

IN THE HIGH COURT OF TRIPURA
AGARTALA

RSA NO. 34 OF 2008

- 1(a) Smt. Gita Sarkar,
wife of late Satish Ch. Sarkar
- 1(b) Sri Sajal Sarkar,
son of late Satish Ch. Sarkar
- 1(c) Sri Anjan Sarkar,
son of late Satish Ch. Sarkar
- 1(d) Sri Ranjan Sarkar,
son of late Satish Ch. Sarkar
- all are residents of Vill. & P.O. Lankamura,
P.S. West Agartala, District : West Tripura
- 1(e) Smt. Padma Sarkar(Kapali),
daughter of late Satish Ch. Sarkar,
wife of Sri Tapan Kapali,
resident of Vill. & P.O. Lankamura,
P.S. West Agartala, Sub-Division : Sadar,
District : West Tripura
- 1(f) Smt. Jamuna Sarkar,
daughter of late Satish ch. Sarkar,
wife of Sri Litan Sarkar,
P.O & Vill. Lembutali,
P.S. & Sub-Division : Bishalgarh,
District Sepahijala
- 2(a) Smti Haridashi Debnath,
wife of late Mahadeb Debnath
- 2(b) Sri Tapan Debnath,
son of late Mahadev Debnath,
- both are residents of Vill. & P.O. Lankamura,
P.S. West Agartala, District : West Tripura
- 2(c) Smt. Alpana Debnath,
daughter of late Mahadev Debnath,
wife of Sri Haripada Debnath,
resident of Vill & P.O. Uttar Charilam,
P.S. Bishalgarh, District : Sepahijala

- 2(d) Smt. Kalpana Debnath,
daughter of late Mahadev Debnath,
wife of Sri Narendra Debnath,
resident of 79 Tilla, G.B. Bazar, P.O. Kunjaban,
P.S. East Agartala, District : West Tripura
- 2(e) Smt. Uma Debnath,
daughter of Sri Monoranjan Debnath,
resident of Village & P.O. Purba Noagaon,
P.S. Ranir Bazar, Sub-Division : Sadar,
District : West Tripura
3. Sri Sanjit Ghosh,
son of late Krishnadhan Ghosh,
resident of Vill. & P.O. Lankamura,
P.S. West Agartala, District : West Tripura

..... Defendant-appellants

* Defendant-appellants Nos. 1(a) to 1(f) and defendant-appellants No.2(a) to 2(e) are the legal heirs of the deceased original defendant-appellant No.1, Satish Sarkar and the original defendant-appellant No.2, Mahadev Debnath.

Vs.

- 1(a) Smti Ujala Das,
wife of late Rajmohan Das
- 1(b) Sri Rakesh Das,
son of late Rajmohan Das
- 1(c) Sri Bikash Das,
son of late Rajmohan Das
- 1(d) Sri Sukesh Das,
son of late Rajmohan Das
- 1(e) Sri Suresh Das,
son of late Rajmohan Das
- all are residents of Vill. & P.O. Rampur,
P.S. West Agartala, District : West Tripura
- 1(f) Smt. Nirmala Das,
daughter of late Rajmohan Das,

wife of Sri Biswajit Das,
resident of Ramnagar, Gangail Road,
P.O. Ramnagar, P.S. West Agartala,
District : West Tripura.

- 2. Sri Subhash Das
- 3. Sri Srinibash Das,
-all are the sons of late Kshirode Chandra Das,
of Village : Rampur, P.O. Ramnagar,
P.S. West Agartala

.....Plaintiff-respondents

* Plaintiff-respondent Nos. 1(a) to 1(f) are the
legal heirs of the deceased original plaintiff-
respondent No.1, Rajmohan Das

- 4. Sri Narayan Debnath,
son of late Harimohan Debnath,
resident of Vill. & P.O. Lankamura,
P.S. West Agartala, District : West Tripura

.....Defendant-respondent

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

For the appellants : Mr. Suman Bhattacharjee, Advocate
For the respondents : Mr. D.C Roy, Advocate

Date of hearing & order : 15.06.2015

Whether fit for reporting :

Yes	No
	√

JUDGMENT & ORDER (ORAL)

Heard Mr. Suman Bhattacharjee, learned counsel
appearing for the appellants as well as Mr. D.C Roy, learned counsel
appearing for the plaintiff-respondents. None appears for the

defendant-respondent, namely Narayan Debnath despite due notice from this Court.

2. This is an appeal under Section 100 of the C.P.C. against the judgment and decree dated 21.05.2008 delivered in Title Appeal No.74 of 2006 by the Additional District Judge, West Tripura, Agartala, Court No.4.

3. At the time of admitting this appeal on 11.08.2008, the following substantial question of law were formulated :

“Whether any appellate court can pass a decree allowing the appeal in absence of any of the parties, particularly any of the defendants, in the suit?”

In addition to that substantial question of law, the appellants were permitted to raise other substantial questions of law at the time of hearing, if they are so advised.

4. Mr. Bhattacharjee, learned counsel appearing for the appellants, has urged that the finding of the trial court, the Civil Judge, Junior Division, Agartala West Tripura, as reflected in the judgment dated 09.06.2006 delivered in Title Suit No.88 of 2005, has been reversed by the first appellate court without any reason and without reading the relevant documents those are introduced in the evidence. He has urged that the impugned order be interfered with.

5. From the other side, Mr. D.C. Roy, learned counsel appearing from the plaintiff-respondents has urged that there is no infirmity in the judgment and as such, this court may not interfere with the finding as returned by the first appellate court.

6. For purpose of appreciating the substantial question of law as well as additional substantial question of law as raised by Mr. Suman Bhattacharjee, this court is required to scrutinise the records and to introduce the brief fact.

