

THE HIGH COURT OF TRIPURA
AGARTALA

RSA No.27 of 2007

1. Sri Suffir Ali Saha,
son of Mashud Ali Saha,
of Village - Pakhirbada,
P.S. Kailashahar,
Dist. North Tripura

..... Defendant-appellant

- Vs -

1. Sri Sahid Miah,
son of late Suna Miah,
2. Sri Noor Miah,
son of late Suna Miah,
3. Sri Roop Miah,
son of late Sona Miah,
4. Smt. Ayburnesa,
wife of late Abdul Khalik,
5. Smt. Hashya Begum,
daughter of late Suna Miah,
6. Sri Mour Miah,
son of late Suna Miah,

all are the residents of Village-Bangaon,
P.S. Kailashahar,
District-North Tripura

..... Plaintiff-Respondents

7. Smt. Rukhia Begum,
wife of Sri Abdul Ali,
8. Sri Rashid Ali,
son of Anfar Ali,
9. Smt. Roopjan Bibi,
wife of Rashid Ali,
10. Sri Ahamad Ali Saha,
son of Mashud Ali Saha,
11. Sri Abdul Ali,
son of Sri Abdul Mannan,
12. Sri Afruj Ali,
son of Rashid Ali,
13. Sri Akkhal Ali,
son of Rashid Ali,
14. Sri Chandai Miah,
son of late Wadullah,
of Village – Srinathpur,

P.S. Kailashahar,
District – North Tripura.

..... Defendant-Respondents

Respondent Nos.7 to 13 are the residents of Village –
Pakhirbada, P.S. Kailashahar, District – North Tripura

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

For the Defendant-appellant : Mr. A. C. Bhowmik, Sr. Advocate

For the respondents : Ms. Anindita Chakraborty, Advocate.

Date of hearing : **11.12.2014**

Date of delivery of
judgment & order. : **26.02.2015**

Whether fit for reporting : **YES**

JUDGMENT & ORDER

By this appeal under Section 100 of the CPC the judgment and decree dated 06.01.2007 and 10.01.2007 respectively delivered in Title Appeal No.37 of 2006 by the Addl. District Judge, North Tripura, Kailashahar has been questioned.

02. By the order dated 11.06.2007 this appeal was admitted on the following substantial questions of law.

"(i) Whether order of the learned appellate court i.e. learned District Judge, North Tripura, Kailashahar in T.A. 25 of 2000 remanding the suit to the learned trial court with the direction for appointing Survey Commissioner and for determining the issue as to whether the suit land of the plaintiff-respondent covered by the documents filed by the plaintiff-respondents or not and subsequently learned appellate court below i.e. learned Addl. District Judge, North Tripura, Kailashahar can differ giving the findings in T.A. 37 of 2006 that the appointment of Survey Commissioner was not necessary in superseding to the order of the learned District Judge and whether the same attracts to the principle of estoppels?

(ii) Whether learned appellate court below can pass judgment and decree in T.A. 37 of 2006 in respect

of the suit dag No.509(P), Hal 835 which was subsequently amended by the plaintiff-respondents under Schedule 'B' of the amended petition as allowed that suit land will be C.S. plot No.509/857 as amended by the plaintiff-respondents and claim for declaration of right, title, interest and recovery of possession ?

- (iii) Whether the learned appellate court below was right in rejecting the report of the Survey Commissioner which was exhausted by the learned trial court as per direction of the District Judge in T.A. No.25 of 2000 in remanding the suit?***
- (iv) Whether the learned appellate court was right in allowing the appeal without discussing the issues framed for the proper adjudication of the pleadings other than the direction of the learned District Judge in T.A. No.25 of 2000.***
- (v) Whether learned appellate court below could have asked for fresh Survey Commissioner report it at all Survey Commissioner report submitted before the learned trial court was not acceptable?"***

03. For appreciating those questions or the core question that is involved in this appeal, the essential fact to lay the perspective of the case is required to be introduced at the outset.

