

HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_
SAO No.03 of 2024

Sri Birendra Debbarma, son of late Manmohan Debbarma, aged about 59 years, resident of West Bachaibari, P.O. Bachaibari, P.S. Champahaur, District- Khowai, Tripura, Pin-799201.

..... Appellant(s)

V E R S U S

Sri Paresh Debbarma, son of late Dhaniram Debbarma, resident of Barabaghai, P.O. Bachaibari, P.S. Champahaur, District- Khowai, Tripura, Pin-799201.

..... Respondent(s)

For Appellant(s) : Mr. Sankar Lodh, Advocate,
Mr. S. Majumder, Advocate.

For Respondent(s) : Mr. S.M. Chakraborty, Sr. Advocate,
Mrs. Pinki Chakraborty, Advocate.

HON'BLE THE CHIEF JUSTICE MR. M.S. RAMACHANDRA RAO

Date of Judgment and Order : 22nd August, 2025

Whether Fit for Reporting : NO.

JUDGMENT & ORDER (ORAL)

Heard Mr. Sankar Lodh, counsel appearing for the appellant as well as Mr. S.M. Chakraborty, learned senior counsel appearing for the respondent.

[2] This SAO is preferred against the judgment dt.21.02.2024 in TA No.14 of 2018 of the Additional District Judge, Khowai District, Khowai setting aside the judgment and decree dt.09.03.2018 of the Civil Judge, Junior Division, Court No.1, Khowai in Case No. T.S. No.21 of 2013 and remitting the matter back to the Trial Court for fresh consideration after giving opportunity to both parties and also to dispose of certain petitions filed by the respondent/defendant before the Trial Court.

[3] The appellant herein is the plaintiff in the suit.

[4] He filed the said suit before the Court of Civil Judge, Junior Division, Khowai for declaration of title and recovery of possession of the suit land.

[5] His case was that the suit land was allotted by the Government of Tripura in favour of one Hari Bandhu Kanda in 1974 with a condition that the allotted land is not transferrable for ten years from the date of allotment, and that the allottee transferred the said land in favour of the appellant/plaintiff under a registered sale deed bearing No.1-1854 dt.31.12.2003. It was the contention of the appellant the he got mutation of the purchased land in his name vide Khatian No.1015 pertaining to R.S Plot No.880 under Mouja - East Singhicherra; and that on 08.07.2011, the respondent/defendant, all of a sudden forcibly took occupation of the suit land.

[6] The respondent/defendant filed written statement contending that Hari Bandhu Kanda never possessed the suit land in any point of time and as such, the allotment order is a void document, that if any sale deed was executed by Hari Bandhu Kanda in favour of the appellant, it was not a genuine document, that the possession was not handed over by the vendor to the plaintiff/appellant and there was no dispossession of the appellant from the suit land on 08.07.2011 by the respondent.

[7] As stated above, the Trial Court allowed the suit on 09.03.2018.

[8] Challenging the same, the defendant filed TA No.14 of 2018 before the Additional District Judge, Khowai District.

[9] It was *inter alia* contended before the Additional District Judge that on 05.02.2018, the respondent had submitted a petition for giving evidence by the allottee Sri Hari Bandhu Kanda for the purpose of proving the genuineness of the registered sale deed executed in favour of the appellant and that the Trial Court did not consider the said petition. It was also contended that on 12.02.2018, the Trial Court also did not consider that a letter of observation was issued by the ADM, Khowai addressed to the SDM, Khowai regarding a revenue case under Section 95 of TLR & LR Act filed by the respondent for deleting the name of the appellant from the suit Khatian, and that the respondent had filed a petition before the Trial Court for exhibiting such document, but the Trial Court did not allow the same and then pronounced the judgment in the suit illegally.

[10] It was also contended that the Trial Court did not give opportunity to the respondent to prove his case by adducing proper evidence.

[11] After hearing counsel for the parties, the Additional District Judge opined that the claim of ownership of the appellant is based on the sale deed which was executed by Sri Hari Bandhu Kanda on 31.12.2003, and that the Trial Court has erred in holding that the sale deed was proved by examining the attesting witnesses P.W.4 & P.W.5 and also scribe P.W.3 and that the original executant/vendor ought to be examined.

