

**THE HIGH COURT OF TRIPURA
AGARTALA**

RSA NO. 49 OF 2004

Sri Manoranjan Bhowmik,
S/O. Sri Mahendra Chandra Bhowmik,
Vill-Tulamura, P.O. Jitendranagar,
P.S.- R.K.Pur, Udaipur,
South Tripura District.

.....**Plaintiff-Appellant.**

- Versus -

1. Sri Prafulla Das,
S/O. Late Basanta Kumar Das,

2. Sri Bipad Debnath,
S/O. Sri Rabi Debnath,

3. Sri Ranjan Shom,
S/O. Late Aswini Shom,

- All are resident of vill-Tulamura,
P.O. Jitendranagar, P.S. R.K.Pur,

4(a). Smti. Tagar Bala Shom,
W/O. Late Sudhir Shom,

4(b). Sri Tapas Shom,
W/O. Late Sudhir Shom,

4(c). Sri Hrishikesh Shom,
W/O. Late Sudhir Shom,
Tulamura, P.S. R.K.Pur,
P.O. Jitendranagar,
South Tripura,

4(d). Smti. Mira Sen(Shom),
D/O. Late Sudhir Shom,
W/O. Shri Binoy Sen,
resodemt of Khilpara(Bhangar Par),
P.S. R.K.Pur, P.O. Khilpara,
Udaipur, South Tripura,

4(e). Smti. Mina Baidya(Shom),
D/O. Late Sudhir Shom,
W/O. Shri Subash Baidya of
Barpathari, P.S. Belonia(Rajnagar),
P.O. Barpathari, Dist.-South Tripura,

- 4(f). Smti. Sima Das(Shom),
D/O. Late Sudhir Shom,
W/O. Shri Ratan Das,
of Basantanagar, Kakraban,
P.S. R.K.Pur, South Tripura,
5. Smt. Upasana Sharma,
W/O. Sri Promode Sharma of
Vill-Chhanban, P.S. R.K.Pur,
Udaipur, South Tripura District.
6. Smt. Parthana Shil,
W/O. Sri Khokan Chandra Shil of
Vill-Chandrapur Colony,
P.S. R.K.Pur, P.O. Tripureswari Colony,
Udaipur.
7. Smt. Pritikana Shom,
D/O. Late Sukhen Shom of
Vill-Uttar Tulamura,
P.O. Jitendranagar, P.S. R.K.Pur,
Udaipur.
8. Smt. Sadhana Shil,
W/O. Sri Sankar Shil of
Vill-Kalinagar, P.O. Belonia No.1 Tilla,
P.S. Belonia, South Tripura.

..... **Defendant-Respondents.**

RSA NO. 50 OF 2004

1. Smt. Himani Prava Lodh(Sarkar),
Wife of Late Rakhal Chandra Lodh of
Village-Tulamura, P.S.- R.K.Pur,
Udaipur, South Tripura District.
2. Smt. Namita Lodh Dey,
Wife of Sri Kamal Kanti Dey,
resident of Bagma, P.S.- R.K.Pur,
South Tripura.
3. Smt. Anita Lodh(Kundu),
Wife of Sri Giopal Kundu of
South Mirza, P.S. Kakraban,
South Tripura,
4. Smt. Rita Lodh Majumder,
Wife of Sri Babul Majumder,
Fulkumari, P.S.- R.K.Pur,
District-South Tripura.

5. Smt. Kanchan Lodh Majumder,
Wife of Sri Sajal Majumder of
Fulkumari, P.S.- R.K.Pur,
District-South Tripura.

6. Sri Utpal Lodh,
Son of Late Rakhal Chandra Lodh,
Resident of village- Tulamura,
P.S.- R.K.Pur, Udaipur,
South Tripura.

