

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

RSA.NO. 31 OF 2009

1. Shri Arun Chandra Das,
son of late Abhoy Charan Das
2. Shri Ajoy Das,
son of late Abhoy Charan Das
3. Smti Prativa Rani Das,
daughter of late Abhoy Charan Das,
and wife of Shri Radhika Ranjan Das,
all of Kacharghat (Daulatpur),
P.S. kailashahar, North Tripura
4. Smti Pranati Das,
daughter of Late Abhoy Charan Das and
wife of late Suresh Chandra Das of Chantail,
P.S. Kailashahar, North Tripura
5. Smti Joyanti Das,
daughter of Late Abhoy Charan Das and
wife of Shri Manik Das of
Bazaricherra, P.S. Patherkandi,
District- Karimganj, Assam

..... Defendant-appellants

- V E R S U S -

1. Shri Bimal Ch. Das
2. Shri Shyamal Das,
both sons of late Brojendra Das @
Brojendra Kr. Das, residents of
Village –Bhagyapur, P.S. Kailashahar,
North Tripura
3. Smti Parbati Das,
daughter of late Brojendra Das @
Brojendra Kr.Das, wife of
Shri Arabindra Das
4. Smti Jyotsna Malakar (Das),
daughter of Late Brojendra Kr.Das@
Brojendra Das, wife of Shri
Sudhangshu Malakar.
all of village Bhagyapur (Dhanbilash),
P.S. Kailashahar, North Tripura
5. Smti Purnima Das,
daughter of late Brojendra Das

@Brojendra Kr. Das, wife of
Shri Sankar Das of Fulkumaripara,
P.S. Radhakishorepur, Udaipur,
South Tripura

.....Plaintiff- respondents

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

For the defendant-appellants : Mr. A.K.Bhowmik, Sr.Advocate
Mr. R.Dutta, Advocate
For the respondents : Mr.G.K.Nama, Advocate.
Date of hearing : 08.04.2015
Date of judgment & order : 08.05.2015
Whether fit for reporting :

Yes	No
√	

JUDGMENT & ORDER

This is an appeal under Section 100 of the CPC from the judgment and decree dated 16.05.2009, delivered in Title Appeal No. 01/2008, passed by the District Judge, North Tripura, Kailasahar. By the said judgment and decree dated 16.05.2009, the judgment and decree dated 08.10.2007 passed by the Civil Judge Sr. Division North Tripura, Kailasahar in Title Suit No. 18(partition) of 1994 was set aside. It is to be noted that by the said judgment and decree dated 08.10.2007, the suit being Title Suit No. 18(partition) of 1994 was dismissed.

[2] On appeal filed by the plaintiff, namely, Sri Brajendra Chandra Das @ Brajendra Kumar Das, since deceased represented by the legal heirs, the plaintiff-respondents No. 1, 2, 3, 4 and 5, being Title Appeal No. 1/2008, the District Judge, North Tripura, has set aside the said judgment and decree dated 08.10.2007 and decreed the suit on observing as under:

“.....In the result, considering the discussion made hereinabove the appeal is allowed on contest with costs. Consequently, the judgment dated 08.10.2007 passed by the learned Civil Judge Sr. Division, North Tripura, Kailasahar in Title Suit No. 18(partition) of 1994 is hereby set aside. The plaintiffs are entitled to get the decree of the partition and the plaintiffs along with the defendant Nos. 12 and 13 are entitled to get 1/3rd share from the suit property. At the same time the defendant Nos. 1 to 6 are entitled to get 1/3rd share of the suit property being the legal heirs of Abhay Chandra Das and the defendant Nos. 7 to 11 are also entitled to get 1/3rd share of the suit property being the legal heirs of Lt. Bipin Chandra Das. Both the parties are directed to make partition of the suit property amicably within a period of 2 months from today, failing which the plaintiffs would be at liberty to pray for final decree of the suit property.....”

[3] On questioning the legality of the said judgment dated 16.05.2009, delivered in Title Appeal No. 01/2008, this appeal has been preferred by the defendants. At the time of admission of the appeal the following substantial questions of law were formulated.

“.... (i)Whether the impugned judgment and order is in accordance with the provisions of Order II Rule 2 of the CPC which needs to be discussed and?

(ii) Whether the learned Trial Court was right in finding that the suit was barred by Order II Rule 2 of the Section 11 of the CPC which was not discussed at all by the learned Appellate Court....?”

