

**HIGH COURT OF TRIPURA
AGARTALA**

RSA No.24 of 2024

1. Sri Rajkumar Nath @ Rajkumar Debnath (60),
S/o Lt. Ramdhan Nath @ Ramdhan Debnath.

2. Sri Prajesh Nath @ Prajesh Debnath (37),
S/o Sri Rajkumar Nath @ Rajkumar Debnath.

3. Sri Rahul Nath @ Rahul Debnath (19),
S/o Sri Rajkumar Nath @ Rajkumar Debnath.

4. Sri Amitava Nath @ Amitava Debnath (38),
S/o Sri Rajkumar Nath @ Rajkumar Debnath.

5. Sri Ranjit Nath @ Ranjit Debnath (36),
S/o Sri Rajendra Nath @ Rajendra Debnath.

All are resident of Rowa (Near Rowa AWC),
Rowabazar B.O. Post Office P.S.-Panisagar,
Dist-North Tripura, PIN-799260.

.....Appellant(s)

Versus

Sri Durga Charan Nath,
S/o Late Kali Charan Nath,
Rowa near Rowa AWC, Rowabazar B.O.
Post Office P.S.-Panisagar,
Dist-North Tripura, PIN-799260.

.....Respondent(s)

For Appellant(s)	:	Mr. A. Acharjee, Advocate. Ms. M. Basu, Advocate.
For Respondent(s)	:	Mr. S. Bhattacharjee, Advocate.
Date of hearing and delivery of Judgment & Order	:	31th January, 2025.
Whether fit for reporting	:	NO.

HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA

JUDGMENT & ORDER (Oral)

Heard Mr. A. Acharjee, learned counsel appearing for the appellants and Mr. S. Bhattacharjee, learned counsel appearing for the respondent.

2. The claim of the plaintiff (respondent herein) is that he is the owner of the suit land, measuring 1.30 acre as described in schedule A of the plaint, by way of purchase from, one Sri Ranjan Kumar Debnath and Smt. Renu Nath, by a registered sale deed No.1-2177 dated 08.08.2022 (Exhibit-3) and the suit land after such purchase was also mutated in his name vide Khatian No.1048. Thereafter, on 20.12.2009, the defendants requested the plaintiff to allow them to stay in the suit land with assurance to vacate the same within two years. Accordingly, they were allowed to stay there. But after expiry of said two years when they were requested to vacate the same they denied and ultimately the suit was filed. The defendants No.1 and No.2 (Sri Rajendra Nath and Sri Rajkumar Nath) contested the case by filing written statement, stating that originally the suit land was *Khas* land and since the time of their father they were possessing total 1.69 acre of land, out of which the Government allotted 1.56 acre of land to them leaving 0.13 acre, though they were in possession of the same and till filing of the suit they were maintaining possession in said 0.13 acre of land. According to them, said 0.13 acre of land is the suit land mentioned under schedule I and II of which the recovery of possession has been sought for by the plaintiff.

3. Learned Trial Court dismissed the suit mainly on the ground that due to absence of boundary description of the schedule A land, the plaintiff failed to prove entitlement to recover possession of suit land described in schedule I and II being part of schedule A land.

4. However, Learned First Appellate Court after setting aside the said judgment of the Learned Trial Court decreed the suit with exhaustive discussions on the evidences as placed in the record by the

parties. According to Learned First Appellate court, as per the Order VII Rule 3 of CPC it is sufficient if the plaint contains a description of the property sufficient to identify it, either by way of boundaries or by the numbers as mentioned in the record of settlement or survey. Learned First Appellate Court also observed that there was no dispute raised by the defendants about the identity of the suit land and schedule A land could be identified by only plot number without any boundary description. The plea of adverse possession by the defendants was turned down by both the Learned First Appellate Court and also by the Learned Trial Court.

