

IN THE HIGH COURT OF TRIPURA
A G A R T A L A

RSA NO.17 OF 2015

Shri Rimember Khasia,
son of late Rol Khasia,
resident of village Golokpur,
P.O. Gokulpur, Rimkhasia Basti,
P.S. Kailashahar, Unakoti District

..... Appellant

– Vs –

Shri Surfan Ali,
son of late Kurpan Ali,
resident of Sonapur (Irani),
P.O. Irani Bazar, P.S. Kailashahar,
Unakoti District

.....Respondent

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

For the appellant : Mr. Samarjit Bhattacharji, Advocate

For the respondent : Mr. D.K. Biswas, Advocate

Date of hearing : 22.09.2015

Date of judgment & order : 23.11.2015

Whether fit for reporting :

Yes	No
	√

JUDGMENT & ORDER

This is an appeal under Section 100 of the CPC against the judgment dated 24.11.2014 by the District Judge, Unakoti District, Kailashahar in T.A. No.01/2014 which has affirmed the

judgment dated 30.11.2013 passed by the Civil Judge, Sr. Division, Kailashahar in T.S. No.09/2013.

2. The respondent herein filed the suit, being T.S.09/2013 for specific performance of contract dated 04.02.2009 whereby the appellant herein, the defendant in the suit, agreed to sell 400 trees at a price of Rs.1,80,000/-. The appellant accepted a sum of Rs.45,000/- in terms of the said agreement and the remaining amount was agreed to be paid by two instalments in the phased manner. It has been pleaded by the respondent that the contract dated 04.02.2009 was in force when the said suit was filed. It is the admitted position that the plaintiff filed another suit earlier, being Title Suit No.47/2009 against one Abdul Salem and the appellant herein, seeking declaration. The contract entered between the appellant and one Abdul Salem in the year 2002 for selling trees, was sought to be declared void, but the said suit was dismissed by the judgment dated 30.07.2011 on returning the decision as under :

"As a result of discussion and findings under issue Nos. 1 and 6, this court hereby comes to the conclusion with decision that the suit contract No.1 cannot be said to be dead being lapsed and not acted upon as evidence falls much too short to sustain discharge of the burden. The suit contract No.2 can also not be declared as live, effective and binding upon the parties thereto as defendants do not interference upon the performing of that contract or they deny the subsistence or existence of the same. The suit of the plaintiff must fail."

3. The said judgment dismissing the suit was challenged by the respondents in the appeal, being Title Appeal No.31/2011 in the Court of the District Judge, North Tripura, Kailashahar. By the

judgment dated 18.04.2012 the said appeal was also dismissed on returning the finding as under :

"Issue Nos. 6 and 7 are the vital issues in this case and it is in respect of entitlement of getting decree and other relief. The first conflict between the respondent No.1 and 2 are made in the year 2002 for 5 years and lapsed in the year 2007 unless and until it is renewed by the party concerned. Party concerned who entered into the agreement did not pray for declaring the contract as void. So plaintiff-appellant is a stranger in this case and cannot get relief by declaring that contract as void. There is no evidence to show that the contracts made in the year 2009 between the plaintiff-appellant and defendant No.2. Remember Khasia included the trees contracted in the year 2002. From the evidences it is found that defendant-respondent No.2 agreed to pay back Rs.86,675/- to the respondent No.1. Agreement No.1 executed in the year 2002 is not produced before the court. From the evidence it is clear that agreement of 2009 for 8 years is still alive and parties there to are bound to act upon. Both the respondent Nos. 1 & 2 made no denial as to the subsistence of contract No.2. Remember Khasia, defendant No.2 stated that he has more than 1000 Nos. of trees in his land. The first contract and second contract both are admitted by Remember Khasia, respondent No.2. Plaintiff-appellant did not pray for any compensation of any relief from Remember Khasia to execute the agreement. First agreement between the appellant-respondent No.1 is not pressed before the court though respondent No. 1 & 2 admitted it. That earlier agreement has no effect on the larger agreement at all. The allegation of collaboration between the respondent No. 1 & 2 is not proved by any specific evidence. From Ext.C-1 series, it is found that as a follow up action first contract some trees were permitted to be fell but Remember Khasia did not say that those trees which were permitted to be fell were again sold out to plaintiff-appellant. So, respondent Nos. 1 & 2 made no denial as to the subsistence of contract No.2. Remember Khasia, defendant No.2 stated that he has more than 1000 Nos. of trees in his land. The first contract and second contract both are admitted by Remember Khasia, respondent No.2. Plaintiff-appellant did not pray for any compensation or any relief from Remember Khasia to execute the agreement. First agreement between the appellant-respondent No.1 is not pressed before the court though respondent No. 1 & 2 admitted it. That earlier agreement has no effect on the later agreement at all. The allegation of collaboration between the respondent

No. 1 & 2 is not proved by any specific evidence. From Ext.C-1 series, it is found that as a follow up action of first contract some trees were permitted to be fell but Rimember Khasia did not say that those trees which were permitted to be fell were again sold out to plaintiff-appellant. So, plaintiff-appellant cannot claim the felling of trees on the strength of second contract executed in the year 2009. Therefore, the court below rightly decided that the appellant is not entitled to get the relief as claimed or any other relief. The issues are rightly decided after appreciation of evidences."

4. It is also the admitted position that against the said judgment, the respondent, the plaintiff in Title Suit No.09/2013, preferred review of the said judgement, but the said review application was also dismissed by the District Judge, North Tripura, Kailashahar as it then was. The present suit, being Title Suit No.09/2013 has been filed for specific performance of contract as the defendant-appellant has failed to perform his obligations.

5. It is no denying fact that the following issue was framed by the trial court :

"Is the suit barred by law of limitation and Section 11 of the CPC?"

The trial court has declined to hold that the suit in question was barred by *res judicata* on the ground that the previous suit was for declaration to the effect that the contract entered between Abdul Salem and the appellant herein was dead and ineffective and the contract between the respondent and the appellant is alive and effective etc. But, the instant suit is for specific performance of contract. It has been also observed by the trial court

that the separate and new cause of action arose on 04.01.2013, which cause has given rise for institution and adjudication of a subsequent and fresh suit. Whether there was failure to perform the contract from the end of the appellant was never the issue in the previous suit and as such the trial court has held that the suit is not barred by the doctrine of *res judicata*.

6. All observations are not findings and the finding must be the one necessary for disposal of the case and only on the basis of such finding the doctrine of *res judicata* may be determined. Such finding returned by the trial court in its judgment dated 30.11.2013, has been affirmed by the impugned judgment dated 24.11.2014.

7. Mr. Samarjit Bhattacharjee, learned counsel appearing for the appellant has succinctly submitted that the suit is barred by *res judicata*.

8. This court has scrutinised the judgment dated 30.07.2011 delivered in Title Suit No.47/2009, the judgment dated 18.04.2012 delivered in Title Appeal No.31/2011. It transpires thus that performance of the contract had never been the subject matter in the previous suit nor that issue was decided by the previous judgment. As such, the contention as raised by the appellant in this second appeal against the concurrent finding that the suit is hit by the doctrine of *res judicata* and as consequence thereof the suit is liable to be dismissed, cannot be accepted by this court.

9. Mr. D.K. Biswas, learned counsel has entered in the appearance for the plaintiff-respondent on a notice from this court even before the appeal is admitted. However, this court has not heard Mr. Biswas, learned counsel for obvious reason.

10. Having held so, this appeal stands dismissed without being admitted. Draw the decree accordingly.

JUDGE

ROY