The plaintiff-respondents instituted the suit for declaration of title and recovery of possession of a piece of land measuring 1.52 acre comprised in old plot No.509(P) corresponding new plot No.835 pertaining to khatian No.231 of Mouza-Pakhirbada under Kailashahar Sub-Division. According to the plaintiffs the suit land was originally khas land and that was allotted to the grandfather of the plaintiff namely Hallimulla alias Itimulla by the Collector of the Maharaja as per the order 28.10.1345 TE. In the settlement operation which commenced from 1962 the said land was recorded as the khas land. Sona Mia son of Hallimulla filed a misc. case No.07 of 1975 under Section 11(3) of the Tripura Land Revenue and Land Reforms Act, 1960. By the order dated 17.12.1975 delivered in the said misc. case

No.07 of 1975 the Collector allowed the prayer in favour of Sona Miah and thus his name has entered as the rayat in possession against dag No.509/857 measuring 1.52 acres. The said khatian was, in due course, published finally. The predecessor of the plaintiffs namely Sona Miah and the plaintiffs paid due revenue. On 03.03.1993 the defendants, the appellants and the respondent No.7 to 14 herein, dispossessed the plaintiffs from the said land, hereinafter referred to as the suit land, by applying force and hence the suit being Title Suit No.11 of 1995 has been instituted by the plaintiff who inherited the title and interest over the suit land as the legal heirs of Sona Miah.

The defendants however by filing the written statement disputed the pleadings stating that the land measuring 1.52 acres had been allotted to the defendant Rashid Ali and Roopjan Bibi, which pertains to plot No.835. They got allotment of the same with other lands measuring 3.77 acres in aggregate. The following issues were framed:

- (i) Is there any cause of action for the suit?**
- (ii) Is the suit barred by limitation?**
- (iii) Whether the plaintiffs have right, title and interest over the suit land?**
- (iv) Is the story of possession and dispossession true?**
- (v) Are the plaintiffs entitled to get decree as prayed for?**
- (vi) To what relief/reliefs the parties are entitled?**
- (vii) Is the suit barred for non-joinder of parties?**

04. This suit has its chequered past. It was once decided by the judgment dated 30.03.2000 decreeing the suit in favour of the plaintiffs. Thereafter on appeal, filed by the appellant and the respondent No.7 to 14, hereinafter referred to as the defendants, being Title Appeal No.25 of 2000 the said judgment and decree was set aside and remanded with a direction to ascertain whether the suit

land i.e. dag No.509(P) present dag No.835 of Mouza-Pakhirbada is covered by the title document filed by the plaintiffs or not and it has been categorically directed to ascertain the possession by engaging a Survey Commissioner for deciding the suit on merit. Having received the records, the Survey Commissioner namely Phani Bhushan Roy was appointed on the terms of reference as per the judgment passed in Title Appeal No.25 of 2000. In due course, the Survey Commissioner submitted his report along with a hand sketch map etc. Objection, if any, was invited from the parties. The Survey Commissioner was cross examined by both the parties. Thereafter, the trial court (Civil Judge, Sr. Divn., North Tripura, Kailashahar) accepted the report of the Survey Commissioner as Exbt.C/1. Based on the report of the Survey Commissioner, the trial court has observed that the land appertaining to dag No.835 of khatian No.231 does not fall within the suit land. The Survey Commissioner surveyed all the documents relied by the plaintiffs and the defendants. The map submitted by the Survey Commissioner also indicates that the plot No.835 is far away from the plot No.857. Thereafter, the trial court held that since the Survey Commissioner has stated that the patta which was produced by the plaintiff related to 48 kanis of land out of which the plaintiffs got allotment of only 8 kanis, the remaining part of the land was taken by the Forest Department and it has been recorded in the name of Forest Department under khatian No.509. It has been also found that the plot No.835 of the khatian No.231 was included in the 'chouhaddi' (the boundary) of the patta but the plot No.835 does not fall within 8 kanis land which was allotted to the plaintiffs. The Survey Commissioner has observed that the plaintiffs sold out 8 kanis land. From the written statement, the trial court has observed that one

Rashid Ali has been possessing the suit land for last 30 years and he had applied for allotment to the Government of Tripura and the Government of Tripura allotted a part of the suit land and other land in favour of Rashid Ali and his wife Rupjan Bibi. The record of right was also created by the khatian No.358 of mouza-Pakhirabad. The rest of the suit land which was not allotted to Rashid Ali and Rupjan Bibi were handed over to Mashud Ali and accordingly Mashud Ali had been possessing the remaining part of the suit land. The plaintiffs had relied one patta issued by the Maharaja, which is antiquated in view of Section 90 of the Indian Evidence Act. That patta has been created in the year 1345 TE (Exbt.1). The trial court has observed again that the features of the land mentioned in the patta has already been changed after the TLR & LR Act came into force. On observing thus, simply on accepting the Commissioner's report the suit was dismissed.

05. Being aggrieved by the judgment and decree dated 25.06.2006 and 01.06.2006, the plaintiffs filed an appeal in the court of the District Judge, North Tripura, Kailashahar being Title Appeal No.37 of 2006 which was in the course of time transferred to the court of the Addl. District Judge, North Tripura, Kailashahar who by the impugned judgment has observed inter alia, as under:

"I find that the land of the plaintiffs has been recorded in khatian No.383. So, I must hold that the land of plaintiffs is quite separate from the land of the defendants which they acquired under khatian No.358."

