

IN THE HIGH COURT OF TRIPURA
AGARTALA

RSA NO.55 OF 2008
RSA NO.56 OF 2008

IN
RSA NO.55 OF 2008

1. Shri Srimanta Kumar Bhowmik,
son of late Harimohan Bhowmik,
resident of Belonia, P.S. Belonia,
District : South Tripura
2. Smti. Chaya (Bhowmik) Mitra,
wife of Shri Ranjit Mitra ,
resident of Belonia, P.S. Belonia,
District : South Tripura
3. Smti. Lilabati (Bhowmik) Mitra,
wife of Shri Kishore Mitra,
resident of Jolaibari, P.S. Baikhora,
Belonia, District : South Tripura

..... Plaintiff-appellants

– V E R S U S –

1. Shri Mrinal Kanti Paul,
son of late Sachindra Chandra Paul,
Belonia (Near PWD Office),
P.S. Belonia, District : South Tripura
2. Shri Manna Paul,
3. Shri Amal Paul,
- both are sons of late Sachindra Chandra Paul,
resident of Belonia (Netaji Palli, near water tank),
Belonia, District : South Tripura
4. Shri Paritosh Paul,
son of late Gopendra Narayan Paul,
Belonia (Oriental Book and Paper, No.1 Tilla),
P.S. Belonia, District : South Tripura

5. Shri Sachindra Kumar Paul,
son of late Krishna Kumar Paul,
resident of Belonia (Near No.1 Tilla),
P.S. Belonia, District : South Tripura

.....Principal defendant-respondents

6. Smti. Tulsibati Bhowmik(Ghosh),
wife of Shri Benimadhab Ghosh,
resident of Madhya Krishnagar,
P.O. Krishanagar, P.S. Belonia,
District : South Tripura
7. Shri Ananta Bhowmik,
son of late Harimohan Bhowmik,
village : South Belonia (near Indrapuri Cinema Hall)
P.S. Belonia, District : South Tripura
8. Smti. Anjali (Bhowmik) Biswas,
wife of Shri Ratan Biswas,
resident of Madhyam Kirishnanagar,
at present Belonia (in rented house) of
Kanti Sarkar (near Nagar Panchayet office)
P.S. Belonia, District : South Tripura,

.....Proforma defendant-respondents

IN
RSA NO.56 OF 2008

1. Shri Srimanta Kumar Bhowmik,
son of late Harimohan Bhowmik,
resident of Belonia, P.S. Belonia,
District : South Tripura
2. Smti. Chaya (Bhowmik) Mitra,
wife of Shri Ranjit Mitra ,
resident of Belonia, P.S. Belonia,
District : South Tripura
3. Smti. Lilabati (Bhowmik) Mitra,
wife of Shri Kishore Mitra,
resident of Jolaibari, P.S. Baikhora,
Belonia, District : South Tripura

..... Defendant(in the counter-claim)-appellants

- V E R S U S -

1. Shri Mrinal Kanti Paul,
son of late Sachindra Chandra Paul,
resident of Bankar (Near PWD Office),
P.S. Belonia, District : South Tripura

.....Counter-claimant respondent
2. Shri Manna Paul,
3. Shri Amal Paul,
- both are sons of late Sachindra Chandra Paul,
resident of Bankar (near PWD Office),
Belonia, District : South Tripura
4. Smt. Tapati Paul,
wife of Sri Monoj Kanti Sarkar,
resident of Vill. Jadunathur Tilla (near P.W.D. office),
Belonia, District : South Tripura
5. Smt. Tapashi Paul,
wife of Sri Bikash Majumder,
resident of Vill. Brindaban Roza Para,
P.O. Chittamara, P.S. Belonia, District : South Tripura

.....Proforma defendant(in the counter-claim)-respondents

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

For the appellants : Mr. S.M. Chakraborty, Sr. Advocate
Ms. B. Chakraborty, Advocate

For the respondents : Mr. A.C. Bhowmik, Sr. Advocate
Mr. D.C. Roy, Advocate
Mr. D. Sarkar, Advocate

Date of hearing & order : 02.07.2015

Whether fit for reporting :

Yes	No
	√

JUDGMENT & ORDER (ORAL)

Heard Mr. S.M. Chakraborty, learned senior counsel assisted by Ms. B. Chakraborty vice Ms. P. Chakraborty, learned counsel appearing for the appellants as well as Mr. A.C. Bhowmik, learned senior counsel assisted by Mr. D.C. Roy and Mr. D. Sarkar, learned counsel appearing for the respondents.