.....**Plaintiff-Appellants.**

- Versus -

1. Sri Kumud Debnath,
S/O. Late Nanda Kumar Debnath,

2. Sri Nikhil Karmakar,
S/O. Sri Atul Karmakar,

3. Sri Dinesh Shom,
S/O. Late Durga Charan Shom,

4. Sri Bikash Shom,
S/O. Late Durga Charan Shom,

5. Smt. Tarubala Shom,
D/O. Late Durga Charan Shom,

6(1). Smti. Niri Sil,
W/O. Sri Pradip Shil of
Mullatilla, P.S. Barapathari,

6(2). Smti. Sabita Sil,
W/O. Gautam Sil,
of Udaipur Agricultural Office,
P.S. R.K.Pur,

6(3). Smti. Namita Sil,
W/O. Late Subrata Sil of
Village-Tulamura, P.S. R.K.Pur,
Udaipur,

6(4). Sri Sadhan Shom,

6(5). Sri Suchita alise Kanu Shome,

Both 6(4) & 6(5) are sons of
Late Prafulla Kumar Shom of
village-Tulamura, P.S. R.K.Pur,
Udaipur, South Tripura.

7. Sri Monoranjan Shom,
S/O. Late Purna Mohan Shom,

All are village- Tulamura,
P.S. R.K.Pur, Udaipur,
South Tripura District.

.....**Defendant-Respondents.**

**BEFORE
THE HON'BLE MR. JUSTICE S. C. DAS**

For the appellants in both : Mr. A.K.Bhowmik,
the appeals, Senior Advocate,
Mr. R. Choudhury,
Advocate,

For the respondents in both : Mr. J. Majumder,
the appeals, Advocate,

Date of hearing : 18.12.2014.

Date of delivery of
Judgment and Order : **16.01.2015.**

Whether fit for reporting : **No.**

JUDGEMENT AND ORDER

On the submission made by learned counsel of both side that identical substantial question of law formulated in both the cases and that the pleadings and issues in both the cases are almost similar, both the appeals were heard together and this common judgment shall govern both the appeals.

2. Second Appeal No. 49 of 2004 under Section 100 of the Code of Civil Procedure is directed against the appellate judgment and decree dated 07.09.2004 passed by learned District Judge, South Tripura, Udaipur, now Gomati District, Udaipur, in Title Appeal No.09 of 2004, whereunder the learned

District Judge upheld the judgment and decree dated 18.03.2004 passed by learned Civil Judge, Senior Division, Udaipur, South Tripura in Title Suit No. 20 of 1998.

3. In Second Appeal No.50 of 2004 preferred under Section 100 of Code of Civil Procedure, the appellate judgment and decree dated 07.09.2004 passed by learned District Judge, South Tripura, Udaipur, now Gomati District, Udaipur, in Title Appeal No.24 of 2001 has been challenged, whereunder the learned District Judge upheld the judgment and decree of dismissal dated 24.09.2001 passed in Title Suit No.18 of 1998 by the learned Civil Judge, Senior Division, Udaipur, South Tripura.

4. As already stated hereinabove, identical substantial questions of law were formulated in both the appeals, the substantial questions of law so formulated in both the appeals are :-

"(i) Whether the first appellate Court held correctly that the second suit was barred by law without arriving at a finding that the first suit was dismissed under Order IX Rule 8 of CPC?"

(ii) Whether the Na-dabi patra executed by some of the legal heirs could transfer the title to other legal heirs in favour of whom the Na-dabi patra was executed?"

5. Heard learned Senior counsel, Mr. A. K. Bhowmik for the appellants and learned counsel, Mr. J. Majumder for the respondents in both the appeals.

