

**HIGH COURT OF TRIPURA
AGARTALA**

RFA No.18 of 2024

1. Sri Biswajit Bhattacharjee

S/O Lt. (Dr.) Bhaba Rn. Bhattacharjee
Resident of Krishnanagar, Thakurpalli Road,
Agartala, PS West Agartala, District West Tripura.

----- Plaintiff-Appellant

Versus

1. Smt. Maya Bardhan @ Maya Rani Bardhan (dead)

W/O Lt. Nalini Mohan Bardhan
(Struck out as per order dated 16-03-2016)

2. Sri Apu Bardhan

S/O Lt. Nalini Mohan Bardhan

3. Sri Tipu Bardhan

S/O Lt. Nalini Mohan Bardhan

4. Sri Debabrata Bardhan

S/O Lt. Nalini Mohan Bardhan

All are residents of Gakulnagar, PS Bishalgarh,
PO Sekerkot, District Sepahijala Tripura

5. Smt. Sima Bardhan (dead)

D/O Lt. Nalini Mohan Bardhan
(Struck out as per order dated 07-05-2016)

6. Smt. Dipa Sarkar (Chowdhury)

W/O Sri Litan Chowdhury

7. Smt. Rama Bhowmik (Chowdhury)

W/O Sri Debajit Chowdhury

8. Smt. Anita Chowdhury

W/O Sri Jishnu Chowdhury

All are of Bikramnagar, PS Amtali, District West Tripura

9. Smt. Suparna Das (Sarkar)

W/O Sambhunath Sarkar

10. Sri Kripankar Chakraborty

S/O Ashutosh Chakraborty

Resident of Joynagar, Middle Road Agartala,
District West Tripura

11. Smt. Shila Chowdhury (Das)

W/O Bijan Kr. Das

12. Sri Suklab Roy

S/O Gauranga Ch. Roy

13. Sri Pradip Chakraborty

S/O Haradhan Chakraborty

14. Sri Uttam Hazari

S/O Gopal Hazari

15. Sri Haripada Natta Bhowmik

S/O Pramod Ch. Natta Bhowmik

16. Sri Haripada Debnath

S/O Birendra Debnath

17. Smt. Mukul Rani Deb

W/O Sankar Ch. Deb

18. Sri Rajkumar Bhuiya

S/O Iswarchandra Bhuiya

19. Sri Narayan Paul

S/O Ananta Paul

20. Sri Sibud Das

S/O Laxmi Kanta Das

21. Smt. Mira Ghosh

D/O Nithun Ghosh

22. Sri Bidyut Chowdhury

S/O Hamendra Chowdhury

23. Sri Dilip Ch. Deb

S/O Debendra Ch. Deb

24. Smt. Sushmita Deb (Sarkar)

W/O Kamal Kanti Sarkar

25. Sri Rajkumar Bhuiya

S/O Iswar Bhuiya

26. Sri Bijoy Kr. Sharma

S/O Rajmohan Sharma

27. Sri Rakesh Bhuiya

S/O Iswar Bhuiya

All are residents of Village Gakulnagar

PO Sekerkote, PS Bishalgarh, District Sepahijala, Tripura

----- Defendant-Respondents

28. Sri Partha Pratim Chakraborty

S/O Lt. Prabir Chakraborty

Resident of Krishnanagar, Thakurpalli Road

Agartala, PS West Agartala, District West Tripura.

----- Proforma Defendant-Respondents

For Appellant(s) : Mr. Deba Ranjan Chowdhury, Sr. Adv,
Mr. Dipak Deb, Adv.

For Respondent(s) : Mr. Abhijit Sengupta, Adv,

Date of hearing : 25.04.2025

Date of delivery of
Judgment & Order : 16.05.2025

Whether fit for
reporting : YES

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

This first appeal under Section 96 of CPC is filed challenging the judgment dated 13.06.2024 and consequential decree dated 19.06.2024 delivered by Learned Civil Judge (Senior Division), Sepahijala District, Sonamura in connection with TS No.107 of 2015. By the said judgment and decree Learned Trial Court has been pleased to dismiss the suit preferred by the present appellant.

2. Heard Learned Senior Counsel Mr. Deba Ranjan Chowdhury assisted by Learned Counsel Mr. Dipak Deb appearing on behalf of the appellant and also heard Learned Counsel, Mr. Abhijit Sengupta appearing on behalf of the contesting respondents.

3. Before proceeding with the merit of the appeal let us discuss about the subject matter of the dispute amongst the rival parties. According to the appellant-plaintiff, the suit land as described in the schedule of the plaint along with other lands was originally owned by one Colonel Raghubir Chandra Kochhar who purchased the same from one Nalini Mohan Bardhan, the predecessor-in-interest of the contesting defendants No.1 to 5, and started possessing the same after having its mutation which created in Khatian No.2065 in favour of said Kochhar in the year 1970. Thereafter, said Raghubir Chandra Kochhar in the year 1975 transferred his entire purchased land in favour of one Prabir Chakraborty i.e. the father of pro-defendant No.28 by executing one registered sale deed bearing No.I-5230 dated 26.04.1975 and accordingly said Prabir Chakraborty was inducted into

