

THE HIGH COURT OF TRIPURA
AGARTALA

RSA 09 OF 2015

1. **Smt. Laxmi Bala Pal**
W/O late Ram Chandra Pal
Resident of Dhajanagar, P.S.- Ridhakishorepur
District- West Tripura.
2. **Smt. Barnali Chowdhury (Pal)**
W/O Sri Santanu Chowdhury
Resident of Dhajanagar, P.S.- Ridhakishorepur
District- West Tripura.

... Counter-Claimant-Appellants

- Versus -

1. **Smt. Arati Bala Pal**
W/O Late Ram Chandra Paul
C/O Sri Raichak Pal, Milan Chakra near T.V.Tower
Srinagar Road No.4, West Tripura, Agartala.

..... Respondent

2. **The State of Tripura**
Represented by D.M. & Colletor
Gomati District (previously South Tripura) Udaipur.
3. **The Director of Industries**
Government of Tripura
Agartala, West Tripura.
4. **The Deputy Director of Industries**
Government of Tripura, Udaipur
P.S.- Radhakishorepur, District- Gomati.
5. **Legal heirs of Chinta Haran Adhikari**
 - (a) Sri Swapan Adhikari
S/O late Chinta Haran Adhikari of village- Dhajanagar
Udaipur,P.S. Radhakishorepur, District- Gomati.
 - (b) Sri Shyamal Adhikari
S/O late Chinta Haran Adhikari of village- Dhajanagar
Udaipur,P.S. Radhakishorepur, District- Gomati.
 - (c) Smt. Suchitra Sharma
W/O Sri Bidhu Bhusan Sharma of village- Bairagi Bazar
P.S. Melaghar,Sonamura, Sipahijala District, Tripura.
 - (d) Smt. Chaya Chakraborty (Sharma)
W/O Sri Mohanlal Chakraborty of village- Dhajanagar,
P.S. R.K. Pur, Udaipur, District- Gomati.
 - (e) Smt. Purnima Chakraborty (Sharma)
W/O Sri Dhaneswar Chakraborty of vill- Bharat Chandra
Nagar, P.S. Belonia, P.O. Bankarshet, South Tripura.

..... Respondents

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... Defendant-Appellants

- Versus -

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C/O Sri Raichak Pal, Milan Chakra near T.V.Tower
Srinagar Road No.4, West Tripura, Agartala.

..... Plaintiff-Respondent

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Nagar, P.S. Belonia, P.O. Bankarshet, South Tripura.

..... Defendant-Respondents

**BEFORE
THE HON'BLE MR. JUSTICE U.B.SAHA**

For the appellants : Mr. B. Majumder, Advocate.

For the respondent no.1 : Mr. D.Chakraborty, Sr. Advocate

For respondent no.2,3,4 : Mr. A. Paul, Advocate

Date of hearing & delivery
of Judgment and Order : **10.07.2015.**

Whether fit for reporting : YES / No.

JUDGEMENT AND ORDER (ORAL)

Both the second appeals arise from a common judgment dated 29.01.2015 passed by the learned District Judge, Gomati District, Udaipur in Title Appeal no. 27 of 2013 and Title Appeal no. 28 of 2013.

2. Both these appeals are between the same parties on the same subject matter relating to claim and counter claim against the judgment of the learned District Judge, Gomati District, Udaipur whereun the learned District Judge upheld the judgment of the learned Civil Judge, Senior Division, Gomati District, Udaipur (hereinafter referred to the trial court) decided in Title Suit no. 26 of 2011 and Title Suit no. 9 of 2012. The respondent no.1 filed the suit being Title Suit no. 26 of 2011 for declaration of title and recovery of possession. Learned trial Court on the basis of the khatian, registered sale deed and other relevant documents decided the case in favour of the respondent and decreed the suit and ordered for declaration of title, recovery of vacant possession of the suit land by way of eviction of the appellant Laxmi Bala Pal. Learned trial Court also decided the counter claim against the appellant who was the defendant in the suit being Title Suit no. 26 of 2011.

