



**HIGH COURT OF TRIPURA
AGARTALA**

RSA 41 OF 2023

1. Shri Sailendra Chandra Nath,
S/o Lt. Suresh Chandra Debnath.

2. Shri Mantu Nath,
S/o Lt. Suresh Chandra Debnath,
Both are residents of Vill. and P.O.- Agnibasa, Ward No. 2,
P.S- Panisagar, District- North Tripura.

3 (a) Smt. Rita Nath,
W/o Lt. Sridam Chandra Nath.

3 (b) Shri Sagar Nath,
S/o Lt. Sridam Chandra Nath.

3 (c) Smt. Sristi Nath@ Rupali Nath,
D/o Lt. Sridam Chandra Nath.

4. Sri Rinku Nath,
S/o Lt. Suresh Chandra Debnath.

5. Shri Nantu Nath,
S/o Lt. Suresh Chandra Debnath.

All are residents of Vill. & P.O.- Agnibasa, Ward No. 1,
P.S.- Panisagar, District- North Tripura.

.... Appellants

Versus

1. Smt. Suchitra Nath,
W/o Shri Shubhendu Bikash Nath,
Vill., P.O. and P.S. – Panisagar, District- North Tripura

.... Respondent.

2. Smt. Khela Rani Nath,
W/o Shri Promath Nath, D/o Lt. Suresh Chandra Debnath,
Vill- Subhash Nagar, P.O. and P.S.- Kanchanpur, District- North Tripura.

3. Smt. Dulu Rani Nath,
W/o Shri Promath Nath, D/O Lt. Suresh Chandra Debnath,
Kanchanpur, Trijangsan, Near Gas Agency, P.O. and P.S. – Kanchanpur,
District- North Tripura.

4. Smt. Tulu Rani Nath

W/o Shri Gakul Nath, D/o Lt. Suresh Chandra Debnath,
Vill- Palgaw, Satdrun, P.O.- Tiltahai, P.S.- Panisagar,
District- North Tripura.

.... Proforma-Respondents

B E F O R E**HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA**

For the Appellants : Mr. R.K.P.Singh, Advocate.

For the Respondents : Mr. S.M. Chakraborty, Sr. Advocate.
Mrs. Pinki Chakraborty, Advocate.

Date of hearing and date of delivery of Judgment and Order: 20.06.2026

Whether fit for reporting :

YES	NO
	✓

JUDGMENT AND ORDER(ORAL)

Heard learned counsel of both sides.

2. The judgment dated 01.09.2023, passed by learned District Judge, North Tripura, Dharmanagar in Tittle Appeal No. 16 of 2022 and related decree thereof are under challenge in this appeal whereby learned District Judge set aside the judgment and decree, passed in Title Suit No. 43 of 2020 and decreed the suit of perpetual injunction of the plaintiff-respondent [here-in-after referred to as the plaintiff] by restraining the appellant [here-in-after referred to as the defendants] and their men and agents from entering into the suit property and from disturbing the peaceful possession and enjoyment of the plaintiff over the suit land.

3. The claim of the plaintiff is that she purchased the suit land from the original owner Late Suresh Chandra Debnath [predecessor of the defendants] by two registered deeds of sale bearing No.1-850, dated 03.03.1980 and deed bearing No.1-851, dated 03.03.1980 and since her purchase, she has been possessing the suit land, though the same was not mutated in her name. On the death of the original vendor, late Suresh

Chandra Debnath, his legal representatives started disturbing the possession of the plaintiff in the suit land, and on 20.09.1980, at about 8:00 am, they cut down some trees from the suit land and also threatened to dispossess her in future. In that context, the suit was filed seeking perpetual injunction against the defendants, their men and agents from entering into the suit land and from disturbing the peaceful possession of the plaintiff therein.

4. The defendant nos.1 and 4 contested the suit by filing written statement. They denied the entire claim of the plaintiff and asserted that their father late Suresh Chandra Debnath borrowed Rs.10,000/- from the husband of the plaintiff and in turn he signed on a blank stamp paper as a token of guarantee that in the event of failure to repay the said amount within two years, he would execute a sale deed in favour of the plaintiff in respect of the suit land after obtaining permission from the competent authority as it was an allotted land. It is also stated by them that said Suresh Chandra Debnath got the allotment of the suit land with a condition that within 10 years of the date of allotment he would not transfer it in any manner. According to them, their father returned the said amount within the stipulated period but said blank stamp paper was not handed over to said Suresh Chandra Debnath by the husband of the plaintiff and now taking advantage of the same, he created sale deed in the said blank signed stamp paper. According to them, during the lifetime of their father he was possessing the suit land and after his death, the defendants are possessing the same having right, title and interest therein.

5. During pendency of the suit, defendant no.3, Sridam Chandra Nath died and the plaintiff filed a petition under Order XXII, Rule 4 of CPC for substitution of legal representatives of the deceased defendant no.3. Said petition was duly verified and was supported by an affidavit sworn by the attorney of the plaintiff. The said petition was also allowed by the learned trial Court.