2. Both these appeals, being RSA No.55 of 2008 and RSA No.56 of 2008 are clubbed together for disposal by a common judgment and order, inasmuch as the suit and the suit(counter-claim) filed by the appellants and the respondent-counter-claimant were disposed by a common judgment and decree. When the appellants herein filed the appeals under Section 96 of the CPC, questioning the judgment and decree passed in those suit and the suit(counter-claim) those appeals, being Title Appeal No.8 of 2008 and Title Appeal No.9 of 2008 were also disposed by the common judgment and decree dated 28.07.2008. The said common judgment and decree is under challenge in these appeals.

3. These appeals being filed under Section 100 of the CPC, were admitted by this court by the order dated 22.09.2008. In RSA No.55 of 2008, the following substantial question of law was framed :

“whether once the court declared right, title and interest of a party over a particular land, can the court again make any declaration of the same nature over the same land in favour of other party in the counter-claim?”

In RSA No.56 of 2008 the substantial questions of law were formulated as under :

- “(i) Whether a civil court can declare the right, title and interest on the basis of presumption in favour of a party without any basic document?**
- (ii) Whether a court can pass order directing the true owner for handing over the vacant possession of the suit land to a third party having without any title?”**

The appellants were given liberty to raise any other substantial question of law at the time of hearing. This is to be noted at the outset that, Mr. S. M. Chakraborty, learned senior counsel appearing for the appellants, did not raise any additional substantial question of law.

4. On initial appreciation of the records, it appears that the substantial questions of law are required to be re-cast for the reason that those substantial questions of law have travelled far from the relevant context. The moot substantial question of law reads as under:

“whether the plaintiffs, the appellants herein, have the right, title and interest over the land as described in the Scheduled ‘B’ of the plaint or on the other way, whether the respondents have projected any claim over the Scheduled ‘B’ land?”

5. It remained undisputed that the defendants in the suit, the respondents in these appeals, did not question the finding based on which the declaration has been made that the plaintiffs are the true owners and possessors of the 'A' Schedule land, which has been described in the plaint as under :

SCHEDULE-A

In mouja Belonia, commonly known as Belonia Town under Belonia T.K., khatian No.2236, hal plot No.2615, 2616, 2617, 2618 and 2619. Land measuring 0.575 acres.

BOUNDARY

**North - Mrinal Pal & others
South - The plaintiffs & others
East - The plaintiffs
West - The plaintiffs & others**

6. The plaintiffs sought a permanent injunction against the defendants, the respondents herein, in respect of the Schedule 'B' land, but the trial court and the first appellate court did not allow that prayer on the ground that the respondents have proved encroachment by the plaintiffs by 'the documentary evidence' viz. the certified copy of the report of the Deputy Collector and Magistrate, corroborated by the oral evidence of the Amin. The learned counsel for the respondents has submitted that the plaintiffs have failed to prove their title over the Schedule 'B' land. On scrutiny, it transpires that nowhere the trial court has returned any finding to the effect that 'the land' identified by the Deputy Collector and Magistrate, Belonia is

attracted by the plot No.2619 pertaining to khatian No.2236 of mouja Belonia, measuring one ganda. It is also pertinent to mention that the respondent-counter-claimant herein, filed a counter-claim being Title Suit No.35 of 2006 (counter-claim) for declaring right, title and interest over the suit land, as described in that counter-claim, pertaining to plots No.2623/7766, comprised in khatian No.2791 of mouja Belonia, more fully described in the schedule of the counter-claim. For nature of the descriptions of the suit land in the counter-claim, the plaintiffs in Title Suit No.11 of 2006, the appellants herein, raised serious resistance against the said counter-claim. Ultimately, by returning the said finding both the suit and the counter-claim were disposed of, declaring the title of the plaintiffs over the Schedule 'A' land and the title of the counter-claimant-respondents over the suit land as described in the counter-claim, but denying the prayer for permanent injunction over the 'B' Schedule land as stated. Against the said judgment and decree passed in both T.S. No.11 of 2006 and Title Suit No.35 of 2006 (counter-claim), the appellants herein filed two different appeals, being Title Appeal No.8 of 2008 and Title Appeal No.9 of 2008. As already stated, both those appeals have been dismissed by the judgment and decree dated 28.07.2008 by the Addl. District Judge, South Tripura, Belonia. While affirming the judgment and decree of the trial court, the first appellate court has observed as under:

“Three times Surveyor and D.C.M. indentified the suit land. The suit land appertained to plot No. 2623/7766. So, from the above discussion, it is established that respondent, counter-claimant has right, title and interest over the suit land as a joint title holder with other proforma-defendants. The land not partitioned. So, the right, title and interest of the respondent, counter-claimant extends to every inch of the property and he has right to evict the trespasser, the plaintiff-appellant. The Court below, therefore, rightly declared the right, title and interest of the respondent, counter-claimant and that declaration is to be along with proforma-defendants and the plaintiff-appellants are to hand over the vacant possession 0.002 acres in length 11 meter and 50 cm North and South, breadth 50 cm and 80 cm in the west of the land of Mrinal Kanti Pal along with other proforma-defendants.” [Emphasis added]

7. Accordingly, the first appellate court affirmed the declaration of title in favour of the counter-claimants and the decree of recovery of possession over the suit land measuring 0.002 acres with its physical denominators. Even though the said judgment has been challenged by the appellants on the grounds that whether any basic document was filed to prove their title or not, this court is of the view that in the suit filed by the appellants, they did not claim any right over that plot No.2623/7766, appertaining to khatian No.2791 of mouja Belonia.

8. As such, this court is of the considered opinion that decree passed in the counter-claim does not call for any interference at all. If the plaintiffs are on unlawful possession

over the land described in the schedule of the counter-claim, they are liable to be evicted from the suit land. But, the denial of the permanent injunction over the Schedule 'B' land in the suit filed by the appellants definitely requires consideration.

9. From a conjoint reading of the counter-claim well as the plaint of the appellants, it would be apparent that the respondents, as the defendants in the suit, did nowhere claim their right or interest over the 'A' Schedule land and the trial court without leaving any uncertainty or ambiguity has declared that the plaintiffs, the appellants herein, have their absolute right, title and possession over the 'A' Schedule land. Even after declaring as such, the trial court has denied permanent injunction to the plaintiffs, the appellants herein, in respect of the Schedule 'B' land. There cannot be any amount of doubt that the Schedule 'B' land is the part of Schedule 'A' land. Out of apprehension that the defendants may intrude into the Schedule 'B' land and dispossess them from the Schedule 'B' land, the plaintiffs filed the suit.

10. From a bare reading of the Schedule 'B' in the plaint, it would be apparent that Schedule 'B' land is constituted of or part of the plot No.2619, which plot is the part and parcel of the Schedule 'A' land as described in the plaint. While decreeing the counter-claim as filed by the respondents herein, the trial court or the first appellate court did not return any

finding as to whether the counter-claimants or the defendants, or the respondents herein have any right over the Schedule 'B' land. Hence this Court is quite at dismay as to why the trial court as well as the first appellate court denied the permanent injunction in favour of the plaintiffs in respect of the land as described in the Schedule 'B'.

11. Having held so, the finding of the first appellate court as well as the trial court denying the permanent injunction is interfered with and set aside. The suit instituted by the appellants, the plaintiffs herein, being Title Suit No.11 of 2006 is decreed declaring that the plaintiffs have right, title, interest and possession over the Schedule 'A' land as described in the plaint and they are entitled to get permanent injunction in respect of the Schedule 'B' land against the defendants and their agents or men. The defendants, the respondents herein, are therefore restrained from disturbing the possession of the plaintiffs, the appellants herein, over the Schedule 'B' land. As such, the appeal, being RSA No.55 of 2008, from the judgment and decree passed in Title Appeal No.8 of 2008, which emerges from the judgment and decree passed in Title Suit No.11 of 2006, is allowed. But, the appeal being RSA No.56 of 2008, from the judgment and decree passed in Title Appeal No.9/2008, which emerges from the judgment and decree passed in the suit being T.S.35 of 2006(counter-claim) is dismissed with clarification that the finding returned by the trial court and the first appellate

court that the plaintiffs cannot get the decree of permanent injunction over the Schedule 'B' land, has been reversed and set aside for the reasons as stated above. However, the declaration of the right, title and interest alongwith the decree of recovery of possession by way of eviction of the appellants is not at all interfered and as such, is affirmed.

Prepare the decree accordingly. Send down the LCRs thereafter.

JUDGE

ROY/Dipesh