

# **HIGH COURT OF TRIPURA AGARTALA**

## **RSA 1 of 2006**

1. Smti Maina Bala Debnath  
@ Sabita Debnath  
W/O. Shri Sudhir Ranjan Debnath.

2. Shri Sudhir Ranjan Debnath  
S/O. Late Ananga Mohan Debnath

3. Shri Ratan Debnath  
S/O. Late Ananga Mohan Debnath

All are of village and P.O. Sakaibari P.O  
Dharmanagar, North Tripura.

Defendant -Appellants

-versus-

1. Smt. Pranati Debnath  
W/O Late Radha Kanta Debnath

2. Shri Ashim Kr. Debnath  
S/O Late Radha Kanta Debnath

3.Smti Pampa Debnath  
D/O Late Radha Kanta Debnath

- All are residents of  
Vill- Sakaibari, P.O.-Sakaibari,  
P.S.- Dharmanagar, Dist- North Tripura

4.Smti Sabita Debnath  
D/O. Late Radha Kanta Debnath  
W/O Shri Laxman Debnath  
Resident of vill- Nayapara, Dharmanagar,  
Dist- North Tripura

Plaintiff-Respondents

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

|                               |                                      |
|-------------------------------|--------------------------------------|
| Advocate for the Appellants:  | Mr. S.M. Chakraborty<br>Sr. Advocate |
| Advocate for the respondents: | Mr. H.Laskar<br>Advocate             |

Date of hearing  
& delivery of the judgment: 26.6.2015

Whether fit for reporting: no

### **JUDGEMENT AND ORDER(oral)**

1. The instant second appeal is preferred against the judgment dated 24.09.2005 passed by the learned Additional District Judge, North Tripura, Dharmanagar in Title Appeal No. 12 of 2005 reversing the judgment and decree dated 31.03.2005 passed by the learned Civil Judge (Junior Division) Dharmanagar, North Tripura in Title Suit No.5 of 2003 wherein the learned civil Judge (Junior Division) dismissed the suit.

2. Heard Mr. S.M. Chakraborty, learned senior counsel appearing for the appellants and Mr. H. Laskar, learned counsel appearing for the respondents.

3. At the time of admission of this appeal, the following substantial questions of law were formulated:-

- (a) Whether a suit for perpetual injunction without seeking a declaration of title when title is in dispute, is maintainable?**
- (b) Whether the suit for perpetual injunction can be decreed in favour of the plaintiff only on the weakness of the defendants even though the plaintiff has failed to prove his possession by adducing evidence?**

4. The plaintiff Radha Kanta Debnath, since deceased, the predecessor-in-interest of the present respondents, filed the suit being Title Suit No. 5 of 2003 before the learned civil judge (Junior Division) Dharmanagar, North Tripura, for perpetual injunction restraining the defendants, appellants herein, and their persons from entering into the suit land and from evicting the plaintiff from the suit land and from disturbing the peaceful possession of the plaintiff in the suit land.

5. The case of the plaintiff is that one Mohini Devi since deceased was the owner and possessor of the suit land along with other lands and she mutated her name in the record of right being Khatian No. 1774 appertaining to C.S Plot No.3965 comprising of land measuring 2.97acres classified as tilla type of land along with other plots of land of Mouza Baruakandi, Dharmanagar, North Tripura. The said Mohini Devi sold out 3 kanis and 12 sataks of land appertaining to plot No. 3965 of Khatian No.1774 along with other lands of the said Khatian to one Girindra Chandra Debnath (since deceased) through a registered sale deed bearing No. 1-4374 dated 04.05.1967 and he had been possessing from the date of purchase. Said Girindra Debnath sold out 20 sataks of land under C.S. Plot No.3965 to one Purna Chandra Roy through a registered sale deed bearing No. 1-5650. Said Girindra Chandra Debnath again sold out 1 kani 20 satak of land of the said plot No. 3965 to one Ram Chandra Debnath who is the full blooded brother of the plaintiff by a registered deed No.1-5359 dated 21.05.1979. Said Purna Chandra Roy (since deceased) sold out the said 20 sataks land of plot No. 3965 to Sri Ram Chandra Debnath by registered sale deed bearing No. 1-5564 dated 31.3. 1971. Wife and son of late Girindra Chandra Debnath sold out 20 sataks of land of plot No. 3965 to Sri Radha Kanta Debnath through registered sale deed No. 1-233 dated 25.01.1984.

6. The said Mohini Devi, who was the original owner of the suit land sold out 4 kanis and 7 sataks of land to the plaintiff and his two brothers, namely, Ram Chandra Debnath and Rajchandra Debnath by a registered sale deed No. 1-4624 dated 26.5.1972.

7. After the death of the father of the plaintiff, they amicably partitioned their property along with the suit land by a registered partitioned deed No. 1-1060 dated 11.03.1983.