5. During the hearing before this Court, Mr. Acharjee, learned counsel submits that he is also not pressing the plea of adverse possession before this Court. Regarding the derivation of ownership over the suit land by the vendors of the plaintiff, the Learned First Appellate Court relied on Exhibit-5, i.e., old Khatian No.1048 and it was observed that the predecessor of vendors of the plaintiff, namely, one Rameshwar Debnath was an allottee of the suit land. As per the said Khatian, such allotment was given in the Bengali year 1385 (corresponding to English calendar 1978-1979). Therefore, the vendors had the transferable right in the suit land after 10 years of such issuance of allotment and with such observations finally decreed the suit.

6. Mr. Acharjee, learned counsel also argues that intentionally the plaintiff did not mention the boundary description of the schedule A suit land in the plaint and only mentioned the survey plot numbers with an intention to lodge a false claim, in schedule I and II of the suit land of which the recovery of possession has been sought for. In fact the

plaintiff has mentioned both the survey plot numbers as well as the boundary description of schedule I and II of the suit property. Learned counsel also took the notice of the Court to paragraph No.21 of the written statement submitted by the contesting defendants and submits that the wrong description boundary was already challenged in an indirect manner in the pleading challenging the identification of the suit land, more particularly schedule I and II of the suit land. But Learned First Appellate Court lost sight of the same.

7. Mr. Acharjee, learned counsel also raises another point that the original land was Government *Khas* land allotted to the predecessor of vendors of the plaintiff, therefore, the plaintiff did not derive any title therein inasmuch as the vendee cannot derive any better title than what was enjoyed by his vendors. But Learned First Appellate Court while decreeing the suit has also missed that aspect. Learned counsel, therefore, prays for admitting the appeal on both the grounds formulating substantial question of law. Mr. Acharjee, learned counsel also refers to a decision of the Madhya Pradesh High Court in a case in between ***Laxman Singh v. Jagannath***, reported in **1999 SCC Online MP 271**, and relevant paragraph No.10 as relied on by learned counsel is reproduced below :

"The purpose of Order 7, Rule 3 of the Code is that unless the plaintiff indicates the identity of the property claimed by him either by means of boundaries or by means of map as required by Order 7, Rule 3 of the Code, it would be difficult for the Court to find whether the plaintiff has title to the property claimed and whether any encroachment or dispossession has been made by the defendant. Thus the duty of the party is to give description sufficient to identify the property in dispute. If such decree is passed, it shall be unworkable. The Court can only pass a decree which can be executed under Order 21 of the Code."

8. Mr. S. Bhattacharjee, learned counsel appearing for the plaintiff, however opposes the prayer, stating that there is no substantial question of law involved in this appeal. Moreover, the decree of the Learned First Appellate Court is already executed.

9. Considered the rival contention of the parties and meticulously perused the record. As per the Order VII Rule 3 of CPC, the suit land can be described either by boundary description or by survey plot numbers but the condition is that land should be properly identifiable. In the instant case, in the written statement, as observed by the Learned First Appellate Court, no plea was raised by the contesting defendants about any wrong description of the suit land, rather in paragraph No.21 of the written statement, some challenges were made regarding mentioning of wrong measurements of huts mentioned in schedule I and II of the suit land. In such a situation, the appellants cannot be allowed to raise any such plea in the second appeal. Regarding the second point raised by the appellants regarding allottee land is concerned, the Learned First Appellate Court has come to the definite findings basing on Exhibit-5, that the allotment was granted to the predecessors of the vendors of the plaintiff before The Tripura Land Revenue and Land Reforms (Allotment of Land) Rules, 1980 came into force and therefore, after expiry of 10 years from the date when the allotment was granted, the allottee derived transferable right over the land, accordingly, thereafter his successors transferred the land to the plaintiff. In that backdrop, no perversity is found in the decision of the Learned First Appellate Court which requires admission of the second appeal on any substantial question of law. As a result, the appeal being devoid of any substantial question of law involved therein is not admitted.

The appeal is accordingly disposed of.

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

JUDGE

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