[4] The appellants were given liberty to raise any other substantial questions of law, if any, at the time of hearing with the leave of the Court. Mr. A. K. Bhowmik, learned senior counsel appearing for the appellant has submitted that the substantial question of law (i) is not at all a question relevant for this appeal. He urged this Court to grant leave for re-framing and adding proper substantial questions of law having regard to the impugned judgment for ends of justice and to determine real controversy involved in this appeal. The appellants had been permitted to re-frame the substantial questions of law. The substantial questions of law those would be allowed to agitate in this appeal are as follows:

(i)Whether the First Appellate Court while setting aside the impugned judgment and decree passed by the learned Trial Court has failed to notice the findings returned by the trial court that the suit was not maintainable being barred by Order II Rule 2 of the CPC?

(ii) Whether the impugned judgment is bad for non consideration of the oral evidence alongside the documents at Exbt.A series, Exbt- B, Exbt.C, Exbt.D, and Exbt.E series?

(iii) Whether the First Appellate Court has granted relief not prayed in the plaint and thereby caused the failure of justice?

[5] The essential fact for purpose of appreciating the substantial questions of law may be laid at the outset. The suit land as described in the plaint was part of the original of Taluki land one Kalim Ullah sold the suit land to one Radhika Mohan Paul Choudhury duly executing the Sale Deed on 18th Jaistha 1351 T.E., one Banka Chandra Das was a tenant under Kalim Ullah. Even though Radhika Mohan Paul Choudhury became the owner of the suit property, Banka Chandra Das continued in his possession over the suit land as tenant. Subsequently Radhika Mohan Paul Choudhury sold the suit property by the registered Sale Deed dated 19th Poush 1353 T.E. Thus Narmada Kumar Das, Uma Charan Das and Shyam Charan Das became the owner of Taluka where Banka Chandra Das was recorded as the tenant Banka Chandra Das continued to pay rent to the new owners against receipt. Banka Chandra Das had two other brothers namely Abhay Charan Das and Bipin Chandra Das and they were living in a joint mess. As Banka Chandra Das was the Karta of the undivided Hindu family, he took jote settlement of the suit property in his name for the interest of the family. Thus, Banka Chandra Das and his two brothers namely Abhay Charan Das and Bipin Chandra Das became owner of the said property to the extent of 1/3rd share each. The said three brothers namely Banka

Chandra Das, Abhay Charan Das and Bipin Chandra Das had the joint possession over the suit property. They were residing in the same mess. That property was not inherited by them from their parents. As such the suit property was not their ancestral property. Banka Chandra Das and Bipin Chandra Das started living separately at one point of time from the joint mess without partition of the suit property but they mutated the suit property jointly with Abhay Charan Das. They used to come and possess the suit property jointly as before with Abhay Charan Das and take usufructs from the said property. Banka Chandra Das died in the year 1961 leaving behind his son, Brajendra Kumar Das, the plaintiff and his only daughter namely Kutan Bala Das. After death of Kutan Bala Das the defendants Nos. 12 and 13 being her sons became the legal heirs to inherit the same. Before death of Banka Chandra Das, his brother Bipin Chandra Das died leaving behind the defendants No. 7 to 11 as his legal heirs. Abhay Charan Das also died leaving behind the defendants No. 1 to 6 as his legal heirs and they succeeded his property. Thus, the plaintiffs and the defendants No. 12 and 13 are commanding title over the suit property to the extent of $1/3^{\text{rd}}$ share against the account of their predecessor. For further clarification it may be noted that the defendants No. 1 to 6 have share in the suit property to the extent of $1/3^{\text{rd}}$ and the defendants No. 7 to 11 have share in the suit property to the extent of $1/3^{\text{rd}}$.

[6] During the last settlement operation the suit property had been incorrectly recorded as the property of Madan Ram Das, the grandfather of the plaintiffs. In fact, the suit property was not the property of Madan Ram Das. When it was detected that the plaintiff's name had not entered in the record of right (ROR) in respect of the suit property, the plaintiff filed an objection before the ASO (Assistant Settlement Officer) and it was registered as Objection Case No. 434. The ASO by the order dated 20.12.1989 gave direction for correction of the record of right of the suit property showing Banka Chandra Das, the father of the plaintiff as one of the owners having 1/3rd share therein. Against the said order dated 20.12.1989 the defendants No. 1 to 6 preferred appeal and the same was registered as Case No. 92/90. The Settlement Officer, Kumarghat, North Tripura by his order dated 21.01.1992 dismissed the appeal and upheld the order of the ASO. The ASO passed the order with direction to correct the record of right in respect of the suit property showing Banka Chandra Das as the co-parcener to the extent of 1/3rd. According to the said order, the suit property was recorded in Khatian Nos. 869/1 and 869/2 of Mouja Kailashahar. As per the record of right i.e Khatian Nos. 869/1 and 869/2, Banka Chandra Das had 1/3rd share in the suit property and after his death the plaintiff and the defendant Nos. 12 and 13 inherited that share in the suit property. The suit property is recorded as the joint property .The co-sharers

were in joint possession and the suit property was never partitioned amongst them.

