

HIGH COURT OF TRIPURA
AGARTALA
RSA No.28 of 2023

1. Tahir Ali

S/O Late Mahmud Ali, age- 70 years

2. Smt. Fateha Begam,

W/O Lt. Taiyab Ali, age- 65 years

3. Rajul Islam, age- 45 years,

4. Samsun Nessa, age- 40 years,

5. Rafiqull Islalm, age- 35 years,

All are sons and daughter of Lt. Taiyab Ali

SL. No.1 to 5 R/O village- West Irani, P.S. Irani, Kailashahar
District- Unakoti, Tripura. (The appellants of Ld. Trial Court
Taiyab Ali was died on 27/12/2022 as legal heirs Sl. No.2 to 5)

6. Newarunnessa,

W/O Late Masuk Ali,

D/O Late Mahmud Ali, age- 45 years,

All are village- West Irani, P.S. Irani, Kailashahar,
District- Unakoti, Tripura.

7. Sufia Begam,

W/O Late Masaddar Ali, age-59 years

D/O Late Mahmud Ali

Vill- Kanakpur, P.S. Kailashahar

District- Unakoti, Tripura.

----- Appellant-Plaintiffs

Versus

*****As per the order dated 31.01.2024 passed in I.A. No.02/2024,
newly substituted respondents are incorporated in following way:**

1. a) Anhar Miah,

S/O Late Abdul Gappar

b) Ahad Miah

S/O Late Abdul Gappar

c) Asad Miah

S/O Late Abdul Gappar

d) Smt. Rabia Begam

D/O Late Abdul Gappar

e) Smt. Sufia Begam

D/O Late Abdul Gappar

All are vill-Maguruli, P.S. Irani, Kailashahar, Unakoti, Tripura.

2. Smt. Minati Ghosh,

W/O- Late Aalur Rahaman,

Vill-Barband, P.S.-Irani, Kailashahar,

District-Unakoti, Tripura.

3. Parija Bibi,

W/O- Late Habid Uddin,
Vill-Irani, P.S.-Irani, Kailashahar,
Unakoti, Tripura.

4. Jahur Uddin,
S/O Haji Habid Uddin
Vill- Maguruli, P.S. Irani, Kailashahar
District- Unakoti, Tripura.

5. Golnahr Begam,
W/O Nur Uddin
Vill-Irani, P.S. Irani,
Kailashahar, District-Unakoti, Tripura.

----- Respondent-Defendants

For Appellant(s)	:	Mr. Anjan Kanti Pal, Adv, Mr. T. K. Bhattacharya, Adv.
For Respondent(s)	:	Mr. Hare Krishna Bhowmik, Adv.
Date of hearing	:	27.02.2025
Date of delivery of Judgment & Order	:	28.02.2025
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 09.11.2022 and consequential decree dated 17.11.2022 delivered by Learned District Judge, Unakoti District, Kailashahar in connection with case No. TA No.5 of 2020. By the said judgment and decree, Learned 1st Appellate Court has upheld the judgment dated 31.01.2020 and consequential decree dated 13.02.2020 delivered by Learned Civil Judge (Senior Division), Unakoti District, Kailashahar (Court No.1) in connection with case No.TS No.1 of 2019.

2. Heard Learned Counsels Mr. Anjan Kanti Pal along with Learned Counsel, Mr. T. K. Bhattacharya appearing on behalf of the

appellants and also heard Learned Counsel, Mr. Hare Krishna Bhowmik for the contesting respondent-defendants.

3. Before coming to the merit of the appeal now let us discuss about the subject matter of the dispute amongst the rival parties. The appellants as plaintiffs instituted a suit bearing No.T.S. No.1 of 2019 in the Court of Learned Civil Judge (Senior Division), Unakoti District, Kailashahar with the plea that the suit land as described in the first schedule of the plaint measuring 0.50 acre was originally belonged to the father of the appellant-plaintiffs namely Mahmud Ali who died in the year 1988. After his death, the appellant-plaintiffs became the owner of the suit land. According to the appellants, their predecessor father Mahmud Ali was illiterate, rustic person and did not execute any sale deed in respect of the suit land during his lifetime and till his death, the suit land was under his possession but on 02.05.2016, the appellant-plaintiff No.1 for the first time came to know the existence of two purported sale deeds bearing No.1-4901 dated 21.07.1975 and 1-4902 dated 21.07.1975 executed by Mahmud Ali in favour of respondent-defendant No.6. The appellant-plaintiff accordingly obtained certified copy on 03.10.2016 and came to know about the deeds. It was the further case of the appellant-plaintiffs that the defendant No.6 transferred the suit land in favour of defendant No.1 by sale deed No.1-318 dated 31.01.1976 and obtained copy on 03.10.2016 and also came to know that the defendant No.1 transferred the suit land in favour of respondent-defendant No.3 by registered sale deed No.1-1894 dated 11.07.1986 and obtained the certified copy on 31.10.2017. It was further asserted by the

