

THE HIGH COURT OF TRIPURA
AGARTALA

RSA 51 OF 2008

Sri Subash Chandra Debbarma,
S/O Late Ram Prasad Deb (Debbarma),
Resident of village- East Kalabaria,
P.O.- Maichara, P.S.- Belonia, Dist- South Tripura.

... **Plaintiff-Appellant**

- **Versus** -

1. **Sri Gobardhan Roy,**
S/O Late Nirendra Roy,
Resident of village- East Kalabaria,
P.O.- Maichara, P.S.- Belonia, Dist- South Tripura.
2. **Sri Subash Debnath,**
S/O Late Bipin Debnath,
Resident of village- East Kalabaria,
P.O.- Maichara, P.S.- Belonia, Dist- South Tripura.
3. **Sri Sukhen Sarkar,**
S/O Late Shankar Sarkar,
Resident of village- East Kalabaria,
P.O.- Maichara, P.S.- Belonia, Dist- South Tripura.
4. **Sri Khokan Sarkar,**
S/O Late Shankar Sarkar,
Resident of village- East Kalabaria,
P.O.- Maichara, P.S.- Belonia, Dist- South Tripura.
5. **Sri Sachindra Das,**
S/O Late Chandra kumar Das,
Resident of village- East Kalabaria,
P.O.- Maichara, P.S.- Belonia, Dist- South Tripura.

Principal Defendant Respondents

6. **Smti. Shimulaxmi Tripura (Debbarma),**
W/O Late Ram Prasad Deb (Debbarma),
Resident of village- East Kalabaria,
P.O.- Maichara, P.S.- Belonia, Dist- South Tripura.
7. **Smti Pancha Debbarma,**
Ganapati Debbarma,
Resident of village- East Kalabaria,
P.O.- Maichara, P.S.- Belonia, Dist- South Tripura.
8. **Sri Dipu Debbarma,**
S/O Satyananda Debbarma,
Resident of village- East Kalabaria,
P.O.- Maichara, P.S.- Belonia, Dist- South Tripura.

... **Pro-Defendant Respondents.**

**BEFORE
THE HON'BLE MR. JUSTICE U.B.SAHA**

For the appellant : Mr. SM Chakraborty, Sr. Advocate.

For the respondents : None.

Date of hearing & delivery
of Judgment and Order : **27.01.2015.**

Whether fit for reporting : No.

JUDGEMENT AND ORDER (ORAL)

The instant second appeal is filed under Section 100 of the Code of Civil Procedure against the judgment dated 10.06.2008 passed by the learned Additional District Judge, Belonia, South Tripura in Title Appeal No. 06(2) of 2008 where-under the learned Additional District Judge, Belonia, South Tripura modified the judgment and decree dated 13.03.2008 passed by the learned Civil Judge (Junior Division), Belonia, South Tripura in Title Suit No. 29 of 2006.

2. Heard Mr. SM Chakraborty, learned senior counsel appearing for the appellant and Ms. P.Sen, learned Counsel.

3. The case of the appellant being plaintiff in short is that one Ram Prasad Debbarma alias Ram Prasad Deb, the father of the plaintiff appellant was the owner and possessor of all those specifically demarcated 2.40 acres of land more or less being the portion of Mouja-Kalabaria under Maichara Tehsil Kachari. Said Ram Prasad Debbarma died intestate on 18.02.2001 leaving behing him the following heirs namely (i) Smt. Shimulaxmi Tripura, wife (ii) Sri Subash Chandra Debbarma, son (iii) Smt. Pancha Debbarma, daughter and (iv) Sri Dipu Debbarma, grand-son, son of the predeceased son Sadananda Debbarma. Thus, all of the successors named above became the owners and successors to the estate of deceased Ram Prasad Debbarma. The instant plaintiff appellant joined the Border Security

Force in the year 1984 and consequently he could not pay visit in his permanent place of residence to look after his family members. Consequently, the defendants in the year 1984 by way of manipulation inserted their name in the 24th column of their khatian and on 18.10.1995 the principal respondents trespassed into the suit land and began to enjoy the usufruct of the land and the principal respondents managed to record their possession in the khatian w.e.f. 1976 which is totally erroneous and arbitrary entry as during that time the father of the appellant was alive and no such dis-possession of the suit land was made. The appellant, being the plaintiff thereafter requested the respondents to vacate the suit land but they refused to vacate it and ultimately the plaintiff appellant for declaration of title of the co-owners, pro-respondents filed the suit in the learned trial Court with a prayer for recovery of the vacant possession of the suit land from the principal defendant respondents and the said suit was numbered as Title Suit No. 29 of 2006. In the said suit, the plaintiff appellant made one Ranjit Bhowmik S/O Prakash Chandra Bhowmik as one of the defendants but the address of the said defendant being not known to the appellant, a paper publication was given to notify him and ultimately he did not turn up.

4. The principal defendant respondent appeared in the learned Court below and submitted their written statement stating that they have been possessing the suit land peacefully to the knowledge of the true owner and have been shown in possession in column no. 2 of the record of right (khatian). The further case of the principal respondent in the written statement was that one Anil Dutta reclaimed the suit land before 37/38 years within the knowledge of the father of the plaintiff appellant and they have been possessing the same peacefully within their sight

and knowledge denying their right, title and interest and neither the father of the appellant nor the appellant objected to the said possession and never disturbed the same. They, therefore, prayed for dismissal of the suit filed against them.

