

IN THE HIGH COURT OF TRIPURA
AGARTALA

RSA NO.69 OF 2008

- 1. Sri Anil Chandra Sarkar,
son of late Surendra Kr. Sarkar
 - 2. Smt. Rina Rani Sarkar,
wife of Sri Anil Chandra Sarkar
 - 3. Sri Mithu Sen,
son of Sri Tulu Sen,
- all are residents of Village : Matai,
East Rajnagar, P.S. Belonia,
District : South Tripura

..... Appellants

- V e r s u s -

Sri Sukhen Sarkar,
son of late Surendra Kr. Sarkar,
resident of Netaji Palli, P.S. Belonia,
District : South Tripura.

..... Respondent

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

For the appellants : Mr. H. Laskar, Advocate

For the respondent : Mr. Suman Bhattacharji, Advocate

Date of hearing & order : 03.07.2015

Whether fit for reporting :	Yes	No
		√

JUDGMENT & ORDER (ORAL)

Heard Mr. H. Laskar, learned counsel appearing for the appellants as well as Mr. Suman Bhattacharji, learned counsel appearing for the sole respondent.

2. This is an appeal under Section 100 of the CPC, questioning the legality of the judgment dated 28.08.2008 delivered in Title Appeal No.7(2)/2008 by the Addl. District Judge, South Tripura, Belonia.

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

“Whether in view of the provisions laid down in Section 188 of the TLR & LR Act, the suit is maintainable in the eye of law?”

The appellants were however given liberty to raise any other substantial question of law at the time of hearing this appeal, but Mr. Laskar, learned counsel appearing for the appellants has not raised any additional substantial question of law.

4. The respondent instituted the suit, being Title Suit No.17/2006 for declaration of title of the Schedule A land, permanent injunction against the appellants in respect of the Schedule B land and also for recovery of the possession of the land described in the Schedule C appended to the plaint.

5. The essential fact which led to institution of the said suit is that the respondent in the year 1978 applied for allotment of the land and the competent authority in the Government allotted the Schedule A land to the respondent, the plaintiff in the suit, by the order no.6 of 1983 dated 03.11.1983. In due course, the record of right has been mutated in the name of the respondent. The suit land measuring 7.50 acres was comprised in plot nos. 2144/2, 2156/1 and 1604/1 under mouja Motai. During the revisional survey operation, the suit land was re-surveyed and new khatians have been prepared under nos. 1695/1 and 1695/2.

6. The plaintiff asserted his possession by growing rubber trees on the said allotted land except few portion of the land comprised in new plot nos. 4420, 4421 and 4425. He had also constructed a homestead in the land measuring .02 acres and constructed four huts over the land comprised in new plot no.4425. Further, the plaintiff excavated one pond in the plot no.4421.

7. The defendant no.1 is the younger brother of the plaintiff and the defendant no.2 is the wife of the defendant no.1, whereas the defendant no.3 is the brother-in-law of the defendant no.1. The defendant no.1 having witnessed the growth of the rubber plantation, started disturbing the possession of the plaintiff and also tried to interrupt the collection of latex from the rubber trees. On 15.05.2006, the defendants entered in a hut over a part of the suit land as described in the Schedule A by dispossessing the plaintiff.

That part of the land wherefrom the respondent was dispossessed has been specifically described in the Schedule 'C'. On 16.05.2006, the plaintiff asked the defendants to vacate the possession of the said hut, but the defendants refused. They asserted that they would continue to possess the said land.

8. The defendants by filing a written statement have contested the case and stated that on 15.05.2006, the defendant no.1 and his brother Rakhal Sarkar filed a prayer before the Sub-Divisional Magistrate, Belonia to cancel the allotment order. Having gathered knowledge of that application, the plaintiff filed the suit. Thereafter, the South Motai Gram Panchayet convened a meeting and a resolution was adopted in the said meeting. Hence, the plaintiff is estopped from raising any dispute about the possession of that land.