appellant-plaintiffs that the sale deeds executed by Mahmud Ali were forged because Mahmud Ali never appear before the office of Sub-Registrar and never admitted the execution of those deeds and possession of the suit land was never delivered to the purchaser by Mahmud Ali and no purchaser took possession of the suit land in view of the purchased deed and with that story, the appellant-plaintiffs instituted the suit for declaration of right, title, interest described in the first schedule of the plaint granting decree for recovery of possession of the suit land described in the first schedule after evicting the respondent-defendants and their men and agents from the suit land and also for a decree that the suit instruments described in the second schedule below are null and void, effect of fraud, collusion, fake personation and not binding upon the appellant-plaintiffs.

4. On receipt of notice, the respondent-defendant Nos.1, 3, 4 and 5 contested the suit by filling joint written statement denying all the plea of the plaintiffs and took the plea that the present suit was barred by *res judicata*, estoppel, law of limitation and for want of proper court fees. It was further submitted by the defendants that the father of the plaintiffs Mahmud Ali during his lifetime filed a suit bearing T.S. No.38 of 1975 against the respondent-defendant No.6, the purchaser of the suit land challenging those two sale deeds but the suit was dismissed with the findings that the sale deeds are genuine and, as such, the present suit was barred by *res judicata*. It was also submitted that the plaintiffs also earlier instituted one suit bearing No.T.S. No.10 of 2018. Thereafter, the present suits have

been filed. They also denied the allegation of the appellant-plaintiffs that the sale deeds were fraudulent and not binding upon the appellant-plaintiffs and by their written statement, the respondent-defendants prayed for dismissal of the suit with costs.

5. Upon the pleading of the parties, Learned Trial Court below framed the following seven numbers of issues:

- i) Whether the suit is maintainable?**
- ii) Whether proper court fee has been paid?**
- iii) Whether the present suit is barred by res judicata?**
- iv) Whether the present suit is barred by limitation?**
- v) Whether sale deed No.1-4902 executed on 21.07.1975, registered on 22.07.1975 and sale deed No.1-4901 executed on 21.07.1975 registered on 23.07.1975 are void ab initio, effect of fraud, collusion, false personation, nullity and not binding upon the plaintiffs and whether sale deed No.1-318 dated 31.01.1976, registered on 02.02.1976 and sale deed No.1-1894 dated 11.07.1986 are not binding upon the plaintiffs and all are liable to be cancelled?**
- vi) Whether the plaintiffs have right, title and interest over the suit land?**
- vii) Whether the plaintiffs are entitled to the relief as prayed for and/or any other relief/reliefs in this suit?**

Before the Learned Trial Court, both the parties adduced oral/documentary evidence on record. For the sake of convenience, I would like to mention herein below the name of witnesses and the exhibits of the rival parties as follows:

(A) Plaintiffs' Exhibits :-

- i) Ext.1:- Khatian No.137.**
- ii) Ext.2:- Khatian No.918.**
- iii) Ext.3:- Khatian No.1130.**
- iv) Ext.4:- Certified copy of sale deed No.1-4901 executed on 21.07.1975 and registered on 23.07.1975.**
- v) Ext.5:- Certified copy of sale deed No.1-4902 dated 22.07.1975.**
- vi) Ext.6:- Certified copy of registered sale deed No.1-318 dated 02.02.1976.**
- vii) Ext.7:- Certified copy of registered sale deed No.1894 dated 11.07.1986.**
- viii) Ext.8:- Advocate Notice dated 06.05.2016.**

- ix) Ext.9:- Reply of Advocate Notice dated 15.05.2016.
- x) Ext.10:- Information receipt by RTI from SPIO in 2 sheets.
- xi) Ext.11:- Copy of order dated 03.10.2018 passed in TS 10 of 2018.

