HIGH COURT OF TRIPURA
A G A R T A L A

RSA No.20 of 2024

1. **Sri V. Thansanga Darlong,**
2. **Sri Lura Darlong,**
3. **Sri Suakhama Darlong,**
4. **Smt. Sangnguri Darlong,**
5. **Smt. B. Vanlalmawii Darlong,**
6. **Sri Hmundinga Darlong,**
7. **Sri Powl Nei Kunga Darlong,**
8. **Smt. Hnampuii Darlong,**
9. **Smt. Margaret Darlong,**
10. **Smt. H. Theresa Darlong**

All are sons and daughters of Late Neidinga Darlong @Neidingalliana Darlong. Residents of Kathalcherra, Darlong Village, P.O. & P.S. – Nepal Tila, District – Dhalai Tripura.

.....Appellant(s);

– V e r s u s –

1. **Sri Ringliana Darlong,**
S/o Late Sanghminthanga Darlong,

2. **Sri Biakthanga Darlong,**
S/o Late Ngurniela Darlong, resident of Kathalcherra, Darlong Village, P.O. & P.S. Nepal Tila, District – Dhalai Tripura.

……..Respondent(s);

For the Petitioner(s)	:	Mr. D. Bhattacharya, Sr. Advocate, Mr. Samar Das, Advocate, Mr. Agniva Chakraborty, Advocate.
For the Respondent(s)	:	Mr. B. N. Majumder, Sr. Advocate, Mr. Subrata Sarkar, Advocate, Mr. Aditya Dasgupta, Advocate.
Date of hearing & delivery of Judgment & Order	:	**11.05.2026.**
Whether fit for reporting	:	YES: ; NO: √

HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA

JUDGMENT & ORDER (ORAL)

Heard Mr. D. Bhattacharya, learned senior counsel assisted by Mr. S. Das, learned counsel appearing for the appellants and Mr. B.N. Majumder, learned senior counsel assisted by Mr. S. Sarkar, learned counsel appearing for the respondents.

[2] This appeal under Section 100 of the CPC, 1908 has been filed challenging the judgment dated 06.09.2023 and the related decree thereof, passed in Title Appeal No.03 of 2023 by the learned Additional District Judge, Dhalai Judicial District, Ambassa whereby the learned first appellate court has held as under:

> **"21. Secondly, one of the major grounds taken by the Ld. Trial Court for dismissal of the said suit is the discrepancy in the names of the grand-father and father of the Appellants/ Plaintiffs in some of the documents exhibited. This Court has minutely gone through the said discrepancies and is of the considered view that the said discrepancies are very minor and inconsequential especially in the absence of any allegations of fraud or impersonation, etc. by the other side. This Court fails to understand how the name of the father of the plaintiffs being mentioned as "Neidinga Darlong" in the cause title and the plaint, but as "Niedingliana Darlong" in the pleadings can make any difference specially when the 02 different names appear in the same document (plaint) and it is not the case of the defendants that one name was given in the plaint and another in an official document like the Khatian/ allotment letter, etc. Consequently, the said conclusions and reasoning of the Ld. Trial court regarding the discrepancies in the above said names are set aside.**
>
> **22. With the said observations, this appeal is dismissed and the Appellants/ Plaintiffs are directed to execute a fresh sale deed qua the suit land in favour of the Respondents/ Defendants and to get the same registered within a period of 03 months from today. The fresh Sale Deed is to be dated and to also contain an accurate description of the land transferred.**
>
> **23. Upon perusal of the Decree-Sheet, it seems that the description of the suit land provided therein is incorrect and <u>not</u> in conformity with the description provided in the plaint/ Page 2 Para 2 of the impugned judgement/ Page 18 of the impugned judgment. In fact, on deeper scrutiny of this inconsistency, it is clear that the description provided in the Decree-Sheet actually pertains to the suit land qua one of the connected Appeals, namely T.A 01/2023 (T.S 28/2018).**
>
> **23A. Situated thus, the LC Record be remanded back to the Ld. Trial Judge for passing a fresh judgment (with necessary amendments) ensuring that the description of the suit land across (1) the plaint (2) Page 2 para 2 of the impugned judgment (3) Page 18 of the impugned judgment and (4) the Decree Sheet, is uniform. The said objections arguments, thus stand addressed accordingly.**
>
> **24. Relief of "mesne profits" cannot be granted in favour of the plaintiffs for the same reasons that the other two reliefs, (namely decree of title and recovery of possession) have been denied.**
>
> **25. This appeal is thus dismissed on merits and the final decision of the Ld. Trial Court is affirmed. (Dismissal of suit for declaration of right, title and interest as well as the dismissal of suit for recovery of possession and mesne profits).**
>
> **26. Appeal is thus disposed of on contest.**
>
> **27. No order as to costs.**
>
> **28. A copy of this judgment be provided to the Ld. Trial Court [Ld.Civil Judge (Senior Division), Dhalai Judicial District, Ambassa] for his necessary information and compliance.**
>
> **29. Decree-sheet be prepared within a week from today.**
>
> **30. File be consigned to the record room.**
>
> **31. Send back the L.C Record.**
>
> **32. The judgment and order, as above delivered on this the 06th Day of September, 2023 under the hand and seal of this Court."**