8. On 3.11.2002 A.D., at about 8 a.m., when the plaintiff along with his workers were cultivating the brinjal plants in the suit land, at that time, the defendant No. 1,2,3 and 4 along with some anti-socials armed with dao, lathi etc. forcefully entered into the suit land by breaking the bamboo fencing of the eastern boundary of the suit land and removed some of the brinjal plants standing over the suit land. On seeing this, the plaintiff and his workers raised objection. The defendants entered into the suit land for evicting the plaintiff and due to resistance, they could not be success and left the place saying that they would come within a short period and occupy the suit land. Hence the suit was filed by the plaintiff for restraining the defendant-appellant from entering into the suit land.

9. The defendants contested the suit by filing written statements. The case of the defendants is that late Girindra Ch. Debnath was an illiterate person and without any experience in the land matter and was simple in nature. He purchased 3 kanis 6 gandas including the suit land and got possession therein and constructed his homestead. He died on 13.11.1975 leaving behind two minor sons , namely, Gopal Debnath and Nepal Debnath and one minor daughter, defendant No. 1, namely, Maina Bala Debnath and his widow Mayna Devi. The Mayna Bala Debnath was of unsound mind and the defendant No. 1 was also illiterate. Taking the said situation Ram Chandra Debnath, the brother of the predecessor-in-interest of the plaintiff manufactured forged and fraudulent deeds in his name and in the name of other persons of his camp bearing registered kabala No. 5650 dated 28.5.1969, No. 5359 dated 21.5.1971, No. 5564 dated 31.5.1971 and No. 233 dated 25.1.1984 when the said Girindra Chandra Debnath, the predecessor in interest of the defendants did not execute the said kabalas. All the said sale deeds were never acted upon and the alleged transferee never got possession over any

portion of the suit land or any other land on the strength of those deeds.

10. After the death of Girindra Chandra Debnath, the defendant No. 1, her widow mother and brother Gopal Debnath became the owners and possessors of 3 kanis and 6 gandas of land purchased by their predecessor-in-interest from the said Mohini Devi and they were in exclusive possession of the said land. Therefore they prayed for dismissal of the suit filed by the plaintiff.

11. On the basis of the pleadings, the learned trial court framed the following issues:-

- (i) *Is the suit is maintainable in its present form?*
- (ii) *Is the plaintiff in possession of the suit land described in the schedule of the plaint?*
- (iii) *Did the defendants try to dispossess the plaintiff from the suit land on 03.11.2002 and 08.11.2002 in the manner as alleged?*
- (iv) *To what relief, if any, is the plaintiff entitled?*

12. The plaintiff has examined as many as nine witness and some documents which were exhibited as Exhibit 1 to 10. Exhibit -1 the copy of Khatian bearing No. 1774 in the name of original owner Mohini Devi was exhibited subject to objection. On the other hand, the defendant examined as many as four witnesses and also exhibited 4 nos documents i.e., Exbt. A to D.

13. Though from the plaint apparently it appears that the suit was for perpetual injunction and without any prayer for declaration of title, but from the recitals made in the plaint, it would be clear that the prayer of perpetual injunction was based on title but in the detailed discussion made by the learned trial court against the issue Nos. 2 and 3 analogously,

it would be found that the plaintiff failed to prove the title over the suit land on the basis of the documents submitted by him. The learned trial Court after considering the evidence on record dismissed the suit.

14. Being aggrieved by the judgment of the trial court, the plaintiff preferred an appeal before the learned Additional District Judge, Dharmanagar, North Tripura and the said appeal was registered as title appeal No. 12 of 2005. The learned Appellate court after hearing the parties reversed the judgment of the learned trial court and allowed the appeal.

15. Mr. Chakraborty, learned senior counsel for the appellants at the very outset submits that he is not pressing the substantial question No. (a). Thus, it is not necessary for this court to discuss anything regarding the said substantial question of law. While urging for setting aside the judgment and decree passed by the learned appellate Court, he further submits that the learned appellate court failed to appreciate the evidence on record from which it would be clearly evident that the defendants were possessing the suit land. He has taken us to the evidence of P.W. 1 wherein P.W. 1 i.e. the plaintiff specifically stated that the predecessor of the defendant late Girindra Ch. Debnath expired in the residence in which the defendants are presently staying. There is a graveyard in the residence of the defendants of deceased Girindra Chandra Debnath and another graveyard of one Nepal Debnath near his residence. Referring to the aforesaid deposition of the plaintiff, Mr. Chakraborty submits that admittedly the suit land is the homestead land of the defendants. Thus, the question of possession of the plaintiff does not arise at all. He again submits that the learned trial court rightly held that the plaintiff was not in possession in the suit land for which the prayer for perpetual injunction was not granted, as granting of perpetual injunction is based on possession. He has also submitted that the learned appellate court came to a finding wholly contrary to

the oral evidence on record including the admission of the plaintiff, as he has only appreciated the khatian which cannot be the only basis for possession.