6. During trial, the Attorney of the plaintiff examined himself as PW-1, one Bhupendra Nath as PW-2, Mintu Das as PW-3 and another Narayan Nath as PW-4 to prove her possession in the suit land.

7. Learned Trial Court while dismissing the suit observed that after the petition for substitution of legal representatives of defendant no.3 was allowed, the plaintiff was asked to file amended plaint on the next date fixed for that purpose. One amended plaint was also submitted by the plaintiff but, it did not bear the signature of the plaintiff or her Attorney and it was antedated and no verification was also signed there and therefore, the plaintiff was not fair and honest in seeking relief before the Court with clean hands and exercised fraud which vitiated the trial. Learned Trial Court further observed that record of right should be presumed to be correct unless contrary is proved and said record of right was still lying in the name of father of the defendants and as the amended plaint was shrouded in doubt, the validity of purchase deeds of the plaintiff were neither proved nor disproved and hence was not proved and finally the suit was dismissed.

8. Learned First Appellate Court set aside the judgment and decree of learned Trial Court and observed that the purchase deeds of the plaintiff were 30 years old and therefore, presumption of genuineness of the signature and other parts of the documents were in favour of the plaintiff, whereas, the defendants did not adduce any evidence to rebut such genuineness and taking note of the above such purchase deeds and also the khatian, learned First Appellate Court arrived at the decision that the plaintiff had acquired title in the suit property but failed to get the land mutated in her name as it was an allotted land. Accordingly, learned First Appellate Court decreed the suit by issuing perpetual injunction restraining the defendants, their men and agents from entering into the suit property and from disturbing the peaceful possession and enjoyment of the plaintiff over the suit property.

9. The appeal was admitted on the following substantial question of law:

“Whether the impugned judgment and decree of First Appellate Court are perverse on the ground that said court passed the said impugned judgment holding that the plaintiff had her right, title and interest over the suit land, in a suit for injunction simpliciter and also when no issue was framed

regarding her right, title and interest in respect of the suit land.”

10. Mr. R.K.P. Singh, learned counsel argues of behalf of the defendants that the original owner of the suit land was the predecessor of the defendants, and that, without any permission from the DM & Collector, the alleged deed of transfer was made. Therefore, such transfer is *void ab initio* and that the learned First Appellate Court has committed gross error in decreeing the suit based on such deeds, and moreover, when there was no relief sought for by the plaintiff seeking declaration of her right, title, and interest in the suit land, learned First Appellate Court has given categorical observation that the plaintiff was the owner of the suit land. According to the learned counsel, such observations is totally illegal, erroneous and same is liable to be expunged. Learned counsel further argues that the suit itself is not maintainable inasmuch as, question of title being involved in the suit, no declaration of right, title and interest of the plaintiff under Section 34 of the Specific Relief Act, was made, and therefore, the suit was not maintainable. Further, learned counsel contends that no issue regarding right, title and interest was framed by the learned Trial Court, but, despite the same, the learned First Appellate Court observed that the plaintiff was the owner of the suit land.

11. Finally, in support of his contention, learned counsel relies on a decision of the Hon'ble Supreme Court in ***Bachhaj Nahar vs. Nilima Mandal & Anr. vs. Civil Appeal Nos.5798-5799 of 2008***, wherein it is observed by the Apex Court that *a Court cannot make out a case not pleaded. The Court should confine its decision to the questions based in the pleadings. Nor can grant a relief which is not claimed and which does not flow on the facts and the cause of action alleged in the plaint, and a factual issue cannot be raised or considered for the first time in the second appeal.*

12. He further relies on another decision of the Hon'ble Supreme Court in case of ***Jharkhand State Housing Board vs. Didar Singh & Anr., Civil Appeal No.8241 of 2009***, wherein it was observed by the Hon'ble Supreme Court that *in each and every case where the defendant disputes the title of the plaintiff, it is not necessary that in all those cases the plaintiff has to seek the relief of declaration. A suit for mere injunction does not lie*

only when the defendant raises a genuine dispute with regard to title and when he raises a cloud over the title of the plaintiff, then necessarily, in those circumstances, the plaintiff cannot maintain a suit for mere injunction.

13. He also relies on another decision of the Hon'ble Supreme Court in the case of ***T.V. Ramakrishna vs. M. Mallappa & Anr., Civil Appeal No.5577 of 2021***, wherein at paragraph No.10, it is observed that *where the plaintiff's title is not in dispute or under a cloud, a suit for injunction could be decided with reference to the findings on possession, however, if the matter involves complicated questions of fact and law relating to title, the Court will relegate the parties to the remedy by way of a comprehensive suit for declaration of title, instead of deciding the issues in a suit for mere injunction.*

