

THE HIGH COURT OF TRIPURA
AGARTALA

SAO NO. 01 of 2012

1. Shri Radha Raman Debnath,
2. Shri Narayan Chandra Debnath,
3. Shri Uttam Kr. Debnath.

All are sons of late Gopal Chandra Debnath.
All are residents of North Bank of Mahadev
Dighi, Udaipur Town,
Post Office – R.K. Pur, PIN – 799120,
Police Station – R.K. Pur,
District – Gomati,
Tripura.

..... *Appellants*

- Vs. -

Shri Uttam Bal,
S/O. Shri Mrinal Kanti Bal,
Resident of North Chandrapur,
Post Office – R.K. Pur, PIN – 799120,
Police Station – R.K. Pur,
District – Gomati,
Tripura.

..... *Respondent*

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the appellants	: Mr. D. Chakraborty, Sr. Advocate. Mr. H. Laskar, Advocate.
For the respondents	: Mr. D.K. Daschoudhury, Advocate.
Date of hearing	: 21.01.2015.
Delivery of Judgment & order	: 12.02.2015.
Whether fit for reporting	: No.

JUDGMENT & ORDER

This second appeal is directed against the order dated 10.01.2012 passed by the learned District Judge, South Tripura, Udaipur in Civil Misc. Appeal No.03 of 2011 whereby he allowed the appeal of the respondent Uttam Bal and remanded the case to the executing Court with the following directions:-

"15. Hence, Order dated 8.4.2011 passed by the learned executing Court in Case No. Civil Misc.38/2010 is hereby set aside and quashed. The case is remanded back to the learned executing Court with a direction to determine the following points:-

(1) Whether the description of the land purchased by the present O.Ps from Bhanu Rani Ghosh and others tallies with the description of the decretal land of case No. T.S. 21/2003 and connected Title Appeal No. 12/2005?

(2) Whether the present appellant as holder of decree in case No. T.S.11/2003 and connected Title Appeal No.10/2006, claims execution of such decree in respect of the land which is under possession of the present O.Ps?

(3) Whether Bhanu Rani Ghosh and others have any land remaining in Khatian No.626 plot No. 4525 and 4526, for execution of the decree of the appellant, apart from the land which is under possession of the O.Ps?"

2. The facts necessary for disposal of this case are that the respondent No.1 herein i.e. Uttam Bal instituted Title Suit 11 of 2003 in the Court of the learned Civil Judge (Sr. Division), Udaipur against Smt. Bhanu Rani Ghosh and 7 others. The plaintiff prayed for a decree of specific performance of contract dated 27.03.2003 wherein there was specific description of the land. The petitioners herein i.e. Shri Radha Raman Debnath, Shri Narayan Chandra Debnath and Shri Uttam Kr. Debnath were impleaded as

defendants 9 to 11 in the said suit on the ground that they were unnecessarily interfering in the suit property.

3. The plaintiff claimed that out of the total sale consideration of Rs.1,75,000/- mentioned in the agreement, they had already paid a sum of Rs.10,000/- and was ready to pay the balance amount Rs.1,65,000/-. The stand of the defendants 1 to 8 was that they had not entered into any such agreement with plaintiff Uttam Bal, but had in fact, agreed to sell the land to defendants 9 to 11 (petitioners herein) for total consideration of Rs.2,80,000/- and they had already received a sum of Rs.1,31,000/-.

4. Defendants 9 to 11 i.e. the petitioners herein also filed a Civil Suit against defendants 1 to 8 being T.S. 21 of 2003 for specific performance of contract dated 04.07.2002, wherein only the area of land was mentioned.

5. The learned Trial Court decreed T.S. No.21 of 2003 filed by the present petitioners and in respect of T.S.11 of 2003, he held that both the agreements for sale had been entered. However, no decree for specific performance could be awarded, in favour of plaintiff Uttam Bal but granted damages of Rs.50,000/- in favour of Uttam Bal. Aggrieved by these two judgments and decree Uttam Bal filed appeals in both the decree and these Title Appeals were registered as Title Appeal No.12 of 2005 in respect of

T.S.21 of 2003 and Title Appeal No.10 of 2006 in respect of judgment passed in T.S.11 of 2003. Both the appeals were heard and disposed of by the Appellate Court in the following terms:-

"4. The appellate-decree dated 07.04.2007 in Title Appeal No.10/2006 arising out of case No. T.S.11/2003 is as follows:-

"In view of the findings and decision arrived at in the preceding paragraphs of the judgment I do hereby set aside the judgment and decree dated 30.6.06 and 12.7.06 of the Ld. Court below which were passed by the Ld. Civil Judge (Sr.Div), South Tripura, Udaipur in connection with Title Suit No.11 of 2003.