He has further observed that:

"From the pleadings of the plaintiffs I find that the plaintiffs have described their suit land at the bottom of the plaint and it has been described by giving khatian Nos. and plot. Nos. The learned counsel Mr. M. Rahaman though argued that the Collector has passed order for

recording C.S. Plot No.509/857 so instead of recording the said plot No. another plot No. bearing No.835 (present) has been recorded in the name of the plaintiff and thus on this ground the court can not declare title of the plaintiffs over the suit land. But I am unable to accept the contention of the learned counsel Mr. M. Rahaman for the reasons that in the khatian C.S.Plot No.509 (part) now corresponds to new C.S.Plot No.835. Thus in my view the plaintiff has rightly described the suit land that it appertains to new C.S. Plot No.835.

With respect, I am of the view that there was no any necessity for holding any Survey Commissioner for identification of the suit land because the suit land is properly described by giving C.S. Plot No., and the plaintiffs have also gave the description how they acquired title over the suit land. Besides it from the report of the Survey Commissioner I also find that the report of the Survey Commissioner is totally vague. The record also does not show what was the actual writ given to the Survey Commissioner for giving the report. In my view, the report of the Survey Commissioner cannot be accepted in this case for giving finding in the present suit.

In view of the above facts, I am of the view that the learned Civil Judge (Senior Division), Kailashahar has committed illegality in relying the report of the Survey Commissioner and thus he has arrived at wrong findings and thus it requires interference by this Court of appeal."

Having held so, the appeal was allowed and the suit was decreed.

06. Mr. A. C. Bhowmik, learned senior counsel appearing for the appellant has candidly submitted that two substantial questions if addressed would converse the entire dispute which are, according to him, whether the finding that there was no requirement of appointment of the Survey Commissioner amounts to interfering with the judgment and order dated 19.03.2003 delivered in Title Appeal No.25 of 2000 by the District Judge, North Tripura Kailashahar whereby the following direction was made in para-5.

"I, therefore, remand the matter back to the court below who may if necessary allow the parties to lead evidence oral or documentary and at the same time court will ascertain whether the suit land i.e. dag No.509(P)

present dag No.835 of mouja Pakhribada covering the land of documents filed by the plaintiff-respondent or not and that is to be ascertained by engaging a survey commissioner. If the report of survey commissioner and other documents found to be sufficient, then the suit be decided accordingly on merit without any further delay."

07. Further, according to Mr. Bhowmik, learned senior counsel, the appellate court lacks in jurisdiction to sit on appeal on the previous judgment passed by the first appellate court. He has thus submitted that since it appeared in the first appeal being Title Appeal No.25 of 2000 that there is ambiguity in identifying the suit land, the said direction was issued. In accordance with the procedure as laid down in order XXVI of the CPC, the Survey Commissioner's report has been accepted by the court. Mr. Bhowmik, learned senior counsel has submitted that the plaintiffs carried out amendments in the original plaint on various times such as on 30.04.1998 and 09.06.1999 but did not amend the schedule of the plaint at any point of time. Rather, by the amendment carried out on 30.04.1998, it has been pleaded that the recent settlement operation showed the suit land as part of the CS Plot No.509, corresponding to old CS Plot No.509/857, a part of the CS Plot No.509. The record of rights was finally published in terms therewith. The settlement authority renumbered the CS Plot No.509/857 as hal plot No.835. Both the plot No. pertains to the same plot of the land. That pleading according to Mr. Bhowmik, learned senior counsel has not supported the records and no evidence by the plaintiff has been led in this regard. The other point as raised by Mr. Bhowmik, learned senior counsel as regards the way the judgment has been written in the Title Appeal No.25 of 2000 indicates to absence of analysis in deciding the issues.

08. From the other side, Ms. A. Chakraborty, learned counsel appearing for the respondents has submitted that the suit land is comprised in CS Plot No.835 recorded in khatian No.231 of mouja-Pakhibada under Tahasil-Tilagaon, Kailashahar, which is a part of the old CS Plot No.509. Ms. Chakraborty, learned counsel has submitted that in the schedule of the suit land as appended below the plaint, the boundaries are fully described which are as follows:

"On the North RS Plot No.837/836, South by RS Plot No.1280, East by RS Plot No.1104 on the West Village road and Silchhara."