9. According to the appellants, who are the defendants in the suit, South Motai Gram Panchayet facilitated the settlement. On appreciation of the pleadings the issues were framed. The issues include whether the plaintiff, the respondent herein, has got the right, title and interest over the 'A' Schedule land and whether the plaintiff is entitled to get the permanent injunction against the defendants as well as the recovery of possession of the Schedule 'C' land.

10. By the judgment dated 03.03.2008, the Civil Judge, Junior Division, Belonia, South Tripura, has observed as under :

"So, in view of the above discussion and on reliance of documents and oral evidence, the permanent injunction is granted in favour of plaintiff. The defendants are restrained from entering into the 'B' Schedule of land. Plaintiff is also entitled to get recovery of possession from the 'C' Schedule land. So, above all right, title and interest of the plaintiff over the 'A' Schedule land is declared. Defendants are permanently enjoined from entering over 'B' Schedule land. Plaintiff is also entitled to get recovery of possession over the 'C' Schedule of land. Defendants are directed to remove any structure from the 'C' Schedule of the land immediately."

11. Against the said judgment and decree, the appellants herein preferred an appeal under Section 96 of the CPC, being Title Appeal No.7(2)/2008 in the court of the Addl. District Judge, South Tripura, Belonia. By the impugned judgment dated 28.08.2008, the said appeal has been dismissed affirming the judgment of the trial court. The first appellate court has observed as under :

"From the careful scrutiny of the evidence on record, it appears that plaintiff-respondent is the title holder of 'A' and 'C' Schedule land, in this part of land wherefrom he was dispossessed by the appellant-defendant. The defendant-appellant had no title or possessory right over the allotted land of the plaintiff-respondent. The Court below observed that allotment authority, S.D.M., Belonia, South Tripura also informed the D.M. & Collector by letter that allotment order was corrected therefore, the Court below also come to the right findings that the plaintiff-respondent is entitled to get decree for declaration of title and recovery of possession and also permanent injunction. After discussion of all the evidence, in respect of issue No.(b) also the Court below came to the right findings that the plaintiff-respondent is entitled for recovery of 'C' Schedule land wherefrom he was dispossessed by the appellant-defendant and also entitled to get order of injunction from the Court. Restrained the appellants to enter into 'B' Schedule land as 'B' Schedule is also part of 'A' Schedule land

where the plaintiff-respondent has established his title.

I find no reason to interfere in the order and decree passed by the Court below. Therefore, in my considered opinion, this appeal has no merit."

12. From the correspondence dated 28.09.2006 (Exbt.A), as introduced by the defendants, it appears that there has been no proceeding under Section 15 of the Tripura Land Revenue and Land Reforms Act, 1960.

13. Mr. Laskar, learned counsel appearing for the appellants has submitted that no final order has been passed on their application for cancellation of the allotment as yet. He has fairly admitted that the defendants did not produce any records relating to pendency of any proceeding under the Tripura Land Revenue and Land Reforms Act, 1960 save and except the document (Exbt.A).

14. Mr. Suman Bhattacharji, learned counsel appearing for the respondent has submitted that only for filing an application for cancelling the valid allotment order, the embargo contemplated under Section 188 of the Land Revenue and Land Reforms Act, 1960 (TLR & LR Act) cannot be extended, preventing the plaintiff-respondent from institution of the suit for causes beyond the purview of that Section. Section 188 of the TLR & LR Act provides as under :

"No suit or other proceeding shall, unless otherwise expressly provided in this Act, lie or be instituted in any civil court with respect to any matter arising under and provided for by this Act."

No issue has fallen for adjudication in the suit in respect to any matter, arisen under and provided for by the TLR & LR Act, 1960. As such, this court does not find any merit in this appeal.

15. Accordingly, the appeal stands dismissed. Draw the decree and thereafter send down the LCRs.

The order of status quo as passed by this court stands vacated.

JUDGE

ROY/Dipesh