I do hereby allow the appeal of the appellant. The recasting of prayers of the appellant is required to avoid future complication. The Title suit of the appellant bearing No.11 of 2003 is decreed according to his prayer and it is as follows:-

First, the appellant is entitled to have the direction that the respondents No.1 to 8 shall have to execute a registered sale-deed in the name of the appellant for the suit land as described in the schedule of the plaint of the T.S.11 of 2003 within two months from today on receipt of the balance amount of Rs.1,65,000/- (Rupees one lakh sixty-five thousand) only from him.

The appellant is directed to hand over the balance consideration of the suit land to the respondents No.1 to 8 in the presence of the District Registrar, South Tripura, Udaipur.

Secondly, the appellant is entitled to have the direction that the respondents No.1 to 8 shall have to hand over the vacant possession of the suit land to the appellant after executing the registered sale deed for the same.

Thirdly, the respondents are perpetually restrained from entering into the suit land and/or disturbing the peaceful possession of the appellant over the same. This relief will come into effect as soon as the entire process of selling of the suit land by the respondents No.1 to 8 and handing over the vacant possession of the suit land to the appellant will be completed.

Fourthly, the appellant is also entitled to have a decree that if the respondents No.1 to 8 fail to execute the

sale deed for the suit land as described in the schedule of the plaint of T.S.11/03 within the stipulated period of two months from today the said deed will be executed by the Court. The appellant shall have to approach the Court with the stamp papers, registration fees and other relevant documents and in that occasion the Sheristadar of the District Judge's Court will execute the deed for the suit land on behalf of the respondents No.1 to 8 after observing all formalities and will also hand over the vacant possession of the suit land to him after removing all obstruction therefrom.

The appellant being the plaintiff of the Title Suit bearing No.11 of 2003 did not seek this relief though it was/is a necessary one to avoid multiplicity of suits/cases. This relief is given to the appellant suo motu keeping in mind that in absence of this relief complication may be arisen in future.

Lastly, the parties to the appeal will bear their respective costs.

Other reliefs claimed by the appellant as plaintiff in the Title Suit No.11 of 2003 are ignored as these are redundant."

"5. The appellate decree dated 7.4.2007 made in Title Appeal No.12 of 2005 arising out of T.S.21/2003 is as follows:-

"In view of the findings and decision arrived at in the preceding paragraphs of the judgment I do hereby allow the appeal of the appellant with some modification.

The judgment and decree of the Ld. Court below dated 7-11-2005 and 10-11-2005 which was passed by the Ld. Civil Judge (Sr. Div), South Tripura, Udaipur in c/w T.S. No.21/2003 is upheld with the following modification of the entire relief portion of the prayers of the principal respondents.

First, the principal respondents (Plaintiffs of the T.S. 21/03 are entitled to have the direction that the respondents shall have to execute a registered sale-deed in the name of the principal respondents of this appeal for a plot of land within their land as described in the schedule of the plaint of the T.S.21/03 excluding the portion of the land of the appellant as described in the schedule of the plaint of the T.S.No.11/03 (Exhibit-A of the T.S.21/2003) within sixty days from today after receiving the balance amount of Rs.1,49,000/-, only from the principal respondents.

Secondly, the respondents shall have to hand over the vacant possession of the land which they will transfer to the names of the principal respondents by a registered sale-deed in pursuance of the decree of the instant appeal.

Thirdly, the principal respondents (Plaintiffs of the T.S.21/03) are also entitled to have a decree that if the respondents fail to execute the sale deed for the suit land as stated above within the stipulated period of sixty days from today the said deed will be executed by the Court. The principal respondents (Plaintiffs of T.S.21/03), in that occasion shall have to approach the Court with the stamp papers, registration fees and other relevant documents and the Sheristadar of the Civil Judge (Sr. Div) will execute the sale-deed for the land in question as stated above on behalf of the respondents after observing all formalities and will also hand over the vacant possession of the same to the principal respondents after removing all obstructions therefrom.