(B) Plaintiffs' Witnesses :-

- i) PW.1 Tahir Ali.
- ii) PW.2 Hazi Mour Miah.
- iii) PW.3 Sri Atanu Roy.

(C) Defendant's Exhibits :-

- i) Ext.A:- Original sale deed No.4901.
- ii) Ext.B:- Original sale deed No.4902.
- iii) Ext.C:- Sale deed No.1-318.
- iv) Ext.A-1:- Khatian No.137.
- v) Ext.B-1:- Khatian No.918.
- vi) Ext.C-1:- Khatian No.1330.
- vii) Ext.D:- Sale deed No.1-1894 dated 11.07.1986.
- viii) Ext.E:- Sale deed No.1-00397 dated 23.03.2016.
- ix) Ext.F:- Sale deed No.00395 dated 23.03.2016.
- x) Ext.G:- Certified copy of plaint of TS 38 of 1975.
- xi) Ext.H:- Certified copy of application under Order 6 Rule 17 -cum- Section 151 of CPC filed in TS 38/1975
- xii) Ext.I:- Certified copy of judgment and decree dated 26.09.1978.

(D) Defendant's Witnesses :-

- i) DW.1 Md. Jahur Uddin.
- ii) DW.2 Md. Nur Uddin.

Thereafter, on conclusion of trial, Learned Trial Court by the judgment dated 31.01.2020 dismissed the suit of the appellant-plaintiffs. The operative portion of the judgment and order dated 31.01.2020 delivered by Learned Civil Judge (Senior Division), Kailashahar, Unakoti District (Court No.1) runs as follows:

ORDER

In the result, the suit of the plaintiffs is dismissed on contest with cost.

The suit is disposed of on contest with cost.

Make necessary entry in the relevant Trial Register.

Prepare decree accordingly and put up before me for signature within 15 (fifteen) days from today latest on 15.02.2020.

Being aggrieved and dissatisfied with the judgment of the Learned Trial Court below, the appellant-plaintiffs preferred an appeal under Section 96 of CPC before the Court of Learned District Judge, Unakoti District, Kailashahar which was numbered as T.A. No.5 of 2020 and after hearing both the parties, Learned 1st Appellate Court by the judgment dated 09.11.2022 was pleased to dismiss the appeal preferred by the appellant-plaintiffs. For the sake of convenience, the operative portion of the judgment and order dated 09.11.2022 delivered by the Learned 1st Appellate Court runs as follows:

ORDER

20. In the result, the plaintiffs-appellants are not entitled to get a relief, as prayed for in the instant appeal and hence, the appeal is dismissed.

The judgment and decree passed by the learned trial court in case No. T.S. 01 of 2019 are upheld.

21. Prepare appellate decree accordingly.

22. Send down the LCR along with a copy of this judgment.

23. The case stands disposed of accordingly.

Being dissatisfied with the judgment of the Learned 1st Appellate Court, the appellant-plaintiffs have again filed this appeal under Section 100 of CPC. At the time of admission of this appeal by order dated 06.09.2024, the following substantial question of law was formulated by this Court:

Whether the judgment of the Learned First Appellate Court is suffers from perversity and contrary to the evidence on record?

6. Taking part in the hearing, Learned Counsel for the appellant-plaintiffs first of all drawn the attention of this Court that both the Courts below have erred in law and facts in deciding the suit and

appeal and, as such, gave an erroneous finding. According to Learned Counsel, both the Courts below at the time of delivery of judgment came to the observation that the suit was barred by the principles of *res judicata* as in view of the provision of Section 11 of CPC but the suit filed by the appellant-plaintiffs was not barred by the principles of *res judicata* as because before the Learned Court below, the appellant-plaintiffs sought relief for declaration of the alleged instrument to be null and void and not binding upon the appellant-plaintiffs. Furthermore, Learned Counsels for the appellant-plaintiffs in course of hearing of argument drawn the attention of the Court referring the evidence of PW-1, PW-2 and also PW-3 i.e., the staff of the Office of Sub Registrar, Kailashahar from which it was crystal clear that the original executant, Mahmud Ali never appeared before the Office of Sub Registrar to put his signature and from his evidence, it is crystal clear that said Mahmud Ali, the predecessor of the plaintiffs also did not put his signatures on the purported sale deeds for which those sale deeds were illegal, forged and not binding upon the appellant-plaintiffs but the findings of the Learned Trial Court below that in view of the judgment passed in connection with T.S. No.38 of 1975, the present suit was barred by the principles of *res judicata* was not tenable in the eye of law. Learned Counsels further submitted that if the evidence of PW-3 is meticulously examined, it will be seen that those purported deeds were nothing but the creation of forgery but the Learned Trial Court below did not believe the evidence of the appellant-plaintiffs and similarly, the Learned 1st Appellate Court without appreciating the evidence on record relied upon the judgment