According to her the suit land has been well described warranting no assistance of the Survey Commissioner. On query from the Court, Ms. Chakraborty, learned counsel has submitted that neither the plaintiffs nor the defendants preferred any appeal against the said judgment and decree dated 19.03.2003 delivered in Title Appeal No.25 of 2000.

09. This Court has perused the report of the Survey Commissioner and other documents, appended therewith and finds that plot No.835 is attracted by khatian No.231 but that is not attracted by the land allotted to the predecessor of the plaintiffs. According to the Survey Commissioner, the allotted land had been sold out by the plaintiffs. The Survey Commissioner has categorically found that the allotted land is not attracted by CS Plot No.835 but it is attracted by CS Plot No.857. He has further observed that CS Plot No.837 has been allotted to the defendants. It appears that the Survey Commissioner namely Phani Bhusan Roy has considered the settlement map, khatian No.231, patta, report of the Revenue Inspector, report of the SDO and the order of the collector. While

preparing his hand-sketched map, it appears that he did not collate the same with the settlement map which has been admitted in the suit as Exbt.4. In the settlement map (Exbt.4) only the plot No.509, which is a vast plot, has been shown. In the order dated 17.12.1975 passed under Section 11(3) of the TLR & LR Act, 1960 the Collector has only recorded as under:

"I agree with the SDO's report. Plot No.509/857 area 1.52 acre may be recorded in favour of the applicant."

The said order is exhibited as Exbt.2 series by the plaintiffs. Exbt.2 series includes the report of the Revenue Inspector who conducted the inquiry at the instance of the SDO. He has observed inter alia that "From the above documents and spot enquiry it appears that a part of plot No.509 (marked as plot No.508/857 in the enclosed map) falls within the boundary of jote No.1 of mouza-Pakhirbada. As such, plot No.509/857 area 1.52 may be recorded in favour of the applicant under Section 11(3) of the Act." The said report was accepted by the Collector and name of the predecessors of the plaintiffs has been recorded in the khatian, Exbt.3 against the plot No.835 butted by the North Plot No.837 corresponding to old plot No.509 measuring 1.52 acres. In the Surveyor's report an observation has been made that in the north of the referred plot No.835 there stands plot Nos. 836, 837 etc. in the north. It appears that the Survey Commissioner has not properly applied his mind while making the survey and furnished the report, Exbt.C/1. However, there is no mark on the said report as Exbt.C/1. Since that is reflected in the order, the Surveyor's report has been referred as the Exbt.C/1. Moreover, the Surveyor as it appears did not consider the map attached to the

report of the Revenue Inspector as that was not part of the documents submitted by the plaintiffs. But the said documents would be available in the records of Misc.17 of 1995 under Section 11 of the TLR & LR Act, 1960 in the court of the District Collector, North Tripura, Kailashahar. But neither the trial court nor the Surveyor has taken the benefit of the said map for identifying the land. Moreover, in the cross examination carried out by the plaintiffs, the Surveyor has categorically stated that hal dag No.835 is included in the allotment order (Exbt.1). He has further submitted that as per revisional survey settlement operation the sabek dag No. of the suit land was 509 of whose hal dag No. is 835. Again, he has responded in the cross-examination stating that distance between the dag No.835, sabek dag No.509 that is the suit land, and dag No.509/857 is about 2192 feet. This observation is not in conformity to and not in terms of the records of the plaintiffs inasmuch as the record shows that the allotted land has been recorded in the name of Sona Miah having his plot No.835, as corresponding old plot No.509. It is not understandable how that plot No.835/857 has become relevant. For this, it may so happen that the amendment carried out by the plaintiffs has created an impression on the Survey Commissioner but he has lost sight of that no such amendment is carried out in the schedule of the suit land appended below the plaint. The Surveyor's map is entirely vague and does not relate to the settlement map at all. He has curved out a plot having no relation with the settlement map, Exbt.4. Surprisingly, this Court finds from the writ that the reference was made to the Survey Commissioner for ascertaining "whether the suit land i.e. dag No.509(P) present dag No.835 of mouja-Pakhibada covers the land filed by the documents by the plaintiff respondents." There is no

reference of plot No.509/857 and the Survey Commissioner was not asked to go through the plaint at all. It is apparent on the report (Exbt.C/1) that the Survey Commissioner has travelled much beyond his reference and compounded to confusion rather than giving a clear report as to the position of dag No.835. This Court is constrained to hold that the reference made to the Surveyor was as well very defective.