[12] This observation of the Additional District Judge, in my opinion, is erroneous because the Trial Court had held regarding execution of the sale deed after considering the evidence of the attesting witness and the scribe, which is correct in law. There is no principle laid down that

unless the executant is examined in person, execution of the sale deed cannot be proved.

[13] Nothing prevented the respondent himself from examining the executant, Sri Hari Bandhu Kanda in the Trial Court to disprove the execution in the Trial Court but he did not choose to do so. The observation of the Appellate Court that mere marking of the document is not proved of the document and that the document has to be proved in accordance with law does not mean that the executant has to be examined in all cases, particularly when the document is also a registered sale deed and the identity of the executant/vendor is therefore something which cannot be doubted.

[14] Consequently, the finding of the Additional District Judge that the Trial Court should not have rejected the application filed by the defendant for summoning Sri Hari Bandhu Kanda as a witness is clearly erroneous. The finding of the Additional District Judge that adverse inference has to be drawn against the appellant for withholding the vendor of the sale deed and not citing him as a witness, is also erroneous for the aforesaid reasons.

[15] The procedural infirmity pointed out in paragraph 16 about marking of the documents on behalf of the appellant/plaintiff is also not something which is so serious that it has caused prejudice to any party since it is not the case of the respondent/defendant that some grave miscarriage of justice has been occasioned in the marking of documents on the part of the plaintiff in the Trial Court. The finding of the Additional District Judge that

there is a doubt and suspicion about the execution of the sale deed being relied upon by the appellant is perverse and also cannot be sustained.

[16] Also the Additional District Judge has held that there was an application moved by the respondent/defendant for recalling and re-examining D.W.1 which was rejected on 12.02.2018 erroneously and that the Trial Court should have granted such opportunity to the respondent.

[17] Admittedly, the Trial Court had recorded in its order dt.27.02.2018 that on several dates the matter was fixed for arguments and the respondent side was unnecessarily delaying the case by adopting dilatory tactics. If the application for recalling and re-examining the witness D.W.1 was filed at a belated stage in 2018 (when the suit itself was filed in 2013) and the Trial Court felt that the respondent was delaying the disposal of the suit, it was justified in rejecting the said application and the Additional District Judge ought not to have held otherwise.

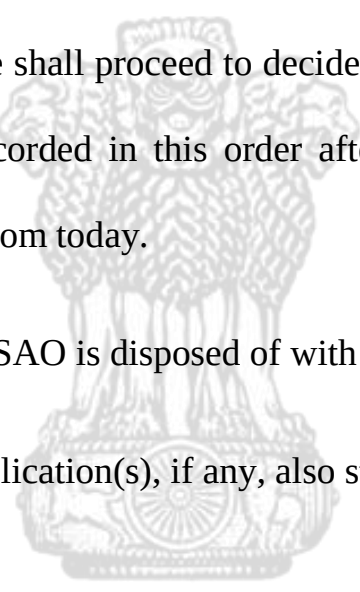
[18] Primarily, on the basis of its erroneous view as to (a) the need for examining the vendor or the appellant, (b) the need for recalling D.W.1 again and (c) on the basis of the pendency of the petition regarding the revenue authorities' observation subsequent to the disposal of the suit, the impugned order of remand appears to have been made without any justification.

[19] It is settled law that order of remand cannot be made to enable a party to fill in the lacuna in their evidence. Unnecessarily remand orders should not be made which would ultimately prolong the life of the suit.

[20] In the instant case, the suit has been filed in 2013 and the remand has been made in February, 2024, eleven years later to the Trial Court. It would take more than 5 years for the matter to ultimately attain finality and this itself causes prejudice to the parties.

[21] Therefore, the impugned order of remand dt.21.02.2024 passed by the Additional District Judge, Khowai District, Khowai in TA No.14 of 2018 is set aside; the appeal is restored to be filed on the said Court; and the Additional District Judge shall proceed to decide the appeal himself keeping in mind the findings recorded in this order after hearing both the parties within 3(three) months from today.

[22] The instant SAO is disposed of with the above terms. No costs.
Pending application(s), if any, also stands disposed of.


सत्यमेव जयते (M.S. RAMACHANDRA RAO, CJ)

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