

**THE HIGH COURT OF TRIPURA
AGARTALA**

RSA. No. 63 of 2008

Shri Anil Chandra Poddar,
Son of Lt. Girish Chandra Poddar,
Village: Chataria, P.S. R. K. Pur, Udaipur,
Dist: South Tripura.

.... Plaintiff-appellant

-vs.-

1. Sri Uttam Poddar
2. Sri Arun Poddar
3. Sri Amar Poddar
4. Sri Samar Poddar
5. Sri Tarun Poddar
6. Sri Litan Poddar

All are the sons of Dharendra Poddar of Village:
Chataria, P.S. R. K. Pur, Udaipur, Dist: South Tripura.

...defendant- respondents

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

Advocate for the appellant	:	Mr. A. K. Bhowmik, Sr. Advocate. Ms. A. Banik, Advocate.
Advocate for the respondents	:	Mr. D. Bhattacharji, Advocate
Date of hearing and delivery of the judgment	:	29.09.2015
Whether fit for reporting	:	Yes

JUDGEMENT AND ORDER(Oral)

The instant second appeal u/S 100 of the C.P.C. is directed against the judgment and decree dated 08.08.2008 passed by the learned District Judge, South Tripura, Udaipur in T.A. No. 09 of 2008 dismissing the appeal and affirming the judgment and

decree dated 14.5.2008 passed by the learned Civil Judge, Junior Division, Udaipur, South Tripura in T.S. 29 of 2005 dismissing the suit.

[2] Heard Mr. A. K. Bhowmik, learned Sr. counsel assisted by Ms. A. Banik, learned counsel appearing for the appellant as well as Mr. D. Bhattacharji, learned counsel appearing for the respondents.

[3] At the time of admission of the appeal, the following substantial questions of law were formulated:

1. Whether the learned lower appellate court is justified in rejecting the application under Order 6 Rule 17 of the Civil Procedure Code as well as the application under Order 41 Rule 27 CPC filed by the present appellant for amendment on the ground that such prayer cannot be permitted at the appellate stage i.e. after commencement of the trial.

2. Whether the appellant-plaintiff is entitled to a decree as prayed for at least in respect of the land covered by the gift deed being Exbt.4.

3. Whether the title and possession of the appellant over the suit land can be presumed in view of the record of rights being Exbt.1 prepared under the provisions of the Tripura Land Revenue and Land Reforms Act, 1960 even if the sale deeds covering part of the suit land are not proved.

[4] The appellant herein being plaintiff instituted the T.S. No. 29 of 2005 in the Court of the learned Civil Judge, (Jr. Division), Udaipur, South Tripura stating, inter alia, that he is the

owner of the suit land measuring in total 1.73 acres in present plot Nos. 63/2664 (1.50 acres), 59/2669 (0.14 acres) and 60/2667 (0.09 acres) and that the said plots were duly recorded in his name in Khatian No. 917 of Mouja Chataria under P.S. R. K. Pur, within District South Tripura on the basis of a registered gift deed dated 08.04.1991 executed in his favour by the lawful owner in possession, namely, his aunt, Smt. Indra Bala Poddar.

[5] The plaintiff-appellant further stated that he was dispossessed from the said land by the respondents on 25.09.2005 illegally and by force. The plaintiff appellant prayed for a decree for declaration of his right and title in the suit land, for recovery of possession and for mesne profit.

[6] The defendant-respondents contested the suit by filling written statement stating, inter alia, that late Jatindra Chandra Poddar was the original owner of the suit land and he was survived by his wife, Indra Bala Poddar and that the plaintiff has purchased 0.40 acres of land out of old C.S. Plot No. 27/904 under old Khatian No. 85 from Jatindra Chandra Poddar on 22.07.1968 and that the father of the defendants 1-6 had also purchased 0.60 acres of land out of the same plot on the same date i.e. on 22.07.1968 and further that Jatindra Chandra Poddar had sold more lands to the father of the defendants No. 1-6, namely, Dhindra Chandra Poddar out of lands of old C.S. Plot No. 24 and 25 of Khatian No. 86 of Mouza Chataria.

[7] The defendants 1 to 6 further stated in their written statement that lands of R.S. (Hal) Plot No. 63 measuring 2.41 acres and R.S. (Hal) Plot No. 59 measuring 0.23 acres and R.S (Hal) Plot No. 60 measuring 0.13 acres have been recorded in the name of Jatindra Chandra Poddar during revisional survey operation in further that the plaintiff had sold out 0.40 acres of land which he had purchased from Jatindra Chandra Poddar on 22.07.1968 to three persons, namely, Sri Nirmal Gope, Sri Arjun Debnath and Sri Ranjit Debnath in the year 1997.

[8] The further case of the defendants 1 to 6 was that the plaintiff did not accept any gift deed or property i.e. the suit land and that Khatian No. 917 of Mouza Chataria showing the ownership and possession of the plaintiff therein was created in connivance with the staff of Settlement Department. The defendants 1 to 6, however, did not rely on any documents in their written statement.