10. Having held so, the judgment of the trial court as well as the judgment of the appellate court are required to be interfered with and accordingly those are set aside. That the first appellate court by the impugned judgment has acceded its jurisdiction by holding that there was no requirement of appointing a Survey Commissioner when by the judgment and decree dated 19.03.2003 passed in Title Appeal No.25 of 2000 the first appellate court set aside the judgment and decree dated 30.03.2000 on allowing the appeal and remanded the matter back for re-adjudication after engaging a Survey Commissioner for ascertaining the identification of the suit land. The first appellate court by the impugned judgment has virtually questioned the said finding returned in Title Appeal No.25 of 2000 when it does not fall within its jurisdiction. The judgment and decree delivered in Title Appeal No.25 of 2000 having not been assailed by either of the parties reached its finality by efflux of time. The first appellate court had no business to reopen any finding of the said judgment and decree dated 19.03.2003 delivered in Title Appeal No.25 of 2000 by the impugned judgment. Apart that, the appellant is precluded to raise any infirmity in the judgment and decree dated 19.03.2003 and as such this Court finds that the substantial question Nos.(iv) and (v) does not require

any consideration at all. However, there is a general misconception as to how the appellate court would write their judgment. The question that always pops up is that whether the appellate court in the first appeal shall reassess the evidence in its entirety and answer all the issues as framed by the trial court or whether it would only answer to the ground of objection or whether the first appellate court can devise its method for considering the appeal. The answer may not be very difficult and cumbersome. The procedural law is not inflexible. Those are to subserve the ends of justice. We may refer to the provisions of Rule 31, 32 and 33 of the order XLI of the CPC. Rule 31, Order XLI of the CPC provides that the judgment of the appellate court shall be in writing and shall state (a) the points for determination, meaning not necessarily on issues, (b) the decision thereon, (c) the reasons for the decision; and (d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled, whereas Rule 32 and 33 deal with the ambit of the direction that may be given by the first appellate court and the power of the court of appeal. Therefore, the general misconception that visits perennially that the first appellate court must bind its journey to answer the issue is wholly unjustified. The appellate court shall decide the point for determination vis-a-vis the grounds of objection or the submissions from the respondents.

11. As consequence of the findings so returned, this appeal stands partly allowed. Hence, the impugned order is set aside and the case is remanded for re-hearing. As this Court finds there is serious ambiguity as regards the position/location of the suit land the trial court is again directed to appoint a Survey Commissioner except the

Survey Commissioner who was appointed earlier for carrying on a fresh survey to find out the location of the plot No.835 corresponding to old plot No.509(P) comprised of khatian No.238 and for that purpose the Surveyor shall consider the allotment order (Exbt.1) order of the Collector dated 17.12.1975 and report of the Revenue Inspector dated 28.02.1975 (Exbt.2 series), khatian No.231 (Exbt.3), Settlement map (Exbt.4), Khatian No.383 published on 16.01.1984 (Exbt.6) and the Surveyor shall be directed to inspect the records of Misc. Case No.17 of 1975 under Section 13(3) of the TLR & LR Act, 1960 in the court of the District Collector to find out the map as enclosed with the Revenue Inspector report, where the allotted plot being part of plot No.509 has been marked as 509/857. The surveyor shall also consider the report of the Head Amin dated 26.09.1945 TE which was the basis of the original allotment caused by the Maharaja. After making a survey, the Survey Commissioner shall collate his map with the settlement map (Exbt.4) and submit his report ascertaining whether plot No.509/857 as shown in the map of the Revenue Inspector is the plot No.835. For locating the plot No.835, corresponding old plot No.509(P) the north boundary be fixed along the plot No.837 in terms of the khatian No.231. Further, the Surveyor shall try to locate the suit land in view of the boundaries described in the schedule of the suit land appended below the plaint and thereafter shall express his opinion for consideration of the trial Court. The trial court is, therefore, directed to engage the Survey Commissioner within two months from the day of receipt of the LCRs along with a copy of this order and to properly frame the writ with the terms of reference having strict regard to the observation made hereinabove. Thereafter, on rehearing the suit afresh, the trial court would pass the

judgment and decree in accordance with law. Since the suit is pending for long time, it is directed that the trial court shall be vigilant that in no manner the suit is unnecessarily dragged either by the plaintiffs or the defendants or by the Survey Commissioner. If necessary, to aid the Survey Commissioner formal orders may be passed directing the Collector, North Tripura, Kailashahar to allow the Survey Commissioner inspect the relevant records in presence of a responsible officer or to provide him the photocopies of the documents that he might require. The Registry shall prepare the decree accordingly and on preparation of the decree, send down the LCRs with a copy of this order to the trial court.

JUDGE

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