[3] The present appellants as the plaintiffs filed the Title Suit No.30 of 2018 praying for declaration of their right, title and interest in the suit land and recovery of possession evicting the present respondents from the suit land. The suit land comprises of an area of 0.15 acre consisting of RS plot nos. 2503, and 2502 of Mouja-Kathalcherra, Longtharai Valley.

[4] The claim of the appellants in the suit are that in 1357 T.E corresponding to 1947 A.D. around 9[nine] drones of land in that locality was allotted by the then Tripura Administration in favour of several Darlong families including late Ziakhama Darlong, the grandfather of the appellants and thereafter, such allottees partitioned their lands amongst them amicably and ultimately, the grandfather of the present appellants got 6.96 acres of land with specific boundary. During first survey and settlement operation, said land was recorded in the name of Late Neidingliana Darlong, son of said Late Ziakhama Darlong.

[5] It is also stated by the appellants that in the last of part of 1950 many Jhumia Darlong families from Saikar village came to Kathalcherra and they set up a new village which became popularly known as New Katahalcherra Darlong Village and at that time, on request of social leaders of the Village Committee, several persons were allowed by the predecessor of the appellants to stay over their part of land as permissive possessor with a condition that those persons would vacate their respective portion of land whenever asked for. The appellants allege that since the lifetime of the predecessor of the appellants, the predecessor of the respondent was staying in the suit land as permissive possessor and after the death of said predecessor, the name of the respondent was recorded in the remark column of the related record of right as permissive possessor in respect of the suit land. It is further stated by them that earlier some Jhumia Darlong families and

one missionary primary school were also allowed to occupy the land of the predecessor of the appellants and lateron some of them vacated the same, but one Khuma Darlong and one Nurliana Darlong continued to occupy the land of the predecessor of the appellants and therefore, in the record of right, their names were reflected as permissive possessor.

[6] The father of the appellants died on 21.01.2004 and their mother pre-deceased their father. It is also stated by the appellants that one of their co-sharer, namely T.N. Martha Darlong was abducted by extremist in the year 2002 and since then she became missing and was not heard of more than 7[seven] years. Said T.N. Martha Darlong was also unmarried and therefore, her shares devolved upon the present appellants. The appellants requested the respondent to vacate the suit land on several occasions but such request went in vain. The last request was made in this regard on 04.08.2008 but at that time the respondent straightway denied their right, title and interest in the suit land and therefore, the suit has been filed.

[7] The respondent stated that the suit land was originally a vacant land and therefore, in the year 1952 the villagers of Kathalcherra village started occupying the suit land by constructing their own houses and cultivating vegetables and other plants without any objection from any corner. In the year 1992, the father of the appellants, Neidingliana Darlong, claimed the possession of the suit land to the village committee members and there one amicable settlement was done at the intervention of the village committee members and it was resolved that the respondent should purchase the suit land from the father of the appellants as he had demanded**.** An agreement was also signed between the parties and Neidingliana Darlong had received Rs.12,000/- from the respondent and other villagers with condition that he would have no further claim in the land. It is also stated by the respondent that one church is also situated within the claimed land of the appellant and the

authority of that church was also one of the payee of said Rs.12,000/- and when the church was constructed, there was no objection from the side of the appellants or their predecessor. Therefore, according to the respondent, the appellants are not entitled to get a decree of recovery of possession.