the possession of the said land. Dr. Bhaba Ranjan Bhattacharjee i.e. the father of the appellant-plaintiff assisted financially to said Prabir Chakraborty in purchasing the aforementioned land, so Prabir Chakraborty bequeathed his entire purchased land in favour of the appellant-plaintiff by execution of one registered WILL vide no. III-138 dated 19.05.2003. But after the execution of the said WILL in favour of the appellant-plaintiff, the father of pro-defendant No.28 namely Prabir Chakraborty further transferred certain portion of land out of the bequeathed land by execution of two registered sale deeds vide No. I-264 and I-265 on 07.01.2004. During the revisional survey, the entire land received by the plaintiff from the father of pro-defendant No.28 by dint of registered WILL dated 19.05.2003 was declared as 'Jotebriddhi' and the said land acquired the quantum of 2.29 acres. After the transfer of certain portion of the bequeathed land measuring 2.29 acres by the father of pro-defendant No.28 Prabir Chakraborty, the remaining land left 2.17 acres and the father of the plaintiff was inducted into the possession of the same. Thereafter, on 01.01.2005 the father of pro-defendant No.28 executed a registered Codicil vide No.I-175 in favour of the plaintiff whereby he affirmed the bequeath of the land measuring 2.17 acres in his favour. Unfortunately during his lifetime father of the pro-defendant No.28 namely Prabir Chakraborty could not obtain his name mutated in respect of his purchased land from the original owner Col. Ragubir Chandra Kochhar and the record of rights of his purchased land stood remained in the name of Col. Ragubir Chandra Kochhar. After taking over the possession of the land as mentioned in

Schedule- A by the father of the plaintiff by dint of registered WILL vide No.III-138 dated 19.05.2003 from the father of the pro-defendant No.28, a probate proceeding under Section 276 of the Indian Succession Act, 1925 was instituted to obtain probate of the said WILL which was registered as case no. Misc(Probate) 07 of 2005. Thereafter, as per the judgment and order dated 16.01.2008 passed in connection with case No. Misc. (Probate) 07 of 2005, Learned Addl. District Judge, Court No.2, West Tripura, Agartala was pleased to grant Probate Certificate for the said WILL. After obtaining the Probate Certificate when the appellant-plaintiff applied for mutation of the land as mentioned in Schedule of the plaint that time his prayer for mutation was dismissed by the Revenue Officer on the ground that the said land has already been recorded in the names of the defendant No.1 and others in RS Khatian No.316/2 appertaining to C/S plot No.1956 corresponding to R/S plot No.2101. According to the appellant-plaintiff, the creation of Khatian No.316/2 in favour of the defendant No.1 and others by the Revenue Authority is illegal because all along the suit land remained under the possession of Col. Raghubir Chandra Kochhar, Prabir Chakraborty and the father of the plaintiff on the strength of their respective deeds. Therefore, challenging the creation of Khatian No.316/2, the appellant-plaintiff filed one petition under Section 95 of the TLR & LR Act, 1960 before the District Collector, Sepahijala which was registered as Revenue Case No.250/2006. In the said proceeding bearing case No.Revenue Case 250/2006, the District Collector, Sepahijala directed for field inquiry in respect of land as mentioned in Schedule-A of the plaint by the DCM,

Bishalgarh and in that proceeding DCM, Bishalgarh had submitted a field inquiry report in favour of the defendants. Thereafter on 12.07.2013 the District Collector, Sepahijala had disposed of the application filed by the appellant-plaintiff under Section 95 of TLR & LR Act, 1960 with direction to maintain status quo of the revisional survey considering the field inquiry report. In the order dated 12.07.2013 the District Collector, Sepahijala suggested the plaintiff to approach to the Revenue Authority afresh for mutation of the suit land. Thereafter, fresh application for mutation was filed before the concerned Revenue Officer which was registered as case No.MR20130423. Accordingly notices were issued upon the defendants of that proceeding. On the date of the institution of the suit the mutation proceeding was pending before the Revenue Officer. But the issuance of notice by the Revenue Officer in the fresh mutation proceeding had infuriated the defendants and since then they were trying to dispossess the plaintiff from the suit land. During the pendency of the suit before the Court and also taking advantage of the functioning of the Court paralyzed due to the imposition of Covid-19 lock-down, defendant Nos.9, 10 & 19 started construction of building over the suit land specifically described in Schedule B1, B2 and B3 which are part of the land as mentioned in Schedule-A of the plaint since 15.11.2019 till 20.08.2020. Thus they have dispossessed the appellant-plaintiff from a portion of land as mentioned in Schedule-A of the plaint as mentioned in Schedule B1, B2 and B3. After that, the appellant-plaintiff filed the suit seeking declaration of right, title, interest and possession over the land as mentioned in

Schedule-A of plaint, confirmation of possession, cancellation of Khatian vide No.316/2, recovery of khas possession of the land as mentioned in Schedule B1, B2 and B3 and also permanent injunction over the remaining portion of land as mentioned in Schedule- A of the plaint.

4. Initially the suit was filed against the five principal defendants and one proforma defendant. The pro-defendant No.28 was originally pro-defendant No.6 but later on as per order dated 16.03.2016 the name of the defendant No.1 Smt. Maya Bardhan was struck off from the cause title of the plaint on account of her death in view of the provision provided under Order I Rule 10(2) of CPC as her legal heirs were already impleaded in the suit as defendant Nos.2 to 5. Thereafter, as per order dated 07.05.2016 the name of the defendant No.5 Smt. Sima Bardhan was also struck off from the cause title of the plaint in view of the provision provided under Order I Rule 10(2) of CPC on account of her death.