3. Heard Mr. B. Majumder learned counsel appearing for the appellants as well Mr. D.Chakraborty, learned senior counsel appearing for the respondent no.1 and Mr. A.Pal, learned counsel appearing for respondent nos. 2,3 and 4.

4. The case of the respondent, in short, is that she had purchased the land from her husband in the year 1981 by a registered deed vide no. 1-1523. It is also her case before the learned trial Court that she was the first wife of the original owner Ramchandra Pal and the appellant defendant is the second wife. The appellant and her daughter Barnali Choudhury (Pal) were living with the respondent-plaintiff. In the record of right, the appellant managed to incorporate her name in column No.24 of the khatian as forceful occupier and in the year 2002 she forcefully dispossessed the respondent-plaintiff. As the respondent-plaintiff was dispossessed, she filed the suit for declaration of title and recovery of possession. The learned Civil Judge passed the decree, as stated supra.

4.a. Being aggrieved by and dis-satisfied with the judgment of the learned Civil Judge, Senior Division, the appellant filed the first appeal against the suit decided by the learned trial Court for redress on the ground that the learned Court below could not appreciate the evidences properly, particularly, the fact that the original owner Ramchandra Pal was mentally ill and was in the Central Jail in the year 1979 and he was not fit in the state of mind when he executed the sale deed in favour of the respondent-plaintiff. The appellant also contended in her first appeal that the possession of the land was with her and she acquired the title by adverse possession.

4.b. The respondent-plaintiff's case was that the appellant was the family member of her and she was allowed to stay with her. It was also her case that the father of the respondent-plaintiff paid the money for purchasing the land and the sale deed was registered in the year 1981 and the appellant did not challenge the authenticity of the said deed. The learned trial Court considered all the evidences including the fact of mental illness of the original owner and decreed the suit. Being aggrieved by the decision of the learned trial Court, the appellant preferred the instant second appeals.

5. Mr. B. Majumder, learned counsel appearing for the appellant would contend that both the courts below failed to consider the evidences, particularly, the mental illness of the original owner. According to him, non-consideration of the evidences on record is nothing but perverse.

6. On the other hand, Mr. D. Chakraborty, learned senior counsel appearing for respondent no.1 submits that both the courts below have considered the evidences on record including the Exhibit-4 i.e. letter to SPIO, Prisons Directorate dated 18.10.2011 submitted by the appellant in their counter claim and came to the finding *inter alia* that on perusal of the Exhibit-4, it reveals that Ramchandra Pal entered into the Central Jail, Agartala on 09.05.1979 in connection with West Agartala P.S. GD Entry no. 679 dated 08.05.1979 under Section 13 of the Lunacy Act. Said Ramchandra Pal was discharged from Central Jail, Agartala on 18.06.1979 as per order of the learned Judicial Magistrate dated 18.06.1979. The exhibit-4 does not support the case of the counter claimant i.e. appellant herein, that at the time of execution of the sale

deed said Ramchandra Pal was mentally ill. Mr. Chakraborty, also submits that the defendant appellants did not produce any document to satisfy the Court that on 08.04.1981 i.e. the date on which exhibit-3 was registered, the original owner Ramchandra Pal was mentally ill.

7. This Court has gone through the impugned judgment in these appeals as well as the judgment of the learned trial Court. After perusal of the judgment, this court is of considered opinion that both the learned trial court and the appellate court considered the plea of the appellant regarding the mental illness of the original owner Ramchandra Pal. Thus, it cannot be said that the judgment of the courts below are perverse. More so, whether the original owner Ramchandra Pal was mentally ill or not, that is a question of fact and the said fact was considered and decided by the learned courts below. Admittedly, these appeals are against the concurrent finding of facts. In a second appeal, the court cannot differ with the finding of facts. Only when substantial questions of law are involved, an appeal can be admitted. As in these appeals, there is no substantial question of law involved, both the appeals are dismissed. Maintain the decree passed by the learned courts below.

8. No order as to costs.

JUDGE