[7] The plaintiff had further contended that Abhay Charan Das during his lifetime filed a suit bearing Nos. 47/1961 in the Court of the Subordinate Judge, Tripura, Agartala which was subsequently re-numbered as Title Suit No. 2/1976 against the plaintiff and others for partition of the property situated at Bhagyapur under mouja Dhanbilash and the suit was finally decreed. The suit property was not involved in the T.S.No. 2/1976 and there is no relation with the suit property of the present suit and the suit property of T.S No. 2/1976. Further the case of the plaintiff is that on several occasions he demanded for partition of the suit property to the defendants, but they paid no response to his demand and for that reason he filed the suit seeking for partition claiming 1/6 share over the suit property. The defendant Nos. 1 to 5 filed their written objection and they have raised certain jurisprudential objection that the suit is barred and the plaintiff did not have any cause to file the suit.

[8] The defendant Nos. 7 to 11 did not file any written statement nor did contest the suit. Even they are not made party in this appeal. The Civil Judge Senior Division, North Tripura, Kailashahar, on appreciating the evidence has observed as under:

“So I am satisfied that all the joint properties of Banka Chandra Das, Abhay Chanran Das and Bipin Chandra Das were

partitioned by T.S. No. 2 of 1976. In this suit Banka Chandra Das did not agitate that he had at all any joint property. Order II Rule 2 CPC provides the instant plaintiff from filing the instant suit separately for another partition as he had to involve all the joint properties in T.S. 2 of 1976 to get partition. So the instant suit of the plaintiff is barred under Order II Rule 2 CPC. Moreover, the plaintiffs failed to adduce any documentary evidence that they took permission of the Court of Subordinate Judge who disposed T.S. No. 2 of 1976 to file separate suit for the instant suit land at a later stage. Moreover, the instant plaintiffs failed to adduce any proof that they took permission from the instant Court also to file a separate partition suit for the instant suit land as they had to involve all the joint properties in the earlier partition suit bearing No. T.S. No. 2 of 1976 which was decreed in preliminary form and the decree was executed and ended in final decree. Moreover, the matter of instant suit is the partition of joint property of three brothers, namely, Brojendra Kumar Das, Abhoy Charan Das and Bipin Chandra Das. That matter was ended in T.S. No. 2 of 1976 of the Court of Subordinate Judge, North Tripura, Kailashahar. Section 11 C.P.C says that:-

“ No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially 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 this regard the matter of partition of joint property of three brothers Banka Chandra Das, Abhoy Charan Das and Bipin Chandra Das were agitated and decided finally in T.S No. 2 of 1976. The same thing has come before this Court to decide today which a bar under Section 11 of C.P.C. As such instant suit of the plaintiffs is barred under Section 11 of C.P.C. also. Moreover, Exhibit-12 shows that Banka Chandra Das was the jotedar/tenant under Kalim Ullah, tenant in Touji No. 6 of Mouja Daulatpur at Kailashahar. Exhibit-1 series shows that rent was received by land lord Narmada Kumar Das from

Jotedar (tenant) Banka Chandra Das and it was received from Abhoy Charan Das. Exhibit-2, Exhibit-3 show that Abhoy Charan Das has been in possession. This Exhibit-2 and Exhibit-3 gives no trace of instant plaintiffs or Brojendra Das or his predecessor Banka Chandra Das as possessor in the suit land in the record. Exhibit-4 shows that by order dated 20.12.1989, Settlement Department decided that Banka Chandra Das, Abhoy Charan Das and Bipin Chandra Das were the heirs of Late Madan Ram Das and they directed to insert the name of Banka Chandra Das as owner of 1/3rd share in the suit land. But this Exhibit-4 as it has come before this Court as evidence has clearly shows that Settlement Officer failed to trace out where from he got the original jote was in the name of Madan Ram Das. So finding of Settlement Officer vide Exhibit-4 stating the original jotedar to be Madan Ram Das is fictitious because under original land lord Kallim Ullah while Banka Chandra Das was shown as jotedar, Madan Ram Das was dead at that time vide Exhibit-12. So the Settlement Officer, North Tripura, Kumarghat gave fictitious finding and it proves that Exhibit-5 decided by Settlement Officer D.C. Bhattacharjee and Exhibit-4 decided by M. K. Datta, A.S.O. Kailashahar Rev. Circle were fictitious and manufactured one. From all the aforesaid discussion I hereby decided that the instant suit of the plaintiffs is not maintainable in its present form. Accordingly, issue No.1 is decided”.

