

**IN THE HIGH COURT OF TRIPURA
AGARTALA**

R.S.A. No.33 of 2009

Smti. Uma Majumder Nee Sen Choudhury,
wife of Shri Jiban Sen Choudhury, village &
P.O. Debipur, P.S. Belonia, District – South
Tripura

..... **Appellant**

- V e r s u s -

- 1. Shri Rakhal Chandra Majumder,**
son of late Kamini Kumar Majumder
- 2. Smti. Kajal Choudhury (Majumder)**
wife of Shri Rakhal Chandra Majumder

Both are of Belonia Town (Opposite to
Town Hall) P.O. & P.S. Belonia, District
– South Tripura

..... **Respondents**

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

For the appellant : Mr. S.M. Chakraborty, Sr. Advocate
Mr. Suman Bhattacharji, Advocate.

For the respondents : Mr. A. Dasgupta, Advocate.

Date of hearing and delivery : **26.03.2015**
of Judgment and order

Whether fit for reporting :

YES	NO
	√

JUDGMENT & ORDER (ORAL)

Heard Mr. S.M. Chakraborty, learned senior counsel
assisted by Mr. Suman Bhattacharji, learned counsel appearing for

the appellant as well as Mr. A. Dasgupta, learned counsel appearing for the respondents.

[2] Against the concurrent finding returned by the judgment dated 30.07.2009 delivered in Title Appeal No.07 of 2009 by the Additional District Judge, South Tripura, Belonia, this appeal under Section 100 of the C.P.C. has been filed by the plaintiff. By the said judgment dated 30.07.2009, the judgment dated 18.04.2009 passed by the Civil Judge, Jr. Division, Belonia, South Tripura has been affirmed. The Civil Judge, Jr. Division while dismissing the suit by the said judgment dated 18.04.2009 held as under:

"So, in conclusion it has transpired that the execution of the sale deed in respect of the purchased land is not disputable but the path way claimed by the plaintiff does not form part of the purchased land and it appears probable that Sri Maran Chakraborty and others who raised objection against the use of path way by the plaintiff are the owner and possessor of it. It was duty incumbent upon the plaintiff to prepare the sale deed keeping in mind the path way which will lead to the main road from the purchased land."

[3] At the time of admitting this appeal, the following substantial questions of law have been formulated by the order dated 09.11.2009:

(a) Whether the statutory obligation of a vendor conferred under Section 55(2) of the T.P. Act, 1882 can be avoided and the purchaser can be denied the right which the vendor exercised before transfer?

(b) Whether any separate agreement for ingress and egress road is at all necessary when the registered sale deed itself is clear and explicit on that point?

(c) Whether a bona fide purchaser of land on valuable consideration can be refused the ingress and egress path by the vendor and thus render the purchaser unable to utilize the said purchased land?

(d) Whether selling of a land by a person by showing the private path of another person and without arranging of his own is permissible under law?

[4] Mr. S.M. Chakraborty, learned counsel appearing for the appellant has emphatically submitted that by laying adequate evidence it has been established by the plaintiff that after showing a private path, the said land was sold to him but later on, it was discovered that the vendor, the defendant had no right on that pathway even for purpose of ingress and egress to the main thoroughfare. Apart that, he has submitted that it can be gathered from a bare reading of the sale deed that the right to enjoyment of the said demised land was transferred but enjoyment is impossible unless there is ingress and egress from the said land. Mr. Chakraborty, learned senior counsel having referred to the provisions of Section 55(2) of the Transfer of Property Act, has submitted that the contract be deemed concluded having the right implicit in the sale deed as regards the ingress and egress from the purchased land.

[5] From the other side, Mr. A Dasgupta, learned counsel appearing for the respondents has categorically submitted that the defect as regards the land was quite known to the plaintiff and knowing that defect, he has purchased it and he has believed at that

point of time that he could be able to manage the private path owned by someone else situated on the western boundary of the purchased land. On such knowledge, the land was purchased from the respondents by the appellant. Therefore, there is no question of deeming anything implicit in terms of Section 55(2) of the Transfer of Property Act. For reference, the provisions of Section 55(2) of the Transfer of Property Act are reproduced hereunder:

"The seller shall be deemed to contract with the buyer that the interest which the seller professes to transfer to the buyer subsists and that he has power to transfer the same:

Provided that, where the sale is made by a person in a fiduciary character, he shall be deemed to contract with the buyer that the seller has done no act whereby the property is encumbered or whereby he is hindered from transferring it.

The benefit of the contract mentioned in this rule shall be annexed to, and shall go with, the interest of the transferee as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested."

[6] The provisions are clear and express. No other meaning can be culled out from the provisions. The ownership of the land demised in the sale deed No.I-487 is not in dispute. From the judgement of the trial court it transpires that even the trial court has read the content of the document (the sale deed). It has been observed by the trial court as under:

This issue deals with the crux of this suit. The execution of sale deed bearing No.I-487 dated 10.03.2004 by the defendants in favour of the plaintiff for the purchased land is not disputed. The defendants admitted the

execution of the sale deed. The point in dispute relates to the path way leading from the purchased land to the main road. The plaintiff claims that during execution of sale deed the defendants showed her the path way on the western side of the purchased land which is to be used to reach the main road. The defendants denies of giving such assurance.

The above claim and its denial requires us to focus on the language of the sale deed. It does not reveals any such agreement or assurance by the defendants to the plaintiff to provide path way. The sale deed is vivid in respect of the purchased land for a consideration value of Rs.1,00,000/-. The plaintiff (P.W.-1), PW-2, Jiban Sen Choudhury, PW-3, Himangshu Badya and PW-4 Ashutosh Majumder although in their evidence deposed about the assurance by the defendants but the fact remains that it finds no place in the sale deed. The defendant side with reference to the above focused on section 92 of the Indian Evidence Act and contended that the documentary evidence will over ride the oral evidence. This contention has force as the entire transaction relating to the purchased land was written down in the sale deed and as stated above the assurance or agreement of providing path way finds no mention in the sale deed.

[7] No challenge has been thrown as to the defect of the title and as such, there is no dispute relating to the interest of the land sold out to the plaintiff. The dispute is concerned with the pathway, which is admittedly not owned by the defendant, the respondent herein. As such, this Court is of the considered opinion that there is no relevance of Section 55(2) of the Transfer of Property Act in the context. Apart that, on scrutiny of the evidence, it is found that the defect in respect of the enjoyment in the purchased land was known to the plaintiff before the purchase. Hence, on account of disclosure of any material defects, the plaintiff cannot have any advantage. It is an admitted position that there is

no separate agreement for ingress and egress from the purchased land to the main road. Whether such agreement can be read implicit in the sale deed or in the backdrop that since the plaintiff has purchased some land, she is entitled to get the ingress and egress as a matter of collateral right if it is found later on that the purchaser is unable to utilise the said purchased land. This aspect of the matter would have been considered by this Court if the transaction was hit by the provisions of 55(1) of the Transfer of Property Act. But in this case, the defect relating to the interest on the purchased land was admittedly disclosed to the plaintiff and as such, this Court does not find any merit in this appeal inasmuch as that the defendant had no right on the private path as the same is owned by someone else not party in the proceeding.

Accordingly, this appeal having no merit stands dismissed.

Prepare the decree accordingly.

Send down the LCRs thereafter.

JUDGE

Sujay