6. In RSA No. 49 of 2004 the appellant, Monoranjana Bhowmik, since deceased, as plaintiff (hereinafter mentioned as

"plaintiff") instituted Title Suit No. 20 of 1998 in the Court of learned Civil Judge, Senior Division, Udaipur, South Tripura against the defendant-respondent Nos.1, 2, 3 and Sudhir Som since deceased, the predecessor of respondent Nos. 4(a) to 4(f) and respondent Nos.5 to 8 seeking declaration of right, title and recovery of possession of the suit land mentioned in the schedule of the plaint as well as for mesne profit. The plaintiff, *inter alia*, contended that he purchased the suit land measuring .02 acres from the legal heirs of the original owner Sukhen Som by a registered deed of purchase dated 07.09.1993 and got possession thereon. He was possessing the suit land by putting boundary fencing and growing crops therein. The purchased land was mutated in the name of the plaintiff in the record or right on 16.11.1996 and Khatian No. 2346 of Mouja-Jitendranagar was opened in his name. The defendants dispossessed the plaintiff from the suit land on 11.05.1997 having no right, title and interest and made some constructions on the suit land unauthorizedly. It is also contended by the plaintiff that the purchased deed of the plaintiff was executed by Sri Sankar Som and Sri Dibakar Som, both sons of Late Sukhen Som and Smt. Lila Bala Som, Wife of Sukhen Som and that defendant Nos.5 to 8 by executing a registered Nadabi Patra dated 20.02.1992 relinquished their right, title and interest in the suit and they never claimed any right, title and interest in the suit land.

6.1. The defendant Nos.2 to 4 contended that the matter in issue involved in the suit was directly and substantially in issue

in the previously instituted suits between the parties under whom the plaintiff claimed title and those previous suits/proceedings were T.S. 19 of 1983, Civil Misc. 16 of 1991, T.S. 10 of 1991, Civil Revision Case No. 09 of 1995 and Civil Misc. Appeal No. 12 of 1984 and as such the suit was liable to be dismissed. It is also contended by the defendants that the predecessor in interest of the plaintiff, Late Sukhen Som, by writing entered into a contract on 13.11.1978 with other co-sharers of the land including the suit land and by such contract transferred the suit land in favour of defendant Nos.3 and 4 and from that date defendant Nos.3 and 4 possessing the suit land constructing huts for the purpose of shops and let out those huts to one Kanu Ghosh for one year and thereafter to defendant Nos.1 and 2 and defendant Nos.1 and 2 running their business since long. The story of possession and dispossession claimed by the plaintiff was false and the plaintiff was not entitled to get any decree of declaration of title and recovery of possession.

6.2. Considering the pleadings of the parties, the trial Court formulated the following issues :-

- "1. Is the suit maintainable in its present form?**
- 2. Whether the plaintiff acquired any right, title and interest over the suit land?**
- 3. Whether the plaintiff is entitled to get recovery of possession of the suit land as prayed for?**
- 4. Whether the plaintiff is entitled to get the mesne profits from the defendants as prayed for?**
- 5. To what other relief/reliefs the parties entitled?"**

6.3. In course of trial, both side adduced evidence both oral and documentary and finally the trial Court dismissed the suit holding that it was barred by *res judicata* and that the plaintiff had failed to prove his right, title and interest in the suit land since the plaintiff did not produce the original exchange deed of the suit land and other lands and the power of attorney under which the sale deeds in favour of Sukhen Som were executed and further held that the plaintiff has failed to prove the fact of alleged possession and dispossession.

6.4. Aggrieved, the plaintiff preferred Title Appeal No. 04 of 2004 and the learned District Judge by impugned judgment dated 07.09.2004 dismissed the appeal holding that the suit was not barred by *res judicata* but it was barred by law and that the exchange deed and power of attorney were not necessary for deciding the case and further held that the plaintiff has failed to prove his possession and dispossession and, therefore, upheld the judgment and decree of dismissal passed by the trial Court and accordingly, dismissed the appeal.

6.5. Hence, the plaintiff filed the present second appeal.

7. In RSA No. 50 of 2004 the plaintiff, Rakhal Chandra Lodh, since deceased, the predecessor of the present appellants (hereinafter mentioned as "plaintiff") instituted Title Suit No.18 of 1998 in the Court of Learned Civil Judge, Senior Division, Udaipur, South Tripura against defendant Nos.1 to 5 and 7 and another Prafulla Kumar Shom, the predecessor of

respondent Nos.6(1) to 6(5) seeking declaration of title and recovery of possession of the suit land as well as mesne profit. The plaintiff contended that he purchased the suit land mentioned in the schedule of the plaint by a registered deed executed on 01.09.1993, registered on 06.09.1993 from the legal heirs of Sukhen Som and got possession thereon. He put boundary fencing and was possessing the same growing crops and vegetables. The purchased land of the plaintiff was mutated in his name vide Mutation Case No.701 of 1996. The defendants having no right, title and interest in the suit land dispossessed the plaintiff on 20.01.1997 and constructed some unauthorized structures thereon. The plaintiff, therefore, prayed for declaration of title and recovery of possession.