Having observed thus the suit was dismissed.

[9] Mr. Bhowmik, learned senior counsel appearing for the appellants has submitted that by the impugned judgment the finding on maintainability of the suit has not even appreciated by the District Judge, North Tripura while allowing the first appeal. According to him, T. S. No. 2 of 1976 was a partition suit between the three brothers. It appears that the land described in the decree in T.S.No. 2 of 1976 was ancestral property pertaining to Khatian No. 12, Plot No. 3/98 Chak of Mouja Dhanbilash, also known as

Bhagyapur. In that suit not only Abhoy Charan Das, Banka Chandra Das and Bipin Chandra Das were parties, but there were several other defendants. As such, from the face of the record it appears that the suit land which was the subject matter of the previous suit is not the subject matter of the present suit inasmuch as the suit land in the present suit pertains to Mouja Kailashahar, old Mouja Kacharghat, old Khatian No. 306 corresponding to new Khatians No. 869/1, and 869/2 , as would be gathered from the order dated 20.12.1989 of the Assistant Settlement Officer.

[10] Even the finding of the trial court to the effect that joint properties must be settled together is not an inflexible rule, but a rule of convenience. Thus, in the considered opinion in this Court the suit is not barred by Order II Rule 2 of the C.P.C., however, these aspects of the matter would have been appreciated by the first appellate court.

[11] Mr. Bhowmik, learned counsel has urged this Court that Exhibit-A series, Exhibit-B, Exhibit-C, Exhibit-D and Exhibit-E alongside the oral evidence having not been considered by the first appellate court has occasioned failure of justice. Exhibit-A series are rent receipts which show that the rent was being tendered by Abhoy Charan Das. Exhibit-B is a Khatian in the attestation stage which was open in the name of Abhoy Charan Das. Exhibit-E is the sale deed in respect of a part of the tenancy property which was transferred by Banka Chandra Das in

favour of one Nagendra Kumar Das, but the said land cannot be accounted in the suit land. Moreover that land was transferred on 01.11.57, much before settlement of the land in favour of three brothers by operation of the Tripura Land Revenue and Land Reforms Act, 1960. Exhibit-D is another deed executed by Banka Chandra Das on 22.12.57. The said land cannot also be made part of the suit land for the same reason. Exhibit-E series is the preliminary decree dated 08.05.67, delivered in T.S. 41 OF 1961 and the final decree dated 01.12.76.

[12] It has been pointed out the said suit being T.S. No. 47/61 has been re-numbered as T. S. No. 2/76 and the suit land thereunder is not identical with the suit land of the present suit. Hence, these documents as referred by Mr. Bhowmik, learned senior counsel, are not at all relevant for deciding the controversy. The relevant documents have been duly considered by the first appellate court alongside the oral evidence. The first appellate court has correctly arrived at the finding as reproduced.

[13] Finally Mr. Bhowmik, learned senior counsel has raised serious objection having referred to the reliefs sought in the suit. The reliefs sought in the suit are as under:-

- (i) **For a decree of declaration that the plaintiff is owner to the extent of 1/6th share in the suit property.**

- (i) For a decree in preliminary form for partition of the suit property and for the plaintiff's 1/6th share therein.
- (ii) For an order of appointment of a survey knowing commissioner for partition of the suit property after local investigation and to prepare a separate share (saham) of the plaintiff's 1/6th share as per preliminary decree in the suit property.
- (iii) For a decree in the final form on the basis of survey Commissioner's report, field book and map.
- (iv) For an order for giving possession of the plaintiff's share (saham) property to him through the process of the Court.
- (v) For passing such other order/orders for partition of the suit property and for granting reliefs to the plaintiffs.
- (vi) For granting any other relief/reliefs as the learned Court deems fit and process.
- (vii) For cost of the suit against the defendants.