And lastly the parties to the appeal will bear their respective costs.

The other reliefs as claimed by the principal respondents in their Title Suit bearing the No.21/03 as plaintiffs are redundant and these are hence ignored.”

6. Admittedly, these decrees have become final. Therefore, the Appellate Court set aside the judgment and decree of the Trial Court in Title Suit No.11 of 2003 and held that the appellant Uttam Bal is entitled to specific performance of contract on payment of the balance amount of Rs.1,65,000/- within two months.

7. With regard to Title Appeal No.12 of 2005, the same was also allowed. It was, however, held that the present petitioners who were plaintiffs in Title Suit No.21 of 2003 were entitled to have a direction that the respondents will execute a

registered sale deed in their name for the plot of land following within the land of the original defendants 1 to 8 after excluding the portion of the land which is part of the Schedule of the plaint of Title Suit No.11 of 2003. Effectively what was stated by the learned Appellate Court was that first Uttam Bal had a right to get possession of his land and after excluding his land the present petitioners namely, Shri Radha Raman Debnath, Shri Narayan Chandra Debnath and Shri Uttam Kr. Debnath would be entitled to get land from Bhanu Rani Ghosh and others. It, however, appears that the present petitioners in connivance with the original venders Bhanu Rani Ghosh and others transferred land in favour of the present petitioners and delivered possession to them and thereby, the decree passed in T.S.No.21 of 2003 and T.A. No.12 of 2005 was deemed to be satisfied.

8. Utam Bal filed Execution (T) 10 of 2007 for execution of the decree passed in Title Appeal No.10 of 2006 in connection with T.S.11 of 2003. The present petitioners appeared before the executing Court and filed objections under Order XXI Rule 99. Thereafter, the executing Court passed an order and held that the present petitioners were not judgment debtors, but were third parties to the decree which was passed in favour of Uttam Bal. The learned Trial Court also held that the present petitioners have a right, title and interest in the immovable property purchased by them and therefore the land which they have purchased from

Bhanu Rani Ghosh and others could not be the subject matter of execution petition.

9. This order was challenged in appeal and the learned District Judge held that both the decrees had to be read together and from the appellate decrees passed it was apparent that first the decree passed in favour of Uttam Bal had to be satisfied and only thereafter the decree passed in favour of the three petitioners herein namely, Shri Radha Raman Debnath, Shri Narayan Chandra Debnath and Shri Uttam Kr. Debnath was to be satisfied.

10. If the rule of law is to prevail in the country then the executing Court must ensure that decrees are executed in letter and spirit. The decree passed by the Appellate Court was absolutely clear that first the decree passed in Title Suit No.11 of 2003 had to be satisfied and thereafter out of the remaining land of Bhanu Rani Ghosh the decree passed in Title Suit No.21 of 2003 was to be satisfied. The fact that the present petitioners and the original venders i.e. defendants 1 to 8 were conniving with each other is apparent from the fact that in Title Suit No.11 of 2003 the defence of the defendants 1 to 8 was that they have entered into an agreement with defendants 9 to 11 and are willing to transferred land in favour of defendants 9 to 11 (petitioner herein). The learned Appellate Court vide the impugned order has only directed that the executing Court to find out what is the description of the land purchased by the present petitioners from

Bhanu Rani Ghosh and whether it tallies with the description of the decreetal land in T.S. No.21 of 2003 or not. Secondly, whether the present appellant as holder of decree in T.S.11 of 2003 claims possession of the land in possession of the present petitioners? It would be pertinent to mention that in all fairness Bhanu Rani Ghosh and others should not have executed sale deed in favour of the present petitioners without first satisfying the decree passed in favour of Uttam Bal.

11. Therefore, the petition filed by the present petitioners is found to be totally without any substance and the order of the learned District Judge is upheld. It is further directed that even if the present petitioners are found to be in possession of some land to which Uttam Bal is entitled to in terms of the decree passed in T.S.No.11 of 2003 they can even in this executing proceedings be dispossessed of the land and if after satisfying the decree passed in favour of Uttam Bal, Bhanu Rani Ghosh and others have sufficient land remaining in Khatian No.626, plot No.4525 and 4526 to satisfy the decree and thereafter, the decree passed in favour of the present petitioners shall be executed and satisfied.

CHIEF JUSTICE

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