

THE HIGH COURT OF TRIPURA
AGARTALA

RSA No.04 of 2009

Shri Manindra Kumar Paul,
son of late Rajani Kanta Paul,
resident of Vill. Sarashima,
P.S. Belonia,
Dist. South Tripura.

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

- Vs -

Shri Jagadish Patwary,
son of late Shyama Charan Patwary,
resident of Vill. Sarashima,
P.S. Belonia,
Dist. South Tripura

.....**Respondent**

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

For the appellant : Mr. S. M. Chakraborty, Senior Advocate
Mr. S. Bhattacharjee, Advocate

For the respondent : Mr. H. Laskar, Advocate.

Date of hearing and : **09.01.2015**
delivery of judgment & order

Whether fit for reporting : **NO**

JUDGMENT & ORDER (ORAL)

Heard Mr. S. M. Chakraborty, learned senior counsel assisted by Mr. S. Bhattacharjee, learned counsel appearing for the appellant who instituted the suit for declaration of title and recovery of the suit land as well as Mr. H. Laskar, learned counsel appearing for the respondent.

02. This is an appeal under Section 100 of the CPC against the judgment and decree dated 22.11.2008 delivered in Title Appeal No.10 of 2008 by the Addl. District Judge, Belonia, South Tripura affirming the judgment and decree dated 28.07.2008

delivered in Title Suit No.05 of 2004 by the Civil Judge, Junior Division, Belonia, South Tripura.

03. By the order dated 16.02.2009 this appeal was admitted to be heard on the following substantial question of law.

"(a) Whether mere prayer for correction of khatian and map can oust the jurisdiction of a Civil court in giving a decree of declaration of title and recovery of possession?"

(b) Whether a Civil court without giving any specific finding as to the right, title and interest of any of the parties to the suit can allow a defendant to remain in possession on the disputed land?"

04. Mr. Chakraborty, learned senior counsel appearing for the appellant has submitted that the judgment of the trial court has not taken care of the evidence on record while dismissing the suit by the judgment and decree dated 28.07.2008. Thus, the appellant preferred an appeal under Section 96 of the CPC against the said judgment and decree which was again dismissed by the impugned judgment without taking the evidentiary materials as to the title and possession and the jurisdiction of the civil court in the consideration. But from the impugned judgment it appears as under:

"But from the scrutiny of the evidence on record, it appears that the land of the plaintiff-appellant was not encroached upon by the respondent-defendant. The plaintiff actually purchased 55 satak land not 59 satak from sabek plot No.157. The respondent-defendant also purchased 35 satak land from the same sabek jote No.157. But in the khatian, land of the plaintiff-appellant was increased to the extent of 59 satak. But land of the respondent-defendant decreased to the extent of 9 satak. But the plaintiff claimed that respondent had encroached upon his land. The preparation of khatian at the time of revisional settlement itself cannot take away the ownership of any person who rightly purchased the land from the rightful owner. The revisional settlement also cannot increase the land of one person who actually purchased lesser land. So, the

encroachment over the land of plaintiff-appellant by the respondent-defendant not proved by any definite evidence.

When the consequential relief becomes unnecessary and relief claimed appears to be not proper, then declaration also not necessary and not attract under Sec.34 of Specific Relief Act. Here the consequential relief as prayed by the plaintiff-appellant appears to be not called for and bare declaration without any consequential relief cannot be given under Sec.34 of Specific Relief Act. Therefore, the case is liable to be dismissed. Though the findings of the court below in respect of dismissal of the suit is not correct. But the case definitely is liable to be dismissed in the light of above discussion on the facts and law."

05. After perusal of the records and the finding recorded in the impugned judgment, this Court is of the view that the substantial questions of law as formulated by this Court shall invariably be answered in the negative, as the appellate court has properly laid the finding on a comprehensive appreciation of the record of evidence. Even the first appellate court has observed that the appreciation as made by the trial court was not proper. Hence, the finding by the trial court has been substituted. This Court is in total agreement with the said appreciation and as such this appeal merits no consideration. However, the final outcome remained the same. Accordingly, the same is dismissed.

The Registry is directed to prepare the decree accordingly.

LCRs be sent back forthwith.

JUDGE