According to the appellant-plaintiff, after institution of the suit when summons were issued upon original defendant Nos.1 to 5, then a written statement was jointly filed by the defendant Nos.2 to 4 contesting the suit on 16.03.2016. Later on, as per order dated 10.02.2017 and based on the pleadings of the defendant Nos.2 to 4, defendants No.6 to 8 were added in the suit. Thereafter, the said defendants No.6 to 8 have jointly filed a written statement on 08.05.2017 contesting the suit. On the basis of pleadings of the defendant No.6 to 8 in their written statement, defendant Nos.9 to 27 came to be added in the suit as per order dated 08.09.2017 passed in

the suit in view of the provision provided under Order 1 Rule 10 (2) of CPC. Thereafter, after the addition of defendant Nos. 9 to 27 in the suit, written statement was jointly filed by the defendant No.9, 11, 14 to 17, 19, 20 and 22 on 24.04.2018. Similarly, the defendant No.10 has singularly filed his written statement on 01.09.2018. No written statement was filed by the defendant Nos.12, 13, 18, 21 and 23 to 27 and pro-defendant No.28. So, by order dated 04.10.2018 the defendant No.12, 13, 18, 21 & 23 to 27 were barred to file the written statement in the suit due to expiry of statutory period of 90 days as required under Order VIII Rule 1 of CPC.

After that, on 17.12.2020 the appellant-plaintiff had filed an application under Order VI Rule 17 of CPC seeking leave to amend the plaint for the purpose of insertion of some new facts, cause of action and also for specific relief against the defendant Nos.9, 10 and 19. The said application was registered as case No.Civil Misc. (J) 04 of 2020 and vide order dated 29.01.2022, the same petition was allowed. Accordingly, the plaint was amended. On 02.03.2022 amended plaint was submitted by the appellant-plaintiff and additional court fee was paid and after filing of amended plaint, defendant Nos.9, 19 jointly filed their additional written statement on 05.04.2022. Similarly, the defendant No.10 also filed additional written statement on 05.04.2022.

According to the defendant Nos.2, 3 & 4 their predecessor namely Nalini Mohan Bardhan was the original owner and possessor of the said land measuring 2.29 acres appertaining to C/S plot No.1956 recorded in C/S Khatian No.216 but after his death, the defendant

Nos.1-5 became the joint owners and possessors of the aforesaid land and on application for mutation, the record of rights was also prepared in their name in Khatian No.316/2 reflecting their possession over 2.29 acres of land appertaining to C/S Plot No.1956 corresponding to R/S plot No.2101. After the creation of the record of rights, the said defendant Nos.2 to 4 transferred land measuring 2.21 acres out of 2.29 acres in favour of the defendant Nos.6 to 8 by executing the registered sale deed vide No.I-670 dated 05.08.2013 on consideration money amounting to Rs. 30,40,000/- and accordingly, possession was handed over to them and as per due process of mutation, R/S Khatian No.2396 reflecting the transfer of land measuring 2.21 acres was created in their favour. It was further submitted by defendant Nos.2 to 4 that this land was further transferred by the defendant Nos.6 to 8 by sale in favour of other purchasers and all those purchasers were duly inducted into possession of the purchased land by raising boundary pillars, commissioning of water and electricity connection. When the plaintiff filed an application under Section 95 of the TLR & LR Act, 1960 before the District Collector, Sepahijala for correction of records by removing the names of defendant Nos.1 to 5 by cancelling khatian No.316/2, the then District Collector after considering the reports submitted by the Director of Land Record and Settlement directed to maintain status-quo of the Revisional Survey records. Later on, when the appellant-plaintiff prayed for mutation afresh, that time his prayer was dismissed. It was further submitted by defendant Nos.2 to 4 that their predecessor never transferred any land in favour of Col. Ragabir

Chandra Kochhar and thereafter said Kochhar did never transferred the land to any other person and furthermore, said kochhar had no title over the land.

The defendant Nos.6 to 8 in their written statement submitted that the predecessor of the defendant Nos.1-5 Nalini Mohan Bardhan was the original owners-in-possession of the suit land and he never transferred the land in favour of Col. Raghubir Chandra Kochhar. The defendant Nos.6 to 8 have completely supported the pleadings of the defendant Nos.2 to 4 and admitted that they have purchased land measuring 2.21 acres out of the total land measuring 2.29 acres from them by dint of the registered sale deed bearing No.I-670 dated 05.08.2013 and also obtained record of rights vide Khatian No.2396 in their favour. It was further submitted by the said defendants that they have further transferred different portions of their purchased land to 21 other bonafide purchasers by executing different registered sale deeds. As such, they prayed for dismissal of the suit.

The defendant No.10 also contested the suit by filing written statement denying the assertions of the appellant-plaintiff in the plaint. He submitted that he has purchased a portion of suit land from the defendant Nos.6 to 8 by dint of the registered sale deed No.I-654 dated 14.08.2014 and prior to purchase, he had conducted search about the title of the land when it was found that the defendant Nos.6-8 have/had valid title over the suit land. He also obtained mutation, domestic electricity connection and water supply from the concerned authority and he also relied upon the pleadings of the defendant Nos.1 to 8.