5. The learned trial Court on the basis of the pleadings of the parties framed 5 (five) nos. of issues which are reproduced below :

- “ (i) Is the suit maintainable in its present form?**
- (ii) Has the plaintiff any cause of action to file the suit?**
- (iii) Has the plaintiff right, title and interest over the suit land?**
- (iv) Is the plaintiff entitled to get a decree of delivery of vacant possession against the defendant?**
- (v) What other relief or reliefs the plaintiff are entitled under laws and equity? ”**

6. The plaintiff appellant has submitted 10 (ten) numbers of documents which inter-alia included as (i) Khatian No. 393 of Mouja-Kalabaria (Exhibit 1); (ii) Khatian No. 599/2 of Mouja- Kalabaria (Exhibit 2); (iii) Khatian No. 599/1 of the same Mouja (Exhibit 3) and (iv) the map sheet no. 8/P of the said Mouja (Exhibit 4) inter-alia other documents.

7. The learned trial Court decided all the issues in favour of the plaintiff appellant and decreed the suit. Against the judgment and decree of the learned trial Court dated 13.03.2008 the respondent no. 1,2,3 and 5 preferred an appeal in the Court of the learned Additional District Judge, Belonia, South Tripura which was numbered as Title Appeal No. 6(2) of 2008.

8. The learned first appellate Court after hearing the appeal modified the decree passed by the learned trial Court to the effect that the appellant is entitled to get a decree over 30 decimals of the land not on 2.40 satak i.e. the entire suit land jointly described in the schedule

nos. 1 and 2 of the plaint and the reason behind such modification of the judgment and decree passed by the learned trial Court was that the plaintiff appellant filed the suit alone as plaintiff for his interest and for the interest of the other co-owners who are the proforma defendants of the suit but the said proforma defendants were not interested for the relief and the plaintiff appellant without any authority to claim title over the suit land on behalf of the proforma defendants filed the suit. Being aggrieved by the judgment of the learned appellate Court, the plaintiff being the appellant preferred the instant second appeal.

9. Accordingly this appeal was admitted on the following substantial questions of law,-

- “ (i) Whether the co-owner can file a suit for the protection of right, title and interest of other co-owners when the same are threatened by any third party ?**
- (ii) Whether for the purpose of filing of any suit for the protection of the interest of the co-owners, a co-owner requires any authority or permission from the other co-owners ?**
- (iii) Whether after establishment of right, title and interest of all the true owners over the land in the learned trial Court it can be taken away by the Appellate Court without giving any contrary finding on the said aspect ?”**

10. Mr. Chakraborty, learned senior counsel submits that the learned appellate Court failed to consider the case of the plaintiff appellant as a whole. He also submits that though the plaintiff appellant filed the suit for declaration of title and recovery of the possession of the entire suit land which belongs to the plaintiff appellant as well as the proforma respondents but the learned appellate Court while accepting the case of the plaintiff appellant rejected his prayer so far the share of the co-owners are concerned. He further submits that the learned appellate Court failed to consider the provision of Order 1 Rule 8 where the statute clearly permits one person to sue or defend the interest of all others

having same interest. In the instant case, admittedly, the proforma defendants have the same interest like the plaintiff appellant being they are also the successors (common ancestors) of the father of the plaintiff late Ramchandra Deb (Debbarma). He also submits that from the judgment of the learned Court below it would be found that there was no specific issue regarding mis-joinder or non-joinder of party and even the defendant respondents also did not file any objection in that regard. Thus, in absence of any issue on that ground, the learned trial Court decided the suit in favour of the plaintiff appellant. The learned first appellate Court though did not reframe the issues but took out the plea of the defendant respondents regarding the mis-joinder or non-joinder of the party and ultimately decided the suit partly in favour of the plaintiff appellant which is totally impermissible under the law. Admittedly, this appeal is against the part reversal of the decree and the learned appellate Court miserably failed to consider the case of the plaintiff appellant, he contended.

11. This Court has gone through the judgment of the First Appellate Court from which it appears that the learned First Appellate Court decided the first two issues in favour of the plaintiff appellant.

12. The learned appellate Court though found that the learned trial Court did not commit any wrong but came to a conclusion that the appellant being the owner of 30 decimals of land i.e. 30 satak he cannot get the remedy for the entire suit land i.e. 2.40 satak as the remaining portion belongs to the co-owners who did not approach the Court as plaintiff for declaration of title and recovery of possession of their share. Such a finding of the learned appellate Court is contrary to the provision of Order 1 Rule 8 of the Code of Civil Procedure.

13. Order 1 Rule 8 of the Code of Civil Procedure provides that where there are numerous person having the same interest in one suit, one or more person may sue on behalf of or for the benefit of all the person so interested. In the instant case, the learned First Appellate Court below has also mis-appreciated the law in that regard particularly that one co-owner can file a suit for his interest as well as the interest of other co-owners when the interest is identical or the same case of action. The learned trial Court in the instant case while decreeing the suit in fact permitted the plaintiff to file a suit on behalf of other co-owners having the same interest arising out of the same cause of action. Therefore, the learned First Appellate Court in absence of any issue on that aspect make out a third case, limited the relief to the extent of the share of the plaintiff appellant over the suit land and modified the decree passed by the learned trial Court which is totally unreasonable and unsustainable under law. Accordingly, the substantial questions, so framed in this appeal are answered accordingly.

14. In view of the above, according to this Court, the judgment of the learned appellate Court is required to be interfered with and accordingly the same is interfered with by way of setting aside the same and affirm the judgment of the learned trial Court which is, according to this Court, a correct decision, so far the subject matter is concerned.

15. With the above, the appeal is allowed. No order as to costs.

16. Prepare the decree accordingly and send down the LCRs forthwith.

JUDGE