

THE HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_

RSA No.33 of 2006

1. **Md. Abdul Hak,**
S/o Late Kachim Ali.
2. **Md. Sayad Ali,**
S/o Md. Abdul Hak.
3. **Mst. Hawarunessa,**
Wife of Late Abdul Jabbar.
All are of Village - South Kadamtala,
P.O. - Kadamtala, P.S. - Churaibari,
District - North Tripura.

..... Appellants.

- Vs -

1. **Smt Angur Bibi,**
Wife of Late Muchabbir Ali.
2. **Achhia Bibi**
Wife of Late Muchabbir Ali.
3. **Maynama Bibi**
Daughter of Late Muchabbir Ali.
4. **Kalachan Begam,**
Daughter of Late Mochabbir Ali.
All are residents of Village and P.O. - Fulbari,
P.S. - Churaibari, District - North Tripura.
5. **Mallika Bibi,**
Wife of Ali Hussain,
Daughter of Late Muchabbir Ali,
of Village and P.O. - Kurti (Kathalia),
P.S. - Patharkandi, District - Karimganj.
6. **Ayamana Bibi,**
Wife of Ramjan Ali,
Daughter of Late Muchabbir Ali, Village and P.O. - Fulbari,
P.S. - Churaibari, District - North Tripura.
7. **Smt Noorjahan Bibi,**
Wife of Jakir Hussain,
Daughter of late Muchabbir Ali,
of Village - South Kadamtala,
P.O. - Kadamtala, P.S - Churaibari,
District - North Tripura.

8. Smti Safalun Bibi (Minor),
Daughter of Late Muchabbir Ali.

9. Smti Hayatun Bibi (Minor),
Daughter of Late Muchabbir Ali.

Both are residents of Village - South Kadamtala,
P.O. - Kadamtala, P.S. Churaibari, District - North Tripura.

Respondent Nos.8 and 9 are minor and they are
represented by their legal guardian Mother namely
Smti Angur Bibi (Respondent No.1).

10. Md. Abdul Uhab,
Son of Late Muchabbir Ali of
Village - South Kadamtala,
P.O. - Kadamtala, P.S. Churaibari,
District - North Tripura.

11. Md. Taj Uddin,
S/o Md. Sajjad Ali, South Kadamtala,
P.S. Churaibari, Dharmanagar, North Tripura.

12. Md. Abdul Ajij,
Son of Late Haji Sipat Ullah,
of Kalacharra, P.S. Churaibari,
Dharmanagar, District - North Tripura.

..... Respondents.

 _B_E_F_O_R_E
THE HON'BLE CHIEF JUSTICE MR. DEEPAK GUPTA

For the appellants : Mr. D C Roy, Advocate.

For the respondents : Mr. D K Biswas, Advocate,
Mr. G K Nama, Advocate.

Date of hearing and : 03.02.2015.
delivery of judgment.

Whether fit for reporting : No.

JUDGMENT & ORDER (ORAL)

This regular second appeal is directed against the judgment
& decree dated 27th June, 2006 passed by the learned Additional

District Judge, North Tripura, Agartala in Title Appeal No.7 of 2007
RSA No.33 of 2006

whereby he allowed the appeal of the plaintiffs and decreed the suit as prayed for and modified the judgment & decree passed by the learned Civil Judge, Jr. Division, Dharmanagar, North Tripura dated 23rd February, 2006 whereby he had only partly decreed the suit.

2. The facts necessary for decision of this second appeal are that the plaintiffs claimed to be the owner in possession of 76 Sataks of land and to support their plea they relied upon the Khatian which had been finally prepared which showed them to be owner-in-possession of the entire suit land.

3. The plaintiffs are admittedly the descendants of Muchabbir Ali. The case set up by the defendants was that in fact Muchabbir Ali had only purchased 71 Sataks of land from Forman Ali and, therefore, the plaintiffs could not be owners-in-possession of the 76 Sataks of land. In support of their claim the defendants relied upon a sale deed Exbt.B executed by Kasim Ali in favour of Forman Ali whereby 71 Sataks of land was sold to Forman Ali. It is not disputed that Forman Ali sold this entire land to Muchabbir Ali. The learned Trial Court proceeded on the assumption that since the title had been transferred only in respect of 71 Sataks, the plaintiffs on the basis of title were not entitled to a decree of 76 Sataks.