[14] Mr. Bhowmik, learned senior counsel has submitted that reliefs granted by the first appellate court are beyond the reliefs sought in the suit. The civil court cannot grant relief which has not been asked for. As such in this regard he has placed reliance on **Manohar Lal (dead) v. Ugrasen (dead) and Others**, reported in (2010)11 SCC 557, which appreciated the various decisions of the Apex Court including **Trojan & Co. v. Nagappa Chettiar**, reported in AIR 1953 SC 235. For the purpose of reference the relevant part is extracted hereunder :

30. In *Trojan & Co. v. Nagappa Chettiar*, this Court considering the issue as to whether relief not asked for by a party could be granted and that too without having proper pleadings. The Court held as under: “22.....It is well settled that the decision of a case cannot be based on grounds outside the pleadings of the parties and it is the case pleaded that has to be found. Without an amendment of the plaint, the Court was not entitled to grant the relief not asked for and no prayer was ever made to amend the plaint so as to incorporate in it an alternative case.

31. A similar view has been reiterated by this Court in *Krishna Priya Ganguly v. University of Lucknow* and *Om Prakash v. Ram Kumar* observing that a party cannot be granted a relief which is not claimed.

32. Dealing with the same issue, this Court in *Bharat Amratlal Kothari v. Dosukhan Samadkhan Singh* held “30.....Though the Court has very wide discretion in granting relief, the Court, however, cannot, ignoring and keeping aside the norms and principles governing grant of relief, grant a relief not even prayed for by the petitioner.

33. In *fertilizer Corpn. Of India Ltd. v. Sarat Chandra Rath*, this Court held that “the High Court ought not to have granted reliefs to the respondents which they had not even prayed for.

34. In view of the above law on the issue can be summarised that the Court cannot grant a relief which has not been specifically prayed by the parties. The instant case requires to be examined in the light of the aforesaid certain legal propositions.

[15] Mr. Bhowmik, learned senior counsel has further referred to the decision of the Apex Court in **State of Orissa and Another v. Mamata Mohanty**, reported in (2011)3 SCC 436, where it has been enunciated that:-

“pleadings and particulars are required to enable the court to decide the rights of the parties in the trial. Thus, the pleadings are more to help the court in narrowing the controversy involved and to inform the parties concerned to the question in issue, so that the

parties may adduce appropriate evidence on the said issue. It is a settled legal proposition that “as a rule relief not founded on the pleadings should not be granted”. Therefore, a decision of a case cannot be based on grounds outside the pleadings of the parties. The pleadings and issue are to ascertain the real dispute between the parties to narrow the area of conflict and to see just where the two sides differ”.

[16] Mr. Bhowmik, learned senior counsel having referred the law enunciated by the apex court has contended that the preliminary decree as drawn cannot be sustained in law. A keen reading of the decisions of the apex court, it would appear that in **Manohar Lal (dead) v. Ugrasen (dead) and Others** it has been held that the court cannot grant a relief which has not been specifically prayed by the parties. But in **Trojan & Co. v. Nagappa Chettiar** as relied in **Manohar Lal (dead) v. Ugrasen (dead) and Others** the apex court held that a decision of a case cannot be based on grounds outside the pleadings of the parties and it is the case pleaded that has to be found. Without an amendment of the plaint, the court was not entitled to grant the relief not asked for and no prayer was ever made to amend the plaint so as to incorporate in it an alternative case. Similarly in **State of Orissa and Another v. Mamata Mohanty** it has been enunciated that pleadings and particulars are required to enable the court to decide the rights of the parties in the trial. As such, pleadings create the premise based on which the court narrows down the controversy. For that purpose issues are framed based on the pleadings and the parties are allowed adduce appropriate

evidence on the issue. It is a settled legal proposition that as a rule, relief not founded on the pleadings should not be granted. Therefore, a decision of a case cannot be based on grounds outside the pleadings of the parties. Ordinarily, the reliefs are drawn on the basis of pleadings. Even in some cases, on the basis of pleadings the court can mould the reliefs. But the foundation of such relief must have its anchor in the pleadings. From the plaint as well as from the written statement it transpires that the main controversy centres around whether the suit land is a joint property of the three brothers or whether the plaintiff and the defendants are co-partner of the said property. The plaintiff has prayed for some reliefs which the first appellate court has allowed and also moulded reliefs having due regard the pleadings.

[17] Hence this appeal is held to be devoid of merit. In the result, the appeal fails and it is accordingly dismissed.

[18] Prepare the decree and send down the LCRs thereafter.

JUDGE

P. Ghosh.