7. The plaintiff-respondents filed the title suit for declaration and recovery of khas possession over 4(four) different plots from the defendants namely Satish Sarkar, Mahadev Debnath, Sanjit Kumar Ghosh and Narayan Debnath. Those plots as sought to be recovered from their possession, have been referred in the Schedules A, B and C.

8. The trial court, by the judgment dated 09.06.2006, returned the finding that over the 'A' Schedule land measuring 18 acre, comprised in C.S. plot No.1577 corresponding to new plot No.2233 of Khatian No.1430/1, there was no permissive possessor and the defendant cannot be evicted. However, the plaintiffs have got right, title and interest over the suit land under Khatian No.1430/1 in C.S. plot No.1577 corresponding to new plot No.2233, measuring 18 acre and under Khatian No.1430/2 in C.S. plot No.4247/5053 corresponding to new plot No.6009, measuring 11

acres, where one Smt. Promode Rani Dey was in possession. But since she was not a party in the suit against her a decree of eviction against her cannot be issued.

As regards the 'B' Schedule land, the plaintiffs' right, title and interest have been declared and as consequence thereof, it has been declared that the defendant Mahadev Debnath is liable to be evicted from the land measuring 6 acre comprised in C.S. plot Nos. 4277/4955, corresponding to new plot No.5999.

As regards the 'C' Schedule land, the following finding has been returned by the trial court :

"And in regard C-schedule land, according to Exb.H the defendant No. 3 Sanjit Ghosh purchased 17 ganda, 3 karas of land from plot No. 4461 and therefore, the plaintiff had no land measuring 20 satak that means 10 ganda of land under C.S Plot No. 4461, and Hal Plot No. 6151, 6152. The plaintiff is not entitled for declaration of right, title interest over this Schedule-C land. Both the issues are decided accordingly partly in favour of the plaintiffs."

Having held so, the suit was partly decreed for eviction of the defendant No.2, Mahadev Debnath.

9. It is now to be noted that the defendant No.2 Mahadev Debnath (since deceased) did not prefer any appeal against the said judgment and decree, but the plaintiffs preferred an appeal against the said judgment. But, that challenge was limited to the finding which has been returned against the defendant No.3, Shri Sanjit Kumar Ghosh. For that reason, in the title appeal being Title Appeal

No.74 of 2006, except the defendant No.3, Shri Sanjit Kumar Ghosh, other defendants were not added as the respondent.

10. After hearing that appeal, being Title Appeal No.74 of 2006, the Additional District Judge, West Tripura, Agartala, Court No.4, by the judgment dated 21.05.2008, allowed the said appeal, holding as under:

"So, the Ld. Court below rightly decreed the suit against the defendant Mahadeb Debnath. On careful scrutiny of the case record it appears to me that the Ld. Court below did not pass any decree against the defendant Sanjit Kr. Ghosh and Satish Sarkar who were also the permissive possessor of the C.S. Plot No.6151, 6152 and 2228 of Khatian No. 1430/2 and 1430/1. Perhaps, the Ld. Civil Judge (Jr. Divn.) inadvertently overlooked the documents of the appellants.

Thus from the discussion made above the appellants are entitled to have the decree against the respondents namely Mahadeb Debnath and Satish Sarkar also.

So, the judgment and decree of the Ld. Court below is set aside. For the sake of convenience of all a fresh decree is passed for the interest of the parties to the suit.

I am also of the view that the appeal of the appellants has merit and as such they are entitled to have the decree against the respondents namely, Satish Sarkar, Mahadeb Debnath and Sanjit Kr. Ghosh."

11. From reading of the above, it appears that the said judgment has been passed against the defendant No.1 in absentia as in the said appeal, Satish Sarkar, the defendant No.1 was not added as the respondent. So far as the finding and observation against

Sanjit Kumar Ghosh or Sanjit Ghosh is concerned, it has been observed in the impugned judgment that the Civil Judge, Junior Division inadvertently overlooked the documents of the appellants, the plaintiffs in the suit, but there is no reference of the documents which were overlooked by the trial court. Even there is no discussion how he had read the said documents to derive the finding that the plaintiffs have got the title over the Schedule C land and how the defendant No.3 can be evicted from the Schedule C land as the trial court has categorically returned the finding that the defendant No.3 had acquired the title and interest over the said land by dint of Exbt.H (the sale document). After reading the Exbt.H document, it appears that one Smt. Dhanabashi Debnath transferred the entire 'C' Schedule land to Sanjit Kumar Ghosh, the defendant No.3 on 01.09.1976. This Court has scrutinized the original deed (Exbt.H) and finds that the finding of the trial court is based on the said sale document and as such, the finding that has been returned by the first appellate court by the impugned judgment is entirely perverse and emanates from misreading of Exbt.H document.

12. It is to be noted here that after death of Satish Sarkar, his legal heirs have been substituted and they pursued the appeal. Even though Mahadev Debnath is one of the appellants, but so far the decree against him as passed by the trial court cannot be interfered by this court as he has not challenged that part of the decree by preferring an appeal under Section 96 of the CPC. In

absence of any appeal in the court of the first instance nobody can challenge the finding of the trial Court in a second appeal under Section 100 of the CPC.

13. It is well settled that no decree can be passed by any civil court or the appellate court in absentia against a person. Further, it is crystal clear that for non-reading of Exbt.H document the finding against the defendant No.3, Sanjit Kumar Ghosh has been returned perversely by the impugned judgment.

14. In the result, this appeal succeeds. The impugned judgment and decree stands set aside.

Prepare the decree accordingly.

Send down the LCRs thereafter.

JUDGE

Dipesh