of the Learned Trial Court below and gave a perverse finding. Learned Counsels further submitted that the findings of both the Courts below that the suit was barred by the 'principles of *res judicata*' was nothing but misconception of law because the earlier suit was filed only for injunction and for that, there was no bar on the part of the Learned Trial Court below to declare the purported instrument to be cancelled inspite of adducing conclusive evidence on record but the Learned Trial Court below failed to appreciate the evidence on record of the appellant-plaintiffs properly for which gave an erroneous finding. So, Learned Counsels for the appellant-plaintiffs urged before the Court to allow this appeal and to set aside the judgment delivered by Learned Courts below.

7. On the other hand, Learned Counsel for the respondent-defendants, Mr. H. K. Bhowmik submitted that the present appeal is not maintainable as because the appellant-plaintiffs have failed to project any substantial questions of law to be formulated in this appeal and as such, the same is liable to be dismissed with costs. He further drawn the attention of the Court that the Learned Trial Court below framed seven numbers of issues as already stated and the Learned Trial Court below after considering the evidence on record at the time of delivery of the judgment in detail discussed the legal position and furthermore, it is admitted position that the predecessor of the appellant-plaintiffs Mahmud Ali filed one suit before the Learned Trial Court below bearing No.T.S. No.38 of 1975(Exbt.-I) and in the said suit, the disputed deeds were marked as Exbt.-B1 and Exbt.-B2 and the Learned Trial Court below at the time of delivery of judgment

came to the observation that both the deeds were rightly executed and registered on payment of full consideration money to the plaintiff i.e. Mahmud Ali. Learned Counsel for the respondent-defendants further submitted that said Mahmud Ali expired in the year 1988 and during his lifetime, he never challenged that judgment. Even the present appellant-plaintiffs who were aware about the said judgment also did not take any effort to challenge that judgment, so, the Learned Trial Court as well as the Learned 1st Appellate Court rightly came to the observation that the suit was barred by the principles of *res judicata*.

Learned Counsel, Mr. Bhowmik further submitted that from the evidence of PW-3, it is crystal clear that during cross-examination before the Court said PW-3 specifically stated that after submission of a deed for registration at first they called the party and asked them about the execution and thereafter the deed is registered if the execution is admitted by the executor and it is also responsibility of them to take LTI of the executants in the thumb impression register in the backside of the last page of the deed. Referring the said evidence of PW-3, Learned Counsel for the respondent-defendants fairly submitted that if there is any lapses on the part of the office of the Sub-Registrar, in that case, that responsibility cannot go to the party concerned and moreover, the defects as alleged are curable defects as per Section 87 of the Indian Registration Act. So, according to Learned Counsel on bare perusal of the evidence on record, it is crystal clear that the Learned Trial Court below as well as the Learned 1st Appellate Court rightly delivered the judgment dismissing the suit

of the appellant-plaintiffs and there was no perversity and illegality in the said judgment and urged for dismissal of this appeal with cost. Learned Counsel also stated that by this time the suit land was transferred to some other person but the appellant-plaintiffs did not seek any relief challenging those subsequent deeds and since the three Courts below have given concurrent findings about the suit land, so, at this stage, there is no scope to interfere with the judgments of the Learned Courts below.

8. I have heard detailed arguments of both the sides and gone through the record of the Learned Courts below including the evidence on record of both the parties. As already stated to decide the suit, the Learned Trial Court in total framed seven numbers of issues and at the time of delivery of judgment, all the issues were thoroughly discussed and accordingly the suit was decided by the Learned Trial Court below which was affirmed by the Learned 1st Appellate Court. Now, for the sake of convenience let us examine whether the decision of the Learned Courts below were in accordance with law or not.

9. In this regard, I would like to refer herein below the definition of *res judicata* as enumerated in Section 11 of CPC which provides as under:

"11. Res judicata.- No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court."