The defendant Nos.9, 11, 14, 15, 16, 17, 19, 20 & 22 have also filed their written statement. It was submitted that the defendant No.9 purchased a portion of suit land by dint of registered sale deed No.I-881 dated 05.08.2015 at the consideration sum of Rs. 2 lakhs from defendant Nos.6 to 8 and after purchase he has applied for mutation and accordingly the same was granted in Khatian No.3092 in his favour. Similarly, the defendant Nos.14, 15, 16, 19, 20 & 22 have purchased different other portions of the land from the defendant Nos.6 to 8 by dint of different registered sale deeds and submitted the details of their title deeds but the defendant Nos.11, 16 and 17 have not mentioned the details of their title deeds in their written statement. They also submitted that they are the bonafide purchaser of the different portion of land. Hence, by the written statement the said defendants prayed for dismissal of the suit with costs.

The defendant Nos.9, 10 and 19 have specifically denied all the averments made by the appellant-plaintiff in their additional written statements with regard to the new facts alleged at paragraph No.16(a) added by the appellant-plaintiff by way of amendment of his pleadings.

5. Upon considering the pleadings of the parties, Learned Civil Judge(Sr. Div), West Tripura, Agartala vide order dated 01.03.2009 framed some issues and thereafter considering the pleadings in the amended plaint as well as the written statements, some additional issues were framed by the Court on 05.08.2022. For the sake of convenience, I would like to refer herein below the issues formulated in the suit by the Learned Court below:

ISSUES

- i) Whether the suit is maintainable in its present form and nature?
- ii) Whether plaintiff has cause of action in the suit?
- iii) Whether plaintiff is entitled to the decree for declaration of right, title, interest and confirmation of possession over the suit land?
- iv) Whether plaintiff is entitled for permanent injunction, restraining defendants, their men and agents from entering into the suit land?
- v) Whether the plaintiff is entitled for decree as prayed for in the suit?
- vi) What other relief/reliefs the parties are entitled in the suit?

ADDITIONAL ISSUES

- i) Whether the defendant No.9, 10 and 19 during the period from 15.11.2019 till 20.08.2020 had illegally dispossessed the plaintiff from the plot(s) of land described in schedule B1, B2 and B3 to the plaintiff and constructed building and other structures thereon?
- ii) Whether the plaintiff is entitled to recovery of the plot(s) of land described in schedule B1, B2 and B3 to the plaintiff?

To substantiate the issues, the parties in dispute have adduced oral/documentary evidence on record which are reproduced herein below:

Witnesses of the appellant-plaintiffs:

- i) PW-1: Sri Biswajit Bhattacharjee
- ii) PW-2: Sri Jiban Das
- iii) PW-3: Sri Pradip Dasgupta
- iv) PW-4: Sri Ratan Sarkar
- v) PW-5: Smt. Tamasa Rani Datta (Debbarma)

Witnesses of the respondent-defendants:

- i) DW-1: Sri Apu Bardhan
- ii) DW-2: Debijit Chowdhury
- iii) DW-3: Shila Choudhury (defendant No.11)
- iv) DW-4: Sri Asish Choudhury
- v) DW-5: Sambhunath Sarkar
- vi) DW-6: Smt. Suparna Das (Sarkar) (defendant No.9)
- vii) DW-7: Smt. Narayan Paul (defendant No.19)
- viii) DW-8: Sri Kripankar Chakraborty (defendant No.10)

Court's Witness:

- i) CW-1: Sri Narayan Ch. Sarkar

Exhibits of the appellant-plaintiffs:

- i) Exbt.-1(a) to 1(e): Original title deed vide No.1-5230 dated 26.04.1975 in 5 sheets on identification by PW1.
- ii) Exbt.-2(a) to 2(d): Original power of attorney registered vide No.IV-9 dated 01.01.2005 in 4 sheets on identification by PW1.
- iii) Exbt.-3(a) to 3(i): Original Probate Certificate in c/w case No.Misc(Probate)07 of 2005 dated 16.01.2008 in 9 sheets on identification by PW1.
- iv) Exbt.-4: Certified to be true copy of khatian vide No.2065 obtained through RTI in 1 sheet on identification by PW-1.
- v) Exbt.-5: Photocopy copy of Khatian vide No.316/1 in 1 sheet on identification by PW-1.
- vi) Exbt.-6: Photocopy copy of Khatian vide No.316/2 in 1 sheet on identification by PW-1.
- vii) Exbt.-7: Original copy of mutation notice vide No.MR-20130423 dated 29.11.2014 in 1 sheet on identification by PW-1.
- viii) Exbt.-8: Original copy of notice dated 11.06.2015 issued by the Hahashildar N.C. Nagar TK in 1 sheet on identification by PW-1.
- ix) Exbt.-9: Certified copy of order dated 12.07.2013 passed by the court of DM & Collector, Sepahijala in c/w Revenue Case No.250 of 2006 in 1 sheet on identification by PW-1.

