

IN THE HIGH COURT OF TRIPURA
AGARTALA

CRP NO.52 OF 2012

1. Sri Pradyut Chakraborty,
son of late Pradyumna Kr. Chakraborty,
resident of Vill. & P.O. Kailashahar, District North Tripura
 2. Sri Mihir Ranjan Das,
son of late Mon Mohan Das
 3. Smt. Prativa Das,
wife of late Ananda Das,
daughter of late Mon Mohan Das,
resident of Rajbari, P.S. Dharmanangar,
presently residing at Vill. Kacherghat,
P.S. Kailashahar, District North Tripura
 4. Smt. Mamata Das,
wife of Sri Biru Das,
daughter of late Mon Mohan Das,
resident of Rajbari, P.S. Dharmanangar,
presently residing at Vill. Kacherghat,
P.S. Kailashahar, District North Tripura
- represented by their lawful attorney,
Md. Jamshed Ali,
son of late Masaddar Ali,
resident of Vill. Yeazekhowra,
P.S. Kailashahar, District North Tripura
-Plaintiff-petitioners
- Vs -

1. Sri Sunil Bouri,
son of late Kalipada Bouri
 2. Sri Sanatan Bouri,
son of late Ranjan Bouri
 3. Md. Golab Ali,
son of late Firuj Ali
 4. Md. Sowag Ali,
son of late Firuj Ali,
- All are residents of Vill. Hiracherra,
P.S. Kailashahar, District North Tripura

..... Defendant-respondents

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

For the plaintiff-petitioners : Mr. R. Dutta, Advocate
 For the defendant-respondents : Mr. D.K. Biswas, Advocate
 Date of hearing & order : 19.03.2015
 Whether fit for reporting :

Yes	No
	√

JUDGMENT & ORDER (ORAL)

Heard Mr. R. Dutta, learned counsel appearing for the petitioners as well as Mr. D.K. Biswas, learned counsel appearing for the respondents.

2. This is a petition under Article 227 of the Constitution of India against the judgment and order dated 13.03.2012 delivered in Civil Misc. Appeal No.07/2011 by the District Judge, North Tripura, Kailashahar, by reversing the order of temporary injunction dated 22.06.2011 passed by the Civil Judge, Jr. Division, Kailashahar, North Tripura in Misc. Case No.5/2010, arising from Title Suit No.15/2010.

3. The petitioners herein instituted Title Suit No.15/2010 for declaration of title, confirmation of possession and perpetual injunction against the respondents herein and the said suit was filed through their attorney, namely Md. Jamshed Ali, who by dint of the power of attorney, had been looking after that land on

behalf of the plaintiff-petitioners. By the order dated 22.06.2011, the Civil Judge, Jr. Division, Kailashahar, North Tripura, has observed that, from perusal of khatian No. 50 and 47 it appears that the suit land is recorded in the name of Manmohan Das, predecessor of the plaintiff-petitioners No. 2, 3 and 4 and Sri Pradyut Chakraborty, the plaintiff-petitioner No.1. But, to rebut such entry relating to title or possession, no materials could be placed by the respondents herein and accordingly the interim temporary injunction restraining the defendant-opposite parties from entering into the suit land for any purpose was passed till disposal of the suit, being T.S.No.15/2010.

4. Being aggrieved, the respondents herein preferred an appeal under order 43, rule 1(r) of the CPC in the court of the District Judge, North Tripura, Kailashahar. By the impugned judgment and order dated 13.03.2012, the District Judge, North Tripura, Kailashahar, has observed as under :