4. The learned lower appellate Court examined the sale deed Exbt.B in detail. Though the measurement of the land when calculated in figures comes to 71 Sataks which fact is not disputed before this

Court, the description of land along with its boundaries is also clearly depicted in the sale deed as is apparent from the following observations of the learned Additional District Judge.

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The Ld. trial court decided both the issue No.2 and 3 together making elaborate discussion of the oral and documentary evidence on record and has come to a conclusion that the appellants have no right, title and interest over the entire suit land measuring 76 decimals, but have the same over 71 decimals of the suit land and for the remaining 5 decimals the same are lying with the respondents. To come to the said conclusion the Ld. Trial Court has given much importance on the documentary evidence, Exbt.B which is a certified copy of the Title Deed executed by the predecessor-in-interest of the respondent No.1 in favour of one Forman Ali. It is also stated that said Forman Ali subsequently transferred the land in favour of the predecessor-in-interest of the appellants namely Muchabbir Ali. But no documentary evidence like certified copy of the title deed etc. is produced on behalf of the respondents to support their contention. But from the documentary evidence under Exbt.1 series reveals that the suit land measuring 76 decimals is recorded during Revisional Settlement under Plot No.3492 in the name of the appellants and nothing adverse regarding the possession of the suit land or any part thereof is mentioned in the said finally published Record of Record of Right under Column No.24, i.e. remarks column. It should be noted here that the finally published Record of Right has a presumptive value until contrary is proved. The respondents by Exbt.B tried to contradict the Exbt.1. On meticulous perusal of Exbt.B it reveals that in the year 1969 perhaps during the C.S operation the said deed was executed and in the schedule of the deed it is stated that land measuring one kani fifteen ghandas two karas and two krantas under C.S. Plot No.2541 of Khatian No.579 is sold out by Kasim Ali to Forman Ali. But nothing mentioned in the deed that part of the said plot No.2541 is sold out.

The boundary of the said sold out land is given on the East-road, on the West-edge of the tilla land, on the North-Abdul Jabbar and on the South – Muchabbir Ali, i.e., the predecessor-in-interest of the appellants. In their written statement at para-11 the respondents claimed the remaining five decimals of land within the boundary of East- P.W.D road, North, West and South- land of the appellants. After comparing the boundary of the land under Exbt.B and the boundary of the land claimed by the respondents reveals that the land on the western side of the road (P.W.D road) under plot No.2541 was sold out. Moreover, in the deed under Exbt.B it is not mentioned that part of the said plot was sold out. So, it could be presumed that entire land under the said plot was sold out by the predecessor-in-interest of the respondents. So, as discussed above, it reveals that by way of Ext.B the presumption as per provision of Section 43(3) of the T.L.R & L.R. Act regarding Exbt.1 series cannot be rebutted. But the Ld. Court below has committed serious mistake and error to appreciate the evidence (both oral and documentary) on record and has come to an erroneous finding holding that the part of the suit land measuring 5(five) decimals is possessing by the respondents ignoring the presumptive value of Record of Right under Exbt.1 which actually not rebutted by the evidence produced by the respondents in this suit. So, the said finding is liable to be interfered and set-aside and accordingly set-aside.”

The learned lower appellate Court on appreciation of the documents relied upon by the parties came to the conclusion that though in figures the land may be 71 Sataks but the boundaries clearly showed that the entire plot of land bearing Khatian No.579 under CS Plot No.2541 had been sold by Exbt.B and that the land was on the western side of the P.W.D road. He came to the conclusion that the land now claimed by the defendants is also on the western side of the

P.W.D road and, therefore, this was the subject matter of the earlier sale deed.

5. This Court is not deciding whether this finding is right or wrong. The only issue is whether this finding is based on evidence or not. Under Section 100 of the Code of Civil Procedure this Court can only interfere when a substantial question of law is involved or where the finding of fact is perverse which no reasonable person can arrive at or where the finding is based on no evidence or based on total misreading of evidence. In the present case, it is an interpretation of the document which is involved and as far as the interpretation of the document is concerned, the Court of the learned District Judge is the final Court of fact. Therefore, I find no question of law, much less a substantial question of law arises in this appeal and accordingly, the appeal is dismissed.

Send down the LCRs forthwith.

CHIEF JUSTICE