In course of hearing, Learned Counsel for the appellants submitted that the suit filed by the appellant-plaintiffs would not be

governed by Section 11 of CPC. From the aforesaid provisions of CPC, it appears that the crux question involved in Section 11 of CPC is that once the matter is finally decided by a competent Court, no party can be allowed to reopen the same in a subsequent litigation.

Here, in the case at hand, it was the observation of the Learned Trial Court below that the subsequent suit filed by the appellant-plaintiffs were suffered by the principle of *res judicata* in view of the judgment passed by the Learned Trial Court below in the earlier suit bearing No.TS No.38 of 1975 because in the said suit, the predecessor of the appellant-plaintiffs Mahmud Ali challenged both the title deeds bearing No.1-4901 dated 21.07.1975 (Exbt.-A) which was registered on 23.07.1975 and 1-4902 dated 21.07.1975 (Exbt.-B) which was registered on 22.07.1975. But the said suit was dismissed on the ground that sale deeds were found to be genuine and furthermore, DW-1 in course of his examination stated that father of the plaintiffs filed a civil suit against his father and others for a decree of permanent injunction challenging the validity of the sale deeds as mentioned above which was numbered as T.S. No.38 of 1975 and after hearing, the Learned Court below dismissed the suit on 26.09.1978 and no appeal was preferred by said Mahmud Ali during his lifetime. In this regard, in course of hearing of argument, Learned Counsel for the appellant-plaintiffs did not submit anything. The respondent-defendants also before the Learned Trial Court submitted the certified copy of plaint in connection with case No.T.S. No.38 of 1975 and from which it appears that Mahmud Ali filed the suit for permanent injunction against Alaur Rahman (respondent-defendant

No.2) of the present case and others challenging the aforesaid sale deeds dated 21.07.1975 on the ground that the sale deeds were false and forged and thumb impression of Mahmud Ali was taken on some unwritten papers on 21.07.1975 and the Learned Trial Court in deciding suit bearing No.T.S. No.38 of 1975 decided issue No.(iv), (v) and (vi) against the original plaintiff. So, based upon that, the Learned Trial Court below and the Learned 1st Appellate Court came to the observation that the sale deeds were not forged and illegal and furthermore, said Mahmud Ali was not in possession of the suit land and, as such, no decree of permanent injunction was granted and both the aforesaid sale deeds were the subject matter of that suit bearing No.TS No.38 of 1975 and since in the said suit bearing No.TS No.38 of 1975, injunction was sought for with the allegation that those sale deeds which were marked as Exbt.-B1 and Exbt.-B2 in TS. No.38 of 1975 were forged and fabricated, as such, in view of the aforesaid provision of Section 11 of CPC, the suit filed by the appellant-plaintiffs before the Learned Court below bearing No.T.S. No.1 of 2019 in my considered view was also barred by the principles of *res judicata* in the present suit. Furthermore, in the said suit No.TS. No.38 of 1975, said Mahmud Ali did not seek any declaration for cancellation of those sale deeds (Exbt.-B1 and Exbt.-B2), so, in my considered view, both the Courts below rightly came to the observation that the present suit was barred by the principle of constructive *res judicata* as because there was clear observation of the Learned Trial Court below that those deeds were found to be genuine and valid. So, in the considered opinion of this Court there

was no illegality or irregularity in the finding of the Learned 1st Appellate Court regarding the decision of Learned Trial Court in respect of issue No.(iii).

10. Now, in respect of issue No.(ii) regarding payment of Court fees it appears to this Court at the time of filling of the suit the appellant-plaintiffs only paid Court fees amounting to Rs.22/- i.e., the five times of the land revenue and the Court fees paid as per Section 7(v)(b) of the Court fees Act and before the Learned Court below, the appellant-plaintiffs prayed for a declaration that the suit deeds bearing No.1-4901 and 1-4902 were null and void, collusive and not binding upon the appellant-plaintiffs and also prayed for cancellation of the same and recovery of possession of the suit land. But the Learned Trial Court below came to the observation that Section 7(v)(b) of the Court fees Act relates to land which form an entire estate or a definite share of an estate, paying usual revenue to the Government. So, according to the Learned Trial Court on perusal of Exbt.-1, it does not reveal that the suit land was a land paying revenue of the estate and furthermore, regarding cancellation of instrument, the appellant-plaintiffs also did not deposit any Court fees. The suit was valued at Rs.1,50,000/- and the Court fees was supposed to be paid as per Section 8 of the Suit Valuation Act which the appellant-plaintiff failed to deposit. So, the Learned Trial Court below and the Learned 1st Appellate Court rightly came to the observation that the appellant-plaintiffs failed to deposit proper Court fees at the time of filling of the suit.