“Now, same Jamshed Ali filed the case as attorney of the allottee successors of Mon Mohan Das and Pradyut Chakraborty. Forest Department filed petition for cancellation of the allottee khatian under section 95 of the TLR & LR Act. Present possession is intimated by Divisional Forest Officer. Forest Department is not made party in this case. From the report of the Revenue Inspector Shri Debasish Das it is found that during the revisional survey settlement the suit land under RS plot No.774, 775 were recorded in the khatian No.47 of Hiracherra mouja in the name of Pradyut Chakraborty. The suit land is situated in the jungle far away from the residential area. Pradyut Chakraborty was staying at Jorhat, Assam. According to report the suit land was not cultivated by anybody and Pradyut Chakraborty is not utilizing the land. Khatian No.22 is in the name

of Forest Department. Khatian Nos. 21 and 44 are in the name of Forest Department. The suit land as per the plaint appertains to CS plot 226, present 775 and 29/357, now 774 under mouja Hiracherra. Plot No.226 is also shown in the Khatian No.44. Part of Dag No.29 is shown in khatian No.2/2 of Hiracherra mouja. So, the suit land is shown under khatian No.50, 47 in the name of the plaintiff-respondents and also in the name of Forest Department. If it is considered as the Forest land, then the appellants being the members of JFMC are authorized to take care of the land and they will suffer irreparable loss if they are not allowed to enter into the suit property for management of the fishery. All these factors were not taken into consideration by the learned Court below."

Having held so, the temporary injunction as passed by the order dated 22.06.2011 in Civil Misc.No.05/2010, arising from T.S.No.15/2010, was reversed.

5. It appears that those observations are manifest in conflict with the records, being khatian No.50(Ext.2) in the name of the predecessor of the plaintiff-petitioners No. 2, 3 & 4. The khatian No.47(Ext.1) stands in the name of the plaintiff-petitioner No.1. Khatian No.50 is for plot No.184, corresponding to old plot No.29/358 and plot No.569, corresponding to old plot No.224(P), whereas plot No.775, corresponding to old plot No.226(P) and plot No.774, corresponding to old plot No.29/357 are recorded in the name of the Forest Department. The khatians containing the name of the Forest Department are also available in the records. Khatian No.44 is concerned with the old plot No.234 and other old plots No. 224, 226, 234, 236, 271 and 29. Khatian No.2/1 is concerned with the plot No.597, corresponding to old plot

No.226(P), plot No.634, corresponding to old plot No.234(P), plot No.636, corresponding to old plot No.236, plot No.716, corresponding to old plot No.271(P), plot No.733, corresponding to old plot No.271, plot No.150, corresponding to old plot No.29(P), plot No.185, corresponding to old plot No.29(P) and plot No.155, corresponding to old plot No.29(P) respectively. Another khatian No.2/2 is concerned with several other plots which are not tallying with the plot Nos. mentioned in the khatian No.50 and khatian No.47.

6. It is apparent that plot Nos. 774 and 775 are not available in any of the khatians recorded in the name of the Forest Department and the plot Nos. 184 and 569 are not also available in the khatians recorded in the name of the Forest Department, but the plot No.569 is the part of the old plot No.224(P). The plot No.224 is available in the khatian No.44, recorded in the name of the Forest Department, but this khatian was opened on 24.04.1965, whereas khatian No.50 was opened on 30.09.1986. It appears that the allotment in favour of Monmohan Das was made after 1965.

7. Such gross misreading of the documents has led to the finding as returned by the appellate court and hence it is interfered with. Consequently, the impugned order dated 13.03.2012 delivered in Civil Misc. Appeal No.07/2011 by the District Judge, North Tripura, Kailashahar, on reversing the order of temporary injunction dated 22.06.2011 passed by the Civil

Judge, Jr. Division, Kailashahar, North Tripura in Misc. Case No.5/2010, arising from Title Suit No.15/2010 is set aside.

8. In view of above, the order dated 22.06.2011 is restored till disposal of title suit being, T.S. No.15/2010. It is made clear that any of the observations as above shall not have any impact on determination of the disputes in the suit. The trial court would be at liberty to arrive at his own finding on the basis of the evidence as would be led by the parties.

Both the counsel appearing for the parties has expressed their anxiety regarding disposal of the suit, being T.S.No.15/2010. Accordingly, it is observed that the trial court shall take all initiative to dispose of the suit within 6(six) months as far as practicable.

9. With this observation and direction, this petition stands disposed of.

Lower Court Records be send down forthwith.

JUDGE

ROY