to Hal Plot No.13, land measuring 14 sataks classified as viti tilla in total land measuring 0.26 acres bounded on the North by themselves, south by PWD road, East by plaintiff and West by Shishir Barman, possessor and before the Learned Trial Court the respondent-defendants relied upon certain documents like sale-deed bearing No.1-1877 dated 24.04.1990 which was marked as Exbt.A(SO) and also relied upon certified copy of khatian bearing No.372 under Mouja Bagbassa Tehshil Sanicherra marked as Exbt.B and also the certified copy of trace map under Mouja-Bagbassa No.22, Sheet No.1, Tehshil Sanicherra, comprising CS Plot Nos.13/1855 marked Exbt.7. As already stated the purchased land of the appellant-plaintiff was mutated. It appears that the land purchased by the appellant-plaintiff measuring 0.26 acres was recorded in Khatian No.372 in two separate plots comprising old CS Plot No.20, Hal CS Plot No.12 land measuring 0.12 acres, old CS Plot No.21(p) corresponding to present CS Plot No.13/1855, land measuring 0.14 acres and which was mutated vide MR Case No.75/1992. Further, on perusal of the Khatian No.85 standing in the name of appellant-plaintiff it appears that the suit land measuring 0.21 acres has been recorded in the name of the appellant-plaintiff in Khatian No.85 through MR Case No.75/1993 comprising old CS Plot No.21(p) corresponding to Hal CS Plot No.13 measuring 0.21 acres. Thus it appears by way of mutation two separate plots have been shown in the trace

map, one is 13 comprising land measuring 0.21 acres and another is 13/1855 comprising land measuring 0.14 acres. From the case record it appears that there is no dispute on record amongst the rival parties in respect of purchase of land by the appellant-plaintiff from said Niranjana Chandra Acharjee and also regarding transfer of land by the appellant-plaintiff in favour of the respondent-defendants. The respondent-defendants in their written statement specifically stated that the respondent-defendants have no claim over the land of the appellant-plaintiff beyond their purchased land and this fact has been admitted by the respondent-defendants through their evidence on record before the court.

14. Situated thus, it appears that the respondent-defendants could not show any better title than appellant-plaintiff over the suit land by adducing oral/documentary evidence on record. However, on perusal of the judgments of both the courts below it appears that both the parties before the Learned Trial Court could not prove their title deeds in accordance with the provisions of the Indian Evidence Act and the Learned Trial Court below at the time of marking exhibits of the documents relied upon by the parties also could not follow the relevant provisions of the Indian Evidence Act and marked those documents and in this regard from the judgment of the Learned Trial Court it appears that there was no clear explanation by the Learned Trial Court at the time of delivery of judgment. As already

stated the appellant-plaintiff before the Learned Trial Court or to the Learned First Appellate Court did not take any step for amendment of the plaint and the Learned Trial Court at the time of delivery of judgment did not consider the said fact just on the basis of oral evidence on record decreed the suit. Although the respondent-defendants before the Learned Trial Court at the time of recording evidence did not dispute anything in this regard thus they have estopped from raising this point at this stage. Learned First Appellate Court also considered the said fact but did not say anything regarding proving of documents by the parties to the suit. Thus it appears that both the courts below ignored the relevant provisions of the Indian Evidence Act at the time of delivery of judgment. In the meantime the plaint has been amended as per order of the court dated 21.03.2024 and necessary amendment has been made in the plaint. So this court is of the considered view that the matter should be remanded back to the Learned Trial Court to give opportunity to both the parties to adduce their evidence afresh and to deliver fresh judgment in accordance with law. The document should be exhibited as per relevant provisions of Section 65 and Section 67 of the Indian Evidence Act.

15. In view of the above, this present appeal is disposed of. The judgment delivered by both the courts below i.e. the judgment dated 02.02.2023 and decree dated 04.02.2023 of the Learned First Appellate Court in

connection with Case No. Title Appeal No.26 of 2018 and also the judgment dated 16.07.2018 and decree dated 31.07.2018 in connection with Case No.T.S.(Eviction) 01 of 2015 passed by Learned Civil Judge (Sr. Division), Dharmanagar, North Tripura are hereby set aside. The suit is remanded back to the Learned Trial Court with a direction to take evidence of both the parties afresh both by oral/documentary in accordance with law and thereafter to deliver afresh judgment. If the Learned Trial Court deems it necessary in that case the Learned Trial Court may appoint a Survey Commissioner to identify the suit land. The entire exercise shall be made at an earliest convenience. Both the parties shall appear before the Learned Trial Court on 26.03.2025.

Since the case is disposed of, so no order is passed on the communication of Learned Addl. District Judge, North Tripura, Dharmanagar and the case records be transmitted to the Learned Courts below immediately.

With this observation, this present appeal is disposed of.

Prepare the decree accordingly. Also send down the LCRs along with a copy of this judgment.

JUDGE

**MOUMITA
DATTA**

Moumita

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MOUMITA DATTA
Date: 2025.02.28
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