11. Now, in respect of deciding issue No.(iv), it was the case of the appellant-plaintiffs that they came to know about the fraud practiced by the defendants only on 15.12.2018 and as such, they are entitled to get exemption under Section 17 of the Limitation Act which provides as under:

17. Effect of fraud or mistake.-(1) Where, in the case of any suit or application for which a period of limitation is prescribed by this Act,—

(a) the suit or application is based upon the fraud of the defendant or respondent or his agent; or

(b) the knowledge of the right or title on which a suit or application is founded is concealed by the fraud of any such person as aforesaid; or

(c) the suit or application is for relief from the consequences of a mistake; or

(d) where any document necessary to establish the right of the plaintiff or applicant has been fraudulently concealed from him,

the period of limitation shall not begin to run until plaintiff or applicant has discovered the fraud or the mistake or could, with reasonable diligence, have discovered it; or in the case of a concealed document, until the plaintiff or the applicant first had the means of producing the concealed document or compelling its production:

Provided that nothing in this section shall enable any suit to be instituted or application to be made to recover or enforce any charge against, or set aside any transaction affecting, any property which—

(i) in the case of fraud, has been purchased for valuable consideration by a person who was not a party to the fraud and did not at the time of the purchase know, or have reason to believe, that any fraud had been committed, or

(ii) in the case of mistake, has been purchased for valuable consideration subsequently to the transaction in which the mistake was made, by a person who did not know, or have reason to believe, that the mistake had been made, or

(iii) in the case of a concealed document, has been purchased for valuable consideration by a person who was not a party to the concealment and, did not at the time of purchase know, or have reason to believe, that the document had been concealed.

(2) Where a judgment-debtor has, by fraud or force, prevented the execution of a decree or order within the period of limitation, the court may, on the application of the judgment-creditor made after the expiry of the said period extend the period for execution of the decree or order:

Provided that such application is made within one year from the date of the discovery of the fraud or the cessation of force, as the case may be.

Before the Learned Trial Court below, the respondent-defendants took the plea that the father of the plaintiffs had knowledge about those two deeds being executants and filed the suit bearing No.TS. No.38 of 1975. So, the Learned Trial Court below at the time of discussing and the decision of the said issue came to the observation that since the father of the appellant-plaintiffs had knowledge about those two deeds which was mentioned in the plaint (Exbt.-G), so, the appellant-plaintiffs were not entitled to get any protection of Limitation under Section 17 of the Limitation Act. The appellant-plaintiffs being the legal heirs of the said Mahmud Ali were also bound by the act, conduct and knowledge of the original owner Mahmud Ali, so, Learned Trial Court rightly decided the issue against the appellant-plaintiffs.

After hearing both the sides and considering the evidence on record, it appears to this Court that the Learned Trial Court decided the said issue that the appellant-plaintiffs were not entitled to get any exemption in view of the aforesaid provision of Section 17 of the Limitation Act which was duly concurred by the Learned 1st Appellate Court and this Court also does not find any illegality in deciding the said issue by the Learned Trial Court as well as the Learned 1st Appellate Court.

12. In respect of issue No.(i), the Learned Trial Court below opined that the suit was barred by the principles of *res judicata*, law of limitation and was suffering from payment of Court fees. At the time of hearing, Learned Counsel for the appellants failed to satisfy

the Court about the decision of the Learned Courts below in deciding the issue No.(i) and since it is already decided that the suit filed by the plaintiffs was barred by the principles of *res judicata* in view of the provision of Section 11 of CPC suffered by law of limitation and improper Court fee was paid, so, in the considered opinion of this Court, the Learned Trial Court also rightly decided the said issue against the appellant-plaintiffs.