7.1. The defendants contended that the matter in issue in the suit was directly and substantially in issue in previously instituted suits/proceedings between the parties under whom the plaintiff claimed title in Title Suit No. 19 of 1983, Civil Misc. Case No. 19 of 1991, T.S. No. 10 of 1991, Civil Misc. Case No. 09 of 1993, Civil Misc. Appeal No. 12 of 1984 and as such the suit was liable to be dismissed. It is also contended by the defendants that Sukhen Som, the predecessor in interest of the plaintiff in writing entered into a contract on 13.11.1978 with defendant No.3, Durga Charan Som, and thereby transferred the suit land in favour of defendant No.3 and also handed over physical possession of the suit land to the defendants. The defendants constructed shop hut and let it out at first to one Nilmani

Murasingh and then to defendant Nos.1 and 2. Since Sukhen Som already relinquished his right, title and interest in the suit land, the plaintiff acquired no right, title by way of alleged purchase from the legal heirs of Sukhen Som.

7.2. Considering the pleadings of the parties, the trial Court framed the following issues:-

"(i) Whether the suit is maintainable in its present form and nature?

(ii) Whether the plaintiff has any right, title and interest over the suit land?

(iii) Whether the plaintiff is entitled to get a decree for recovery of khas possession of the suit land?

(iv) Whether the plaintiff is entitled to get mesne profit, if so to what extent?

(v) What other relief/reliefs the parties are entitled to?"

7.3. Both the side adduced evidence both oral and documentary and the trial Court considering the pleadings and evidence decided that the suit was barred under Section 10 of the CPC and was not maintainable in its present form and that the plaintiff has failed to prove his right, title and interest by placing on record the original deed of exchange and power of attorney through which the suit land and other lands were transferred to Sukhen Som by his predecessor in interest and that the plaintiff failed to prove his possession and dispossession.

7.4. Aggrieved, the plaintiff preferred Title Appeal No. 24 of 2001 and the learned District Judge by impugned judgment dated 07.09.2004 dismissed the appeal holding that the suit was

not barred under Section 10 of CPC but it was barred by law and that the plaintiff has failed to prove his possession and dispossession.

8. Issues framed in both the cases, as stated hereinbefore, were identical. Pleadings of both the parties were almost same in both the cases. The trial Court in both the cases held that because of previous suits/proceedings the present suits instituted by the plaintiffs were not maintainable, but why the present suits were not maintainable has not been discussed. Though in the pleading of defendants in both the cases it has been stated that suits were barred by Section 10 of CPC, but practically the defendants contended that the issues involved were directly and substantially in issue in the previously instituted suits between the parties under whom the plaintiffs claimed title and so, it was apparent that the defendants intended to raise a bar of *res judicata*. The trial Court has decided that the suit was not maintainable and was barred, but why it was barred and what was the materials placed before the Court on the basis of which it was decided to have barred, has not been discussed and no reason also assigned. Surprisingly, the appellate Court also took up the issue and had held that there was no question of *res judicata* since no issues were framed and decided in earlier suits/proceedings, but the appellate Court abruptly arrived at a finding that the present suits were barred. No reason has been assigned why the

appellate Court arrived at a finding that the present suits were barred and under what provision of law those suits were barred.

9. The finding of the trial Court as well as the appellate Court on this point that the suit was either barred by *res judicata* or barred by law appears to be a perverse finding. If the earlier suits were dismissed for non-appearance of the plaintiff on the date fixed for hearing, the subsequent suits by the plaintiff shall be barred under Order IX Rule 8 of CPC. But neither the trial Court nor the appellate Court gave any finding referring to the evidence adduced by the parties to that effect.

