

THE HIGH COURT OF TRIPURA
AGARTALA

RSA No.02 of 2009

Khilpara Krishi Sramik – O – Matsajibi Union,
 Represented by its president Md. Ahammed Ullah,
 son of late Alfus Miah, Village and Post Office – Khilpara,
 P.S. – R.K. Pur, Udaipur, South Tripura,
 the President who represents the interests of all members, in
 total 254 persons.

.....Plaintiff-Appellant
(Plaintiff-Appellant in T.A. 11 of 2008)

– Vs –

1. The State of Tripura represented by D.M. & Collector, South Tripura, Udaipur, P.O. R.K. Pur.
2. Superintendent of Fisheries, Udaipur, South Tripura, P.O. R.K. Pur.
3. Sub-Divisional Police Officer, Udaipur (SDPO), Udaipur, South Tripura, P.O. – R.K. Pur.
4. Officer-in-Charge, Radhakishorepur Police Station, Udaipur, South Tripura, P.O. - R.K. Pur.
5. Chairperson, Matar Bari Block Panchayet Samity, Matar Bari Block Development Officer, P.O. Matar Bari, P.S. R.K. Pur, Udaipur, South Tripura
6. Gaon Pradhan, Khilpara Gaon Panchayet, P.O. Khilpara, P.S. – R.K. Pur, Udaipur, South Tripura
7. President, Khilpara, Fishermen Co-Operative Society Limited (Matsajibi Samabaya Samiti Limited), Village and P.O. – Khilpara, P.S.- R.K. Pur, South Tripura. (Representing the Khilpara M.S.S. Ltd.)

.....Respondents
(Principal Defendant-Respondents in T.A. 11 of 2008)

8. President, Formerly of Samabaya Krishi Samiti Limited, Now Khilpara Prathamik Krishi Samabaya Samiti & Limited – PACS, P.O. Khilpara, P.S. – R.K. Pur, Udaipur, South Tripura. (Representing Khilpara PACS).

.....Pro-forma-Respondent
(Pro-forma Defendant in T.A. 11 of 2008)

B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the appellant : Mr. Sekhar Dutta, Advocate
 For the respondents : Mr. G. S. Bhattacharjee, Advocate
 Date of hearing and : **12.01.2015**
 delivery of judgment & order
 Whether fit for reporting : **NO**

JUDGMENT & ORDER (ORAL)

Heard Mr. Sekhar Dutta, learned counsel appearing for the appellant as well as Mr. G. S. Bhattacharjee, learned counsel appearing for the respondents.

02. This is an appeal under Section 100 of the CPC questioning the legality of the judgment and decree respectively dated 20.12.2008 and 02.01.2009 delivered in Title Appeal No.11 of 2008 by the District Judge, South Tripura, Udaipur whereby the judgment and decree respectively dated 26.05.2008 and 03.06.2008 passed by the Civil Judge (Jr. Divn.), Udaipur, South Tripura delivered in Title Suit No.21 of 1998 has been affirmed.

03. At the time of admitting this appeal, the following substantial questions of law were formulated by the order dated 22.01.2009.

"(i) Whether an appellate Court has the power to award cost of Rs.2 lakhs as compensatory costs under the provisions of Section 35A of the CPC while exercising his appellate power?"

(ii) Whether the appellate Court exceeded his jurisdiction while passing the impugned judgment and decree at the time of disposing of the petition filed by the appellant under Section 24 of the CPC?"

04. Even though the appellant was granted liberty to raise any other substantial question of law, at the time of hearing, it is necessary to record that Mr. Sekhar Dutta, learned counsel appearing for the appellant has not made any endeavour projecting any other substantial question of law.

05. The appellant as the plaintiff filed the suit for declaration with consequential relief representing the numerous

members of an unregistered union namely Khilpara Krishi Sramik–O–Matsajibi Union. The suit has been set up claiming the possessory right over the water bodies described in the Schedule of the plaint couched with the consequential relief of permanent injunction against the respondents.

06. The defendant Nos.1, 2, 3, 4 and 5 by filing a joint written statement has denied the claim of the petitioner and raised certain jurisprudential objections. In the written statement it has been categorically stated that those water bodies were under the control and possession of the Fishery Department, Government of Tripura since long and those were in the course of time leased out to the Khilpara Primary Agricultural Co-operative Society Ltd. till the possession of those were handed over to Matabari Panchayet Samity on 23.05.1995. It has been also stated that before the said water bodies were leased out to Matabari Panchayet Samity, the possession of those water bodies were with that Primary Agricultural Co-operative Samity Ltd., the defendant No.8 uninterruptedly. Therefore, even the claim of the possession has been strongly denied by the defendants.