Exhibits of respondent-defendants:

- i) Exbt.A: Certified to be true copy of finally published old khatian No.216 in one sheet on identification by DW1.
- ii) Exbt.B: Order dated 12.07.2013 passed in Revenue Case No.250/2006 by the court of the DM & Collector, Sepahijala, Bishramganj in one sheet on identification by DW-1.
- iii) Exbt.-C: Certified to be true copy of the letter issued by the Dy. Director, Land Records and Settlement Govt. of Tripura addressing to the DM & Collector, Sepahijala, Bishramganj dated 30.03.2013 in one sheet on identification by DW-1.
- iv) Exbt.-D: Certified to be true copy of the letter issued by the Director, Land Records and Settlement Govt. of Tripura addressing to the DM & Collector, Sepahijala, Bishramganj dated 16.05.2013 in one sheet on identification by DW1.
- v) Exbt.-E: Certified to be true copy of finally published RS khatian No.316/1 in one sheet on identification by DW-1.
- vi) Exbt.-F: Certified to be true copy of finally published khatian No.316/2 in one sheet on identification by DW-1.

- vii) Exbt.-G: Certified to be true copy of finally published computerized khatian No.316/1 in one sheet on identification by DW-1.
- viii) Exbt.-H: Certified to be true copy of finally published computerized khatian No.316/2 in one sheet on identification by DW-1.
- ix) Exbt.-I: Certified to be true copy of finally published computerized khatian No.316/3 in one sheet on identification by DW-1.
- x) Exbt.-J: Certified to be true copy of finally published computerized khatian No.2396 in one sheet on identification by DW-1.
- xi) Exbt.-K(a) to K(j): Original registered sale deed vide No.1-670 dated 08.08.2013 in ten sheets on identification by DW-1.
- xii) Exbt.L(a) to L(b): Digitized finally published khatian No.3340 in two sheets on identification by DW-1.
- xiii) Exbt.-M(a) to M(z): Digitized finally published khatian Nos.3339, 3336, 3321, 3297, 3209, 3146, 3115, 3108, 3092, 3074, 3053, 2908, 2874, 2871, 2860, 2772, 2735, 2682, 2647, 2616, 2612, 2590, 2542, 2534, 2532 and 2396 on identification by DW-1.
- xiv) Exbt.-N(as a whole): Original registered sale deed vide No.I-654 dated 14.08.2014 executed by Smt. Dipa Sarkar (Chowdhury), Smt. Rama Bhowmik (Chowdhury) and Smt. Anita Chowdhury in favour of DW-8 in five sheets on identification by DW-8.
- xv) Exbt.-O(as a whole): Original money receipt for payment of Rs.343/- dated 22.05.2015 issued by the Asst. Engineer, DWS Sub-Division, Badharghat, West Tripura, in favour of DW8 regarding cost for installation of domestic water supply connection in one sheet on identification by DW-8.
- xvi) Exbt.-P(as a whole): Original letter dated 20.05.2015 issued in favour of DW-8 by the Asst. Engineer, DWS Sub-Division, Badharghat, West Tripura, regarding domestic water supply connection in one sheet on identification by DW-8.
- xvii) Exbt.-Q(as a whole): Original estimate dated 20.05.2015 issued by the Asst. Engineer, DWS Sub-Division, Badharghat, West Tripura in favour of DW-8 for domestic connection water supply in one sheet on identification by DW-8.
- xviii) Exbt.-R(as a whole): Certified copy of the registered sale deed vide No.I-565 dated 18.05.2015 executed in favour of DW-6 by the defendant No.6-8 in three sheets on identification by DW-7.
- xix) Exbt.-S(as a whole): Certified copy of the registered sale deed vide No.I-881 dated 05.08.2015 executed in favour of DW-6 by the defendant No.6-8 in three sheets on identification by DW-6.

Finally on conclusion of trial, Learned Trial Court below dismissed the suit filed by the appellant-plaintiff. The operative portion of the judgment and order of the Learned Trial Court below runs as follows:

89. Thus, on the basis of the above discussion, I decline to grant the relief prayed by the plaintiff to declare Khatian No.316/2 created in favour of the defendant nos.1-5 to be void and inoperative in law for ouster of jurisdiction of this Court in view of Sec. 188 of the TLR & LR Act, 1960.

90. Since all the preceding issues have been decided in negative and against the plaintiff, thus, the plaintiff is not entitled to any of the reliefs as prayed for or any other relief in the circumstances of this case. However, the answering defendants shall be entitled to the cost of defending this suit. Consequently, these two issues are also decided in negative and against the plaintiff.

ORDER

91. In the result, the suit is dismissed on contest with cost being devoid of merits.

92. Prepare the decree accordingly and place before me for signing within 15 days from today.

Challenging that judgment, this present appeal is preferred before this Court.