[8] In the trial, from the side of the appellants total 5[five] witnesses were examined and the respondents also examined total 5[five] witnesses. Both sides also proved certain documents into evidence. Finally, the learned trial Court i.e. the Court of the learned Civil Judge, Sr. Division, Court No.1, Dhalai, Ambassa dismissed the suit.

[9] Challenging the said judgment, the appeal was filed by the appellants and the same is also disposed of in the line as extracted earlier.

[10] Mr. D. Bhattacharya, learned senior counsel seriously challenges the correctness of the findings of the learned first appellate court on the ground of over exercise of jurisdiction. Learned senior counsel submits that the appellants filed the suit for declaration of their right, title and interest in the suit land and for recovery of possession thereof, but the learned first appellate court travelling beyond its jurisdiction granted decree of specific performance of contract in favour of the respondent directing the appellants to execute a fresh sale deed in favour of the respondent in respect of the suit land and to get the same registered within 3[three] months from the date of decree. Simultaneously, the learned first appellate court also dismissed the appeal of the appellants. Learned senior counsel, Mr. Bhattacharjee therefore prays for setting aside the judgment of the learned first appellate court.

[11] Mr. B. N. Majumder, learned senior counsel for the respondents, submits that the genealogy of the appellants' title was not described in the plaint. Moreover, it is the appellants' claim that the respondent has been

possessing the suit land as permissive possessor from 1952 and on the other hand, the respondents' claim is that he or his predecessor are in possession of the suit land from 1952, but on the basis of their own strength and not as a permissive possessor. So, the possession of the respondent or his predecessor in the suit land from 1952 is established. Learned senior counsel referring to the evidences of the appellant Lura Darlong (PW.1), submits that PW-1 himself had stated that he was aged about 62 years as on the date of his deposition recorded on 03.09.2019. Therefore, it is clearly established that in the year 1952 he was not even born and therefore, he cannot have any personal knowledge of what had happened in the year 1952, and thus his evidence is liable to be discarded. According to the learned senior counsel, PW-2 is also not the person connected with the affairs between the parties and PW.3 and PW-4 were also not born during the relevant period. PW.5 is also an official witness. Therefore, the evidences adduced by them are not acceptable at all.

[12] According to learned senior counsel, Mr. Majumder, the appellant neither could satisfactorily prove their title in the suit land nor could be able to prove the story of permissive possession of the respondent in the suit land. Rather, by claiming the respondent to be permissive possessors, they themselves have admitted that the respondent has been in possession of the suit land uninterruptedly for a long period. The judgments passed by Ld. Trial Court and as affirmed by Ld. 1st Appellate Court, Mr. Majumber submits, are well reasoned and proper.

[13] Learned senior counsel, Mr. Majumder, further submits that in the year 1992, when the father of the plaintiffs claimed the suit land again, there was a settlement in a village meeting organized by the Village Committee Members and as per that settlement, the villagers who were possessing the

land of the predecessor of the appellants jointly paid Rs.12,000/- to the father of the present appellant and a document was also executed in this regard which has been proved in the evidence and surprisingly, it is seen that the requisite stamp for the said deed of settlement was purchased by PW- 1 himself. Therefore, he has full knowledge of the affairs between the parties.

[14] The Court has appreciated the submissions of the parties. The second appeal was admitted on the following substantial questions of law-

> **(i) Whether the judgment of First Appellate Court is perverse in Law for granting relief in the nature of specific performance of contract etc. to the defendant without any such relief claimed by him through any separate suit or counterclaim.**
>
> **(ii) Whether the judgment of First Appellate Court is perverse on the ground of wrong application of provision of Section 53 (A) of Transfer of Property Act.**

[15] Without delving into factual aspects of the case, this Court at the very outset is constrained to observe that learned first appellant Court has grossly erred by ignoring the settled principle of law that no relief can be granted to any party when no such relief is claimed by him. In fact, there was no counterclaim or cross-suit filed by the respondent seeking relief of specific performance of contract against the appellants and no issue in this regard was framed in the suit and no evidence was also led in this respect. Despite the same, the learned first appellate Court took the venture to create a new case for the respondent and granted relief of specific performance of contract by directing the appellants to execute a deed of sale in favour of the respondent within 3 months, under the guise of Section 151 of C.P.C The first appellate Court even did not consider whether any such claim could be at all tenable without examining the question of period of limitation, and also without giving

any opportunity to the appellant to submit their pleading and lead evidences on that point.