07. The trial court by the judgment dated 26.05.2008 delivered in the said Title Suit No.21 of 1998 dismissed the suit categorically holding that *"I am of the opinion that even if those persons who are inhabitants of the banks of the tanks were engaged by the defendant No.8 to rear fish in the tanks, it does not mean that the plaintiffs' society or its members have been possessing the tanks."*

08. All the issues, such as (i) Whether the suit is maintainable in its present form and nature? (ii) Whether the suit is bad for defect of parties? (iii) Whether the plaintiffs are in possession of the suit land? (iv) Whether the plaintiff is entitled to get a decree that the plaintiff is not evictable forcibly or illegally without due course of law from the suit land by the defendant Nos.1 to 7? (v) Whether the plaintiff is entitled to get an order of injunction restraining the defendants from evicting the plaintiff from the suit land forcibly or illegally? or (vi) Any other relief or relieves the parties are entitled to?, were decided and determined against the plaintiff-appellant.

09. Being aggrieved, the appeal was filed under Section 96 of the CPC in the court of the District Judge, South Tripura, Udaipur being Title Appeal No.11 of 2008. The said appeal was dismissed by the impugned judgment, affirming the finding of the trial court.

10. Mr. Sekhar Dutta, learned counsel appearing for the petitioner has submitted that before the judgment in the appeal was pronounced, the appellant herein filed an application under Section 24 of the CPC for transferring the said appeal from the court of the District Judge to any other competent court for hearing. But by the order dated 20.12.2008 the appeal was finally disposed of. Mr. Dutta, learned counsel has further submitted that the appellate court had the responsibility of disposing the petition filed for transfer of the appeal prior to the delivery of the judgment but that has not been done causing serious prejudice to the appellant.

11. Mr. Dutta, learned counsel has further submitted that unless the trial court passed an order of compensatory cost under Section 35A of the CPC, the appellate court is bereft of jurisdiction to pass such compensatory cost. But by the order dated 20.12.2008, the District Judge has directed payment of a sum of Rs.2,00,000/- as the compensatory cost to the respondents for filing an appeal on vexatious grounds. Mr. Dutta, learned counsel has severely criticised the award of such compensation without having any jurisdiction.

12. Mr. G. S. Bhattacharjee, learned counsel appearing for the respondent Nos.1 to 5 has submitted that the day i.e. 20.12.2008 was fixed for delivery of the judgment after hearing was completed on 03.12.2008. The appellant participated in the hearing without any demur. But subsequently on certain obnoxious pleas the petition under Section 24 of the CPC had been filed by them just to clog the wheel of the justice. However, Mr. Bhattacharjee has candidly submitted that award of the compensatory cost cannot be sustained in view of the provisions as provided under the statute.

13. Having regard to the rival contentions, this Court finds that the rejection of the petition dated 20.12.2010 filed under Section 24 of the CPC on the grounds as canvassed does not suffer from any sort of infirmity whatsoever. But Mr. Dutta, learned counsel for the appellant is substantially correct that in absence of any compensatory cost by the trial court, the appellate court does not have any jurisdiction to impose a compensatory

cost in terms of Section 35 A of the CPC inasmuch as proviso to Rule 33, Order 41 stipulates as under:

"Provided that the Appellate Court shall not make any order under section 35A, in pursuance of any objection on which the Court from whose decree the appeal is preferred has omitted or refused to make such order."

This is a clear prohibition, curbing an exception to the generality of the powers for awarding cost. As such, the direction to make payment of Rs.2,00,000/- as the compensatory cost is interfered with and set aside and to that extent the impugned order dated 20.12.2008 is interfered with. However this Court refrains from making any further scrutiny as the appeal is set up only on those two substantial questions of law. Moreover, the learned counsel for the appellant has not pressed for any other substantial question at the time of hearing. Accordingly, this appeal stands dismissed, subject to interference made in the order dated 20.12.2008 passed in Title Appeal No.11 of 2008.

The Registry is directed to prepare the decree accordingly.

LCRs be sent back forthwith.

JUDGE