14. Mr. Saktimoy Chakroborty, learned senior counsel for the plaintiff, however, submits that no prayer for declaration of right, title and interest was made by the plaintiff in the case; the reason may be that in the Khatian there was mention that the transfer was barred under Section 14 of the Tripura Land Revenue and Land Reforms Act, 1960 [for short, TLR & LR Act]. However, learned Trial Court erroneously took into consideration only one part of the said relevant Khatian, wherein the name of the predecessor of the defendants was mentioned as 'raiyat' of the land but ignored the 16th column of the Khatian, wherein name of the plaintiff was mentioned as the possessor of the suit land. Therefore, according to the learned senior counsel, the learned First Appellate Court rightly corrected the view of the learned Trial Court and decreed the suit. Learned senior counsel further submits that some harsh observations were made erroneously by learned Trial Court, stating that the pleading of the plaintiff was doubtful on a technical ground that when defendant No.3 died, the plaintiff filed a petition for substitution of his legal representatives, which was allowed by the Court. However, later on, the learned Trial Court directed the plaintiff to submit a re-casted copy of the plaint and took exception to the fact that the re-casted plaint was not supported by any affidavit and was also not verified by the plaintiff.

15. According to learned senior counsel, such observation is seriously prejudicial to the interest of the plaintiff, as it touches the genuineness of her claim made through her plaint, though, as per law, there is no necessity to submit any re-casted plaint in this regard, inasmuch as it was not an amendment filed under Order VI Rule 17 of CPC, rather it was a mere petition by the plaintiff for substitution of legal representatives of the deceased defendant No.3. It was, therefore, the ministerial work of the Court to incorporate the names of legal representatives in the cause title of the plaint and plaintiff had no legal obligation to submit any re-casted plaint. According to Mr. Chakraborty, learned senior counsel, the impugned judgment of learned First Appellate Court is sound, well-reasoned and deserves no interference, and therefore, the appeal may be dismissed.

16. Court has considered the rival submissions of both sides and also gone through the relevant materials placed in the record.

17. So far the claim of ownership and possession over the suit land of the defendants are concerned, they failed to prove the same by adducing any evidence. On the other hand, from the side of the plaintiff four witnesses were examined to prove the possession of the plaintiff in the suit land since her alleged purchases, which remained un-rebutted. The related ROR of the suit land also reflects the possession of the plaintiff in the suit land in the relevant 16th column. Therefore, the possession of the plaintiff in the suit land is established in this case. Thus, learned First Appellate Court committed no error in decreeing the suit.

18. The source of claim of such possession by the plaintiff was her purchase of the suit land by above said two registered purchase deeds. She did not claim any relief of declaration of her right, title and interest in the suit land but while discussing such source of her possession, learned First Appellate Court incidentally observes that she is having title in the suit land. In fact, no such relief of declaration of her title in the suit land was made by the plaintiff. Moreover, no issue was also framed therein. Therefore, such observation of the learned First Appellate Court was not necessary at all and was beyond the scope of adjudication and thus, such observation of the learned First Appellate Court is expunged. The question of title of the

plaintiff is kept open. Though learned counsel, Mr. Singh relies on two decisions of the Hon'ble Supreme Court in case of ***T.V. Ramakrishna Reddy and Jharkhand State House Board*** (supra) to bolster his submission that there was a genuine dispute with regard to the title and a cloud existed over the title of the plaintiff and therefore, the suit for injunction simpliciter was not maintainable, but to justify their claim, the defendants did not adduce any evidence in this case. Moreover, according to them their father was an allottee of the suit land and terms and conditions of such allotment only restricts transfer of the said land for 10 years after the date of allotment, but they did not divulge as to when their father had got such allotment. The sale deeds executed by their predecessor were also registered under the provision of Indian Registration Act, 1908, therefore, story of creation of a deed in a stamp paper is also not believable. Therefore, the present suit is not at all a suit involved in complicated question of title. Thus, such claim of the defendants is not sustainable.

19. As indicated earlier, learned Trial Court has also committed gross error by observing that just because of the reconstructed copy of the plaint was not signed and verified by the plaintiff, the contents of the original plaint of the plaintiff was doubtful and she exercised fraud upon the Court. Learned Trial Court ought to have been conscious of the fact that no petition for amendment was filed under Order VI, Rule 17 of CPC by the plaintiff rather, she filed a petition for only substitution of legal representatives of deceased defendant no.3 under Order XXII, Rule 4 CPC and said petition was duly verified and supported by affidavit. When learned trial Court allowed the said petition, it was only ministerial work to be done for incorporation of names and addresses of legal representatives of said deceased defendant. Therefore, such observation of learned Trial Court was uncalled for. As already learned First Appellate Court has set aside the judgment and decree of learned Trial Court, no further observation is made in this regard by this Court.

20. When the possession of the plaintiff in the suit land is established, same is required to be protected. As per Art. 300A of the Constitution, no person shall be deprived of his property save the authority of law. Thus, the plaintiff cannot be dispossessed of her property except due

process of law. Learned First Appellate Court has therefore rightly decreed the suit.

21. In view of above such discussion, it is held that the present appeal is devoid of any merit and accordingly, the same is dismissed.

22. No order as to costs.

23. Registry will prepare a decree accordingly and re-consign the trial Court record and the record of the First Appellate Court with a copy of this judgment and decree.

24. Interim application, if any, stand disposed of.

JUDGE

SANJAY GHOSH Digitally signed by SANJAY GHOSH
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