In this regard, Hon'ble the Supreme Court in **2023 SCC OnLine SC 356** titled as **Prem Kishore and Others versus Brahm Prakash and others** dated **29.03.2023** in para No.38 observed as under:

38. The general principle of *res judicata* under Section 11 of the CPC contain rules of conclusiveness of judgment, but for *res judicata* to apply, the matter directly and substantially in issue in the subsequent suit must be the same matter which was directly and substantially in issue in the former suit. Further, the suit should have been decided on merits and the decision should have attained finality. Where the former suit is dismissed by the trial court for want of jurisdiction, or for default of the plaintiff's appearance, or on the ground of non-joinder or mis-joinder of parties or multifariousness, or on the ground that the suit was badly framed, or on the ground of a technical mistake, or for failure on the part of the plaintiff to produce probate or letter of administration or succession certificate when the same is required by law to entitle the plaintiff to a decree, or for failure to furnish security for costs, or on the ground of improper valuation, or for failure to pay additional court fee on a plaint which was undervalued, or for want of cause of action, or on the ground that it is premature and the dismissal is confirmed in appeal (if any), the decision, not being on the merits, would not be *res judicata* in a subsequent suit.

From the aforesaid judgment, it appears that the Hon'ble Apex Court also clarified the application of principle of *res judicata* in a given case. Here in the case at hand, since the earlier suit TS No.38 of 1975 was delivered by the Learned Trial Court after a full fledged trial dismissing the suit of the predecessor of the appellant-plaintiffs

Mahmud Ali with the observation that the suit deeds were genuine and, as such, in my considered view, Learned Trial Court below in the given case rightly decided that the suit filed by the appellant-plaintiffs was barred by the principles of *res judicata* which has been affirmed by the Learned 1st Appellate Court and this Court does not find any infirmity to the decision in this regard.

13. In respect of issue No.(v), it was the case of the appellant-plaintiffs that the alleged sale deeds i.e., Exbt.-B1 and B2 were not executed by Mahmud Ali. At the time of hearing of argument, Learned Counsels for the appellant-plaintiffs has drawn the attention of the Court that from the evidence of PW-3, it is crystal clear that said Mahmud Ali never appeared before the office of Sub Registrar, Kailashahar. In this regard, I have seen the judgments and also perused the evidence on record of the PW-3. Although the said Mahmud Ali in the earlier suit did not pray for cancellation of those two deeds but his suit was based on those deeds and challenging those deeds, he sought for injunction which was dismissed by the Learned Trial Court by the said judgment in the year 1978 and in the said judgment, it was categorically observed by the Learned Trial Court below that the suit deeds were genuine one. No appeal was preferred challenging that judgment. I have also perused Exbt.-1 i.e. the judgment passed in connection with case No.TS. No.38 of 1975 wherein the Learned Trial Court on the basis of evidence of the witnesses specifically the scribe of the deeds, witnesses of the deeds, the Learned Trial Court at the time of delivery of judgment came to the observation that those deeds were genuine being executed,

admitted at the instance of Mahmud Ali. So, Learned Trial Court below came to the observation that since the executant himself produced the deed and put his thumb impression and admitted execution, so, non-compliance of other provision on the part of the Office of the Sub Registrar does not makes the deed invalid as the same is curable. It was also observed by Learned Trial Court that on the basis of those deeds, successive sale deeds were made. Learned 1st Appellate Court at the time of delivery of judgment also concurred the same view made by Learned Trial Court.

In this regard, I would like to refer herein below one judgment of the Hon'ble Supreme Court reported in **(2021) 15 SCC 300** titled as **Rattan Singh and others versus Nirmal Gill and others** dated **16.11.2020** wherein in para Nos.80 and 81, Hon'ble the Apex Court has observed as under:

80. Before analysing the correctness of the decisions arrived at, let us see the settled legal position as to effect of fraud on limitation as prescribed in Section 17 of the Limitation Act, 1963 (for short "the 1963 Act"). The said provision reads as under:

17. Effect of fraud or mistake.-(1) Where, in the case of any suit or application for which a period of limitation is prescribed by this Act,—

(a) the suit or application is based upon the fraud of the defendant or respondent or his agent; or

(b) the knowledge of the right or title on which a suit or application is founded is concealed by the fraud of any such person as aforesaid; or

(c) the suit or application is for relief from the consequences of a mistake; or

(d) where any document necessary to establish the right of the plaintiff or applicant has been fraudulently concealed from him,

the period of limitation shall not begin to run until the plaintiff or applicant has discovered the fraud or the mistake or could, with reasonable diligence, have discovered it; or in the case of a concealed document, until the plaintiff or the applicant first had the means of producing the concealed document or compelling its production:

(emphasis supplied)

81. Therefore, for invoking Section 17 of the 1963 Act, two ingredients have to be pleaded and duly proved. One is existence of a fraud and the other is discovery of such fraud. In the present case, since the plaintiff failed to establish the existence of fraud, there is no occasion for its discovery. Thus, the plaintiff cannot be extended the benefit under the said provision.