6. At the time of hearing of argument, Learned Senior Counsel Mr. D. R. Chowdhury appearing on behalf of the appellant-plaintiff has drawn the attention of the Court that the judgment and decree of the Learned Trial Court below suffers from infirmities as because the Learned Trial Court based on the provision of Section 188 of TLR Act dismissed the suit without considering the probate certificate granted by the Court of competent jurisdiction. He further submitted that before the Learned Trial Court below the appellant-plaintiff could prove the probate certificate granted by the competent Court and also submitted that on the basis of probate certificate the appellant-plaintiff acquired title over the land but the Learned Trial Court below did not consider the same. Learned Senior Counsel further submitted

that when the appellant-plaintiff came to know that the suit land was recorded in the name of some other persons immediately he filed an application for mutation of the suit land in his favour but that was not considered as the suit land was recorded in the name of different other persons. Thereafter, the appellant-plaintiff filed proceeding under Section 95 of TLR and LR Act before the District Collector, Sepahijala but the District Collector, Sepahijala on the basis of report of DCM, Bishalgarh passed an order which was contrary to the law and also directed the present appellant to apply for fresh mutation. It was also reflected in the order that the land which was recorded in the name of Kochhar was never in existence at any point of time and as such the findings of District Collector, Sepahijala was also perverse. He further submitted that the then District Settlement authority on the basis of document produced by said Kochhar mutated the land in his favour which he later on transferred to one Prabir Chakraborty and after that Prabir Chakraborty executed a will in favour of the present appellant and bequeathed the suit land to him. He further submitted that if the suit land was not in existence at any point of time then how the settlement authority recorded the suit land in favour of Col. Kochhar. Although said Prabir Chakraborty i.e. the testator of the Will could not mutate the land in his favour. Furthermore, Learned Senior Counsel again submitted that although no record of rights could be prepared in the name of Prabir Chakraborty but since Prabir Chakraborty stepped into the shoe of said Kochhar so in absence of any documentary evidence in his name, the suit was also maintainable. But the Learned Trial Court below without finding out

the actual truth regarding the title of Raghubir Chandra Kochhar came to the observation that the suit was not maintainable. Learned Senior Counsel also submitted that the land recorded in the name of Raghubir Chandra Kochhar and the land purchased by the different purchaser is totally different which has got nexus with each other but the Learned Trial Court without going into the root of the case decreed the suit most arbitrarily which needs to be interfered with by this Court. It was also submitted that initially the appellant-plaintiff filed suit for declaration and perpetual injunction but by this time COVID-19 spread across the country for which there was total disruption of official works as because there was lockdown across the country and taking this advantage the respondent-defendants No.9, 10 and 19 made some construction over the suit land and ousted the appellant-plaintiff from the suit land for which the appellant-plaintiff was also compelled to amend his plaint wherein decree for recovery of possession was also sought for. Learned Senior Counsel further submitted that there are numerous judgments holding that in a case of this nature the Civil Court can also interfere because the revenue forum has got no authority to pass any decree but the Learned Trial Court below did not consider the same and dismiss the suit of the appellant-plaintiff without any basis. It was also submitted that said probate certificate was never challenged and also the Khatian standing in the name of said Raghubir Chandra Kochhar was never challenged by any other person including the present respondent-defendants to any other forum. As such, on the basis of said probate

certificate the appellant has acquired right, title, interest over the suit property.

Regarding the concluding observation of the Learned Trial Court below that the jurisdiction of Civil Court is barred in view of the provision of Section 188 of TLR & LR Act, Learned Senior Counsel has relied upon one citation of Privy Council reported in **AIR 1940 Privy Council 105 [titled as Secretary of State vs. Mask & Co. dated 15.03.1940]** wherein in page 110 c1 the Lordships of Privy Council observed as under:

"It is settled law that the exclusion of the jurisdiction of the Civil Courts is not to be readily inferred, but that such exclusion must either be explicitly expressed or clearly implied. It is also well settled that even if jurisdiction is so excluded, the Civil Courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with, or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure."

Learned Senior Counsel further referred another citation reported in **(2016) 1 TLR 166 [titled as State of Tripura and Ors. Vs. Dilip Kumar Majumder and Ors. dated 08.12.2015]** wherein in para No.20 this High Court observed as under:

"20. The question that has been raised that whether the civil court has got the jurisdiction to determine the dispute which may fall within the ambit of section 15 of the TLR & LR Act, 1960. Proviso to section 188 of the TLR & LR Act which has not been printed in some of the subsequent editions even though that was not deleted by any amendment, clearly provides that when the dispute is relatable to the question of title or determination of the title then the bar as created under Section 188 of the TLR & LR Act would not be applicable. Apart that, it is well settled that when it is a question of title, the revenue court does not have any jurisdiction, it is the civil court and the civil court alone is to determine the question of the title. If there arises a situation of co-terminus jurisdiction then the option remains with the person who would take the action at law to opt the forum. As such the argument that has been advanced by Mr. Deb, learned senior counsel cannot be sustained. Apart that another latent issue has been made part of the substantial question of law is that whether would extinguishment of the title of the true owner when the true owner is the Government

and the land is the Government land be under section 27 read with article 112 of the Limitation Act 1963 or can such prescription eclipse the provisions of section 15 of the TLR & LR Act, 1960? Section 15 of the TLR & LR Act, 1960 confers power to evict the illegal or unauthorized possessor from the Government land. Section 27 or article 112 if read together clearly, it makes out a special provision. The special provision always derogates the general provision. If the law is not interpreted in that way, the provisions of section 27 or article 112 of the Limitation Act would be rendered otiose and no court can interpret law to make it otiose. It must be made workable. It has to be stated clearly that provisions of section 15 of the TLR & LR Act, 1960 is subject to provision of section 27 read with article 112 of the Limitation Act, 1963 and, thus, the first substantial question is answered in the negative.