16. Mr. Laskar while supporting the impugned judgment passed by the appellate court would contend that the learned appellate court after discussing the oral evidence as well as documentary evidence under Exbt. 4 series rightly held that the appellant has right, title and interest over the suit land. He has also referred to Para-7 of the impugned judgment wherein the learned Appellate Court stated, inter alia, "...considering the oral and documentary evidence it appears that the plaintiff has established his title by producing title deed of purchase and then the partition deed and also by producing finally published revisional khatian under Exhibit-4 series..."

17. He further submits that the substantial question of law (b) above was formulated in the manner as the plaintiff has failed to prove his possession. He has placed reliance on the decision of **Ramji Rai and anr Vs. Jagdish Mallah, (2007)14 SCC 200**, particularly para-11 which is reproduced hereunder:

*" It has been held that mere fact that the question of title may have to be gone into in deciding whether an injunction can be given or not is not any justification for holding that the suit is for a declaration of title and for injunction. There can be a suit only for an injunction. The present suit is only for permanent injunction and, thereafter, the lower appellate court should have, on the facts and circumstances of this case, confined itself to its dismissal only on the ground that the appellants have failed to show that they were in possession. This has been done by the declaration that the appellants are not the owners, was not necessary."*

18. Referring to the aforesaid judgment, he submits that the appellant-defendants were not in possession of their land.

Therefore, the learned appellate court rightly allowed the appeal restraining the defendants from entering into the suit land. He finally contended that the second appellate court can only consider the substantial question of law, not the facts and it has no power to re-appreciate the evidence.

19. I have given my thoughtful consideration to the rival submission of the learned counsel for the parties and also meticulously perused the impugned judgment and decrees of the courts below. The learned Additional District Judge while allowing the appeal mainly dealt with the documentary evidence, particularly, Exbt. 4 series. There is no doubt that the power of the High Court is very limited in the second appeal relating to the concurrent findings of fact, but when there is a reversal finding and the appellate court failed to appreciate the evidence on record and came to a perverse finding, then obviously the second appellate court has the power to re-appreciate the evidence also.

20. In **Shri Bhagwan Sharma Vs. Smt. Bani Ghosh, AIR 1993 SC 398**, the Apex Court held that

*“ The High Court was certainly entitled to go into the question as to whether the findings of fact recorded by the first appellate court which was the final court of fact were vitiated in the eye of law on account of non-consideration of admissible evidence of vital nature. But, after setting aside the findings of fact on that ground the court had either to remand the matter to the first appellate court for a re-hearing of the first appeal and decision in accordance with law after taking into consideration the entire relevant evidence on the records, or in the alternative to decide the case finally in accordance with the provisions of Section 103(b) of the Code of Civil Procedure...”*

21. In **D.R. Rathna Murthy vs. Ramappa, (2011) 1 SCC 158**, the Apex Court taking note of its earlier judgment in **Rajappa Hanamantha Ranoji vs. Mahadev Channabasappa, (2000) 6 SCC 120; Hafazat Hussain v. Abdul Majeed, (2001) 7 SCC 189; Bharatha Matha vs. R. Vijaya Renganathan (2010) 11 SCC 483** held inter alia,

*"Undoubtedly, the High Court can interfere with the findings of fact even in the second appeal, provided the findings recorded by the courts below are found to be perverse i.e. not being based on the evidence or contrary to the evidence on record or reasoning is based on surmises and misreading of the evidence on record or where the core issue is not decided. There is no absolute bar on the re-appreciation of evidence in those proceedings, however, such a course is permissible in exceptional circumstances."*

22. It appears from the judgment of the learned trial court that the D.W. 1 in her deposition specifically stated that her mother is insane since last 25 years and the present suit land is a part of their homestead and it appertains to 3 kanis 6 gandas bounded on the north by Ram Chandra Debnath and others, now Holy Cross School, on the south and east by Ramchandra Debnath and others and on the west by heirs of late Raj. Ch. Nath.

23. It also appears from the evidence of D.W. 2 that he knows the suit land measuring 3 kanis in one block and it is the portion of ancestral homestead of deceased Girindra Ch. Debnath, wherein the defendants have their huts, latrine, urinal point etc. D.W. 3 also deposed that the plaintiff was not in possession of the suit land. When admittedly, the plaintiff failed to prove the possession, the learned trial Court rightly rejected the prayer for injunction. In a suit of perpetual injunction, such possession is sine qua non and the plaintiff failed to prove his possession. Thus, the question No. (b) is answered accordingly.

According to this court, the learned trial court rightly dismissed the suit.

24. In view of the above, the order of the first appellate court is set aside and the judgment of the learned trial court is affirmed. The second appeal is allowed and accordingly disposed of. No order as to costs.

Send down the L.C. records.

**JUDGE**

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