10. The defendants in Title Suit No.18 of 1998 submitted certified copies of orders in previous suits but those have not been discussed for arriving at a finding that the present suits instituted by the plaintiffs were barred by law. If the previous suit was abated, the subsequent suit will be barred under Order XXII Rule 9 of CPC and in case the plaintiff or their predecessor in interest abandoned the previous suit it will be barred under Order XXIII Rule 1 of CPC. But for arriving at a decision that the present suits were barred because of any previous suit or proceeding, the trial Court as well as appellate Court must arrive at a definite finding considering the evidence/materials produced by the parties at the time of trial.

11. I have meticulously gone through the judgment passed by the trial Court and affirmed by the appellate Court. The findings of the trial Court and the appellate Court are not

concurrent findings on material issues, rather findings are contradictory, whereas both the Courts arrived at a finding that the present suits were barred. The appellate Court has held that the defendants in their pleadings clearly admitted the title of Sukhen Som, the predecessor of the plaintiffs, in the suit land, since the defendants pleaded that Sukhen Som transferred the land to the defendants by a contract dated 13.11.1978, but the defendants did not prove any such contract and so, the finding of the trial Court that the plaintiffs failed to prove the original exchange deed etc. were of no consequence. But the appellate Court also arrived at a finding of dismissal of the suits since the suits were held to be barred by law. As it appears, the appellate Court had taken into consideration some new issues beyond issues formulated by the trial Court, but did not discuss the evidence and pleadings in its right perspective.

12. Having gone through the judgment and decree passed by the trial Court, I am constrained to observe that the trial Court passed a cryptic judgment, even the trial Court did not mention the witnesses examined by both side and the documents proved by both side during trial. A judgment in a judicial proceeding should be prepared not only for the understanding of the trial Court, which passed the judgment, but it should be for the parties to the proceeding and also keeping in mind that it is for the superior Court to examine and also for the public at large. Any Judgment passed by a Court of law must be lucid and in details. Specially the trial Court's judgment must contain the

detailed discussion on the pleadings and evidence and relevant point of law raised by the parties. Unfortunately, in this case the trial Court's judgment is lacking the requirements of a proper judgment.

13. The appellate Court also did not decide the points raised by the appellant, rather it has formulated its own issues and gave finding on those issues. The appellate Court was supposed to decide the points raised by the aggrieved party, i.e. the appellant, taking into account the issues formulated by the trial Court and the evidence and materials on record. The appellate Court has jurisdiction to reverse or affirm the finding of the trial Court. The first appeal is a valuable right of the parties and unless restricted by law, the whole case is open for rehearing both on questions of fact and law. The judgment of the appellate Court must, therefore, reflect its concise application of mind and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the appellate Court. Sitting as a Court of first appeal, it was the duty of the appellate Court to deal with all the issues and the evidence led by the parties before recording its findings. The trial Court and the appellate Court dismissed the suits of the plaintiffs on the ground that it was barred by law, whereas no such issues were framed and decided. No issues were also framed as to whether the vendors of the plaintiff had right, title and interest in view of the pleadings in T.S. No.20 of 1998.

14. I think it appropriate that following issues should be formulated and decided by the trial Court afresh along with other issues already framed –

(1) Whether the suits instituted by the plaintiff were barred under any provision of law because of any earlier suit/proceeding instituted by Sukhen Som against the defendants?

(2) Whether the vendors of the plaintiff had right, title and interest in the suit land to have a valid transfer in favour of the plaintiff?

15. Since the judgment passed by the trial Court and affirmed by the appellate Court is found to be perverse, both are liable to be interfered and set aside and accordingly, I do so.

16. The case is remanded back to the trial Court to frame the above two issues afresh in addition to the issues already framed and to invite evidence from the parties, if any, to be adduced by the parties and not more than two dates should be given for adducing evidence by the parties. A specific time frame of six months is given to the learned trial Court to complete the trial since already a considerable time has been consumed that the litigation is pending. The parties are directed to appear before the learned trial Judge on or before 27.01.2015. However, the learned trial Judge is also directed to give notice to the parties on receipt of the case record back fixing a short date for appearance of the parties.

17. With the above observations and direction, both the appeals stand disposed of.

18. Send back the lower court records along with a copy of this judgment in each of the lower court record.

JUDGE