Having held so, this appeal is allowed partly in terms of the above.

Prepare the decree accordingly and thereafter send down the records."

Referring the same, he submitted that inspite of pendency of revenue proceeding civil Court has got the jurisdiction to determine the dispute where question of title is involved.

Further, referring the jurisdiction of civil Court Learned Senior Counsel also referred another citation of full bench of Gauhati High Court reported in **AIR 1990 Gauhati 17 [titled as Daulatram Lakhani v. State of Assam and others dated 29.08.1988]** wherein in para No.22 the Hon'ble Gauhati High Court observed as under:

"22. From what has been stated above, we would say that in a matter like the one at hand civil court's jurisdiction would not be barred in the following cases:

- (1) when the order under Rule 18 is patently illegal or without jurisdiction.
- (2) Where the remedy provided by the Regulation to adjudge the objection raised is not sufficient;
- (3) where complicated questions relating to title are involved; or
- (4) where the plaintiff seeks declaration of his title over the land from which he is sought to be evicted."

Learned Senior Counsel thereafter submitted that since on the ground of want of title Learned Trial Court below determined all the

issues framed and since the probate certificate was never challenged by any person to any other forum and till today it stands legally good and lawful so the decision of Learned Trial Court below on the issues appears to be unsustainable in the eye of law for which this appeal is preferred and the appellant has been able to establish that the judgment of the Learned Trial Court below suffers from perversity and infirmity as such the same needs to be interfered with by setting aside the judgment and decree delivered by the Learned Trial Court below.

7. On the other hand, Learned Counsel for the contesting respondents has drawn the attention of the Court that originally the suit land was belonging to one Nalini Mohan Bardhan and after his death as per law of inheritance his legal heirs became the owners in possession of the suit land and on different occasions they have transferred portion of suit land to different persons and those subsequent purchasers by this time were made parties in the suit before the Court but surprisingly before the Learned Trial Court below the appellant-plaintiff could not adduce any document showing title of Raghubir Chandra Kochhar over the suit land. According to Learned Counsel granting of probate does not confer any title over the suit land and before the Learned Trial Court below the appellant-plaintiff could not produce any document showing his title over the suit land or could not adduce any document as to how he derived title over the suit property save and except production of probate certificate before the Court. Thus the Learned Trial Court below rightly came to the observation that the appellant-plaintiff had no title over the suit land and decided all the issues in negative against the appellant-plaintiff of

the case and ultimately dismissed the suit. According to Learned defence Counsel there was no infirmity in the judgment delivered by Learned Trial Court and it was a reasoned one. So, Learned Counsel for the contesting defendants finally urged for dismissal of this appeal.

8. I have heard detailed argument of both the sides and perused the record of the Learned Court below including the judgment and decree delivered by Learned Trial Court below. Admittedly the suit land was originally belonged to one Nalini Mohan Bardhan being the predecessor of Maya Bardhan, Apu Bardhan and others. It was the case of the appellant-plaintiff that from said Nalini Mohan Bardhan one Raghubir Chandra Kochhar purchased the suit land which was recorded in his name in Khatian No.2065 and thereafter he transferred the land to Prabir Chakraborty who purchased the same with the financial support of the father of the appellant-plaintiff and thereafter, Prabir Chakraborty executed a Will in favour of the present appellant-plaintiff and also a Codicil and after that, based on the 'Will' one probate was obtained which was never challenged by any other person including the contesting respondent-defendants. But when the appellant-plaintiff approached for mutation that time it revealed to him that the suit land was recorded in the name of different persons and his mutation was not allowed. Thereafter he approached to the District Collector, Sepahijala by filing petition under Section 95 of TLR & LR Act but no effective order could be passed. Rather the District Collector ordered for maintaining status quo and also advised the appellant-plaintiff to apply for fresh mutation. In the meantime he filed the suit.

There is no dispute on record that Nalini Mohan Bardhan was the owners-in-possession of the suit land originally who transferred the land according to the appellant-plaintiff to Raghubir Chandra Kochhar but surprisingly before the Learned Trial Court below the appellant-plaintiff could not produce any document as to how the land was purchased by Raghubir Chandra Kochhar from Nalini Mohan Bardhan which created a doubt in the mind of the Learned Trial Court below regarding title of the appellant-plaintiff. However, it is on record that the said land was recorded in the name of Raghubir Chandra Kochhar in Khatian No.2065. From the order of District Collector, Sepahijala, it emerges that the suit plot recorded in the name of said Raghubir Chandra Kochhar in Khatian No.2065 was never existed rather it was imaginary one but on perusal of the certified copy of khatian (Exbt.-4) issued by the settlement authority it appears that the khatian was prepared under Section 43(3) of TLR & LR Act vide case No.103/1970 by the Revenue Officer. So definitely it can be presumed that on the basis of a mutation proceeding the Khatian was opened in his name but surprisingly the appellant could not produce the record of the said proceeding before the Learned Trial Court below to draw any inference. Before this Court also, the appellant-plaintiff although relied upon the document but could not submit anything in this regard. The contesting respondent-defendants also did not submit anything in this regard rather Learned Counsel confined his argument to the fact that although the original owners-in-possession was Nalini Mohan Bardhan and after his death the same was recorded in the name of his legal heirs which was recorded in their name in khatian

No.316/1 but it is the admitted position that the CS plot number as mentioned in Exbt.-4 i.e. the Khatian of said Raghubir Chandra Kochhar and the CS plot as mentioned in Khatian in the name of legal heirs of said Nalini Mohan Bardhan namely Maya Rani Bardhan and others are completely different. It cannot be believed that the settlement authority without perusing any documentary evidence on record allowed mutation and created Khatian No.2065 in the name of Raghubir Chandra Kochhar.