[16] In fact, the powers under Section 151 of the CPC cannot be exercised in any manner which would be contrary to or different from the procedure expressly provided in the CPC. Reference in this regard may be made to a decision of Hon'ble Supreme Court in case of **Padam Sen and another versus the State of U.P. [1960 Supreme (SC) 229]** and the relevant portion of the paragraph no.8 is reproduced hereunder:

> **"……..The inherent powers of the Court are in addition to the powers specifically conferred on the Court by the Code. They are complementary to those powers and therefore it must be held that the Court is free to exercise them for the purpose mentioned in S. 151 of the Code when the exercise of those powers is not in any way in conflict with what has been expressly provided in the Code or against the intentions of the Legislature. <u>It is also well recognized that the inherent powers is not to be exercised in a manner which will be contrary to or different from the procedure expressly provided in the Code</u>."**

[17] Provisions of Rule 4 of Order XX of CPC envisage that judgments of Courts shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision. As per the provisions of Rule 5 of Order XX of CPC, the Court is required to state its finding or decision <u>on the issues framed</u> in a suit with necessary reasoning. It is also settled position of law that the Court cannot travel beyond the pleading of the parties. In ***Bachhaj Nahar v. Nilima Mandal, (2008) 17 SCC 491*****,** the followings were held by the Hon'ble Supreme Court:

> **"23. It is fundamental that in a civil suit, relief to be granted can be only with reference to the prayers made in the pleadings. That apart, in civil suits, grant of relief is circumscribed by various factors like court fee, limitation, parties to the suits, as also grounds barring relief, like res judicata, estoppel, acquiescence, non-joinder of causes of action or parties, etc., which require pleading and proof. Therefore, it would be hazardous to hold that in a civil suit whatever be the relief that is prayed, the court can on**

> **examination of facts grant any relief as it thinks fit. In a suit for recovery of rupees one lakh, the court cannot grant a decree for rupees ten lakhs. In a suit for recovery possession of property 'A', court cannot grant possession of property 'B'. In a suit praying for permanent injunction, court cannot grant a relief of declaration or possession. The jurisdiction to grant relief in a civil suit necessarily depends on the pleadings, prayer, court fee paid, evidence let in, etc.**"

[18] In the case in hand, Learned first appellant Court even remained unconscious of the fact that the respondent never claimed any relief of specific performance of contract. Therefore, the exercise of power under Section 151 of CPC in favour of the respondent by issuing direction for the execution of a sale deed, is a clear abuse of the process of the Court. Consequently, the substantial question of law as formulated in this appeal is answered accordingly in favour of the appellant.

[19] Learned first appellate Court in the impugned judgment relied on a decision of Hon'ble the Supreme Court in case of ***Rambhau Namdeo Gajre versus Narayan Bapuji Dhotra (Dead) through Legal Heirs*, AIR 2004 SC 4342** wherein some discussions were made by Hon'ble the Supreme Court with regard to the provisions of Section 53A of the Transfer of Property Act. So far the present case is concerned, the applicability of Section 53A of the Transfer of Property Act can be examined by learned first appellate Court keeping in mind the pleadings and evidences led by the parties.

[20] In view of above, the instant appeal is allowed. The impugned judgment dated 06.09.2023 and the related decree thereof, passed in Title Appeal No.03 of 2023 by the learned Additional District Judge, Dhalai Judicial District, Ambassa are set aside. The matter is remanded back to the learned first appellate Court to hear the parties afresh and to decide the matter within the parameters of law and taking into consideration the pleadings and evidences presented by the parties in the suit.

The appeal shall preferably be disposed of by the learned first appellate Court within three months from the date of receipt of a copy of this judgment.

Registry is to issue a certificate for return of the value of the Court fee filed with memorandum of appeal, to the appellants in view of provisions of Section 13 of Court Fees Act as force in Tripura.

Return the LC record with copy of this judgment.

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

JUDGE

HIGH COURT OF TRIPURA
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