From the principle of law laid down by the Hon'ble Apex Court, it appears that for proving fraud, two ingredients are to be pleaded and proved. One is existence of fraud and another is discovery of such fraud. Here in the given case, on perusal of the records of the Learned Court below, it appears to this Court that the appellant-plaintiffs save and except the evidence of PW-3 could not produce and prove any other material before the Learned Trial Court below to substantiate that those deeds were fraudulent, made by applying fraud and there was also no such evidence on record from the side of the appellant-plaintiffs regarding discovery of such fraud. The appellants only pleaded that PW-3 stated that in the last page of the deed, there was no signature of the executants but if we meticulously go through the evidence of PW-3 in his examination-in-chief and in cross-examination, it appears that the witness specifically stated that once the party appears and confirms execution then the deed is registered if the execution is admitted by the executants.

Here in the given case from the judgment of the earlier suit T.S. No.38 of 1975 and also from the cross-examination part of PW-3, it is clear that the deceased Mahmud Ali, the predecessor of the plaintiffs appeared before the Sub-Registrar and admitted the execution. So, for non-taking of LTI on the last page of the deed cannot makes the deed invalid one as the same was curable in view of Section 87 of the Indian Registration Act which provides as under:

87. Nothing so done invalidated by defect in appointment or procedure.- Nothing done in good faith pursuant to this Act or any Act hereby repealed, by any registering officer, shall be deemed invalid merely by reason of any defect in his appointment or procedure.

From the aforesaid provision, it appears that for any procedural defects nothing makes the deed invalid if there was no such signature of the executant on the last page of the deeds because it was the responsibility of the registering authority or staff to cure the defects and for that, it cannot be said that those deeds were fake and fabricated as alleged by the appellant-plaintiffs and furthermore, since the judgment of TS No.38 of 1975 was never challenged by the original executant himself now with the plea taken by the appellant-plaintiffs that the signature of executant was not there to the last page of the deeds cannot makes the deed a fraudulent and forged one and for that, the Learned Trial Court in suit T.S. No.38 of 1975 rightly pointed out that those deeds were genuine furthermore, I would also like to refer herein below the provision of Section 40 of the Evidence Act which provides as under:

40. Previous judgments relevant to bar a second suit or trial.- The existence of any judgment, order or decree which by law prevents any Court from taking cognizance of a suit or holding a trial, is a relevant fact when the question is whether such Court ought to take cognizance of such suit or to hold such trial.

So, here in the case at hand after hearing both the sides and after going through the judgments of the Learned Courts below, it appears that the Learned Trial Court also rightly decided the said issue against the appellant-plaintiffs which has been accepted by the Learned 1st Appellate Court and this Court also does not find any irregularity or perversity in the said issue decided by the Learned Trial Court affirmed by the Learned 1st Appellate Court.

14. In respect of issue No.(vi), Learned Trial Court also came to the observation that since the deeds executed by Mahmud Ali i.e. the predecessor of the appellant-plaintiffs were found to be genuine, as such, the appellant-plaintiffs have had no right, title, interest over the suit land and the Learned 1st Appellate Court also concurred the same issue with the Learned Trial Court and this Court also does not find any perversity in deciding the said issue by the Learned Trial Court below.

15. In respect of issue No.(vii), it was the observation of the Learned Trial Court and the Learned 1st Appellate Court that since all the issues were decided against the original appellant-plaintiffs, so, the same was also rightly decided against the appellant-plaintiffs of the suit.

16. Thus, after hearing both the sides, it appears to this Court that the appellant-plaintiffs have failed to make out any case to frame any substantial questions of law to be decided in favour of the appellant-plaintiffs, as such, the present suit is liable to be dismissed with costs.

17. In the result, the appeal filed by the appellants is hereby dismissed on contest with costs. The judgment dated 09.11.2022 and consequential decree delivered by Learned 1st Appellate Court in connection with case No.T.A. No.5 of 2020 is hereby upheld and the same is accordingly confirmed affirming the judgment of the Learned Trial Court dated 31.01.2020 and consequential decree in connection with case No.T.S. No.1 of 2019. The appellant-plaintiffs are not entitled to get any relief in this appeal.

With the above observations, this present appeal stands disposed of.

Prepare decree accordingly.

Send down the records of the Courts below along with a copy of this judgment and Order.

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

JUDGE