9. Section 42 and 43 of TLR & LR Act deals about preparation of record of rights and publication of record of rights. In this regard, I would like to refer the relevant provisions of Section 42 and 43(3) of TLR & LR Act which are as under:

"42. Preparation of record of rights.- It shall be the duty of the survey officer to prepare a record of rights for each village showing the area of each survey number and other particulars and any other record or register, in accordance with the rules made under this Act:

Provided that where for any reason a record of rights cannot be prepared in respect of the entire village it shall be lawful for the survey officer to prepare separate records of rights for different areas of such village and notwithstanding anything contained in this Act or any rule made thereunder, a record of rights when finally published shall not be called in question in any court on the ground that it was not prepared in respect of the entire village.

43. Publication of the record of rights.- (3) Every entry in the record of rights as finally published shall, until the contrary is proved, be presumed to be correct."

There is no evidence on record that challenging that Khatian No.2065 any person objected creation of said khatian in the name of Raghubir Chandra Kochhar. The Learned Trial Court below at the time of elaborate discussions of all the issues only came to the observation that the appellant-plaintiff could not prove any title over the suit land and the Khatian No.2065 was not in force. Although both the parties

fairly submitted that the land recorded in the name of said Raghubir Chandra Kochhar and also in the name of legal heirs of Nalini Mohan Bardhan are quite different. Thus, it appears that without going into the root of preparation of record of rights, Learned Civil Court determined the suit and came to the observation that in view of Section 188 of TLR & LR Act, 1960 that this present suit is not maintainable. The mutation officer or the District Collector at the time of passing of the order dated 12.07.2013 in connection with Revenue Case No.250 of 2006 under Section 95 of TLR & LR Act, 1960 did not go into the root of the matter and gave an observation which according to this Court was not in accordance with the factual aspects. However, those orders have not been challenged before this Court. If it is found that the CS plot numbers as mentioned in the said Khatian No.2065(Exbt.-4) does not in existence in that case the plaintiff will not be entitled to get any relief from the Court. Admittedly, the contesting respondents could not cast any doubt over probate certificate/Will, etc as relied upon by the appellant-plaintiff but they confined to their argument that the appellant could not prove any title belonging to Raghubir Chandra Kochhar over the suit land. But it is on record that on the basis of mutation proceeding No.103 of 1970 the said Khatian No.2065(Exbt.-4) was created by the settlement authority probably the order was passed by Assistant Survey and Settlement Officer for which the matter needs further examination and consideration by the Learned Trial Court below.

10. In absence of the specific findings regarding preparation of said Khatian No.2065 by the settlement authority, the issues

determined by the Learned Trial Court below appears to be unreasonable for which this Court is of the considered view that the decision of the Learned Trial Court needs to be interfered with and accordingly the judgment and decree delivered by Learned Trial Court needs to be set aside and accordingly the matter is remanded back to the Learned Trial Court to determine following issues afresh:

- i) Whether the appellant-plaintiff has got right, title, interest and possession over the suit land?
- ii) Whether the appellant-plaintiff was dispossessed from the suit land?
- iii) Whether the appellant-plaintiff is entitled to the decree as prayed for?

In determining the issues both the parties be asked to adduce fresh evidence on record i.e. both oral and documentary evidence. In addition to that, Learned Trial Court below shall seek a report from Director, Land Records and Settlement, Tripura referring Exbt.-4 (Khatian No.2065) asking as to how the said Khatian was prepared by the then settlement authority and to produce the record of mutation proceeding if available and if necessary by sending a team of surveyors physically to identify the land of the said Khatian and thereafter if necessary to examine and record the evidence of the staff of the settlement department to support the factual report giving scope to the contesting respondents for cross-examination if any and after that to deliver a fresh judgment covering the factual aspects in accordance with law.

11. In the result, the appeal filed by the appellant is hereby allowed on contest with costs. The judgment dated 13.06.2024 and consequential decree dated 19.06.2024 delivered by Learned Civil Judge, Senior Division, Sepahijala District, Sonamura, Tripura in connection with TS No.107 of 2015 is hereby set aside. The matter is remanded back to the Learned Trial Court with a direction to take fresh evidence of both the parties and prior to that, the Learned Trial Court below shall obtain a report from the Director of Settlement authority referring Exbt.-4 i.e. Khatian No.2065 as indicated above in earlier paragraph and after that shall deliver a fresh judgment in accordance with law.

The parties shall appear before the Court of Learned Civil Judge, Senior Division, Sepahijala District, Sonamura, Tripura on 12.06.2025.

With this observation, the appeal stands disposed of.

Send down the LCR along with a copy of this judgment to the respective Courts.

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

JUDGE