[9] The learned Civil Judge, Jr. Division, hereinafter referred to as Trial Court, framed the following issues:

1. Whether the suit is maintainable in its present form;
2. Whether the suit is bad for non-joinder and mis-joinder of necessary parties;
3. Whether the plaintiff has right, title, interest and ownership over the suit land;

4. Whether the plaintiff is entitled for recovery of possession of the suit land on the strength of his right, title, interest and ownership on the suit land;

5. To what other reliefs/relieves the plaintiff is entitled to;

[10] After hearing the parties and considering the documents as exhibited, learned Trial Court decided the issue No. 1 and 2 in favour of the plaintiff, but decided issue Nos. 3, 4 and 5 against the plaintiff and ultimately dismissed the suit.

[11] Being aggrieved by the judgment and decree by the trial court, the plaintiff appellant preferred the first appeal before the learned District Judge, South Tripura, Udaipur which was registered as T.A. No. 9 of 2008.

[12] When the appeal was pending for hearing, the plaintiff appellant preferred an application under Order VI Rule 17 of the C.P.C. for amendment of the plaint and also filed an application under Order XVI Rule 27 for adducing additional evidence.

[13] The learned first appellate Court on 05.08.2008 heard the learned counsel appearing for the parties on amendment petition as well as the petition for adducing additional evidence and also on appeal and finally decided both the amendment petition and the petition for adducing additional evidence as well as the appeal together by the impugned judgment dated 08.08.2008 passed in the T.A. No. 09 of 2008 as states supra.

[14] Mr. Bhowmik, learned Sr. counsel while urging for setting aside the judgment of the first appellate Court would contend that though the three substantial questions of law were framed but if the question No. 1 is decided in favour of the appellant, then it would not be necessary to decide the other two substantial questions of law.

[15] In support of the substantial questions of law, whether the learned lower appellate court is justified in rejecting the application under Order VI Rule 17 of the C.P.C. as well as the application under Order XLI Rule 27 C.P.C. filed by the present appellant for amendment on the ground that such prayer cannot be permitted at the appellate stage i.e. after commencement of the trial, he contended that learned first appellate court ought to have decided first the amendment petition and the petition for adducing additional evidence before deciding the appeal. But he decided both the amendment petition and the petition for adducing additional evidence along with the appeal which is not permissible at all.

[16] He further contended that due to the decision in appeal regarding the aforesaid petitions, the plaintiff appellant lost one of the forums i.e. the revisional forum. He also contended that in view of the decision in **North Eastern Railway Administration, Gorakhpur V. Bhagawan Das (D) by L. Rs., AIR 2008 SC 2139**, the apex court has considered the similar issue as involved in this case and held that “*insofar as the principles*

which govern the question of granting or disallowing amendments under Order 6 Rule 17 CPC (as it stood at the relevant time) are concerned, these are also well settled. Order 6 Rule 17 CPC postulates amendment of pleadings at any stage of the proceedings.”

[17] On the other hand, Mr. Bhattacharji, learned counsel for the respondents relying on a decision of the Apex Court in **Rajkumar Gurawara (Dead) Thr. L. Rs., v. M/s S. K. Sarwagi and Co. Pvt. Ltd. and Anr., AIR 2008 SC 2303**, submits that the amendment of pleadings at the stage of pre-trial are to be allowed liberally than those sought to be made after commencement of trial. He further submits that the amendment of plaint after commencement of trial is barred by subsequent amendment of the Civil Procedure Code. More so, the amendment prayed at the argument stage normally should not be allowed.

[18] There is no doubt that at the argument stage, a Court should be cautious while dealing with an amendment petition and normally the same should not be allowed when such amendment alters the original cause of action. By way of amendment of Order VI Rule 17, new proviso has been inserted wherein it is specifically stated that no application for amendment shall be allowed after the trial is commenced unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before commencement of trial. There is no

quarrel with the aforesaid proviso, but question arises here is that whether without deciding the amendment petition and the petition for adducing additional evidence, the appeal can be heard together with all those petitions and decided by a single order/judgment. According to this Court, before hearing the appeal, the learned first appellate Court should have heard the application for amendment as well as the application for adducing additional evidence and if the said amendment was allowed, then the petition for adducing additional evidence could be disposed of. The facts remain that on 05.08.2008, learned appellate Court took up both the aforesaid petitions as well as the appeal for hearing and in the order, there is nothing that the parties were agreed for such disposal of the amendment petition and the petition for adducing additional evidence together with the appeal. But in the judgment, it is stated that on the date fixed for hearing over the aforesaid two petitions, the appeal of the appellant was also heard as both the petitions touched the merit of the appeal and the learned counsel for the both the sides admitting the said facts argued their respective cases before the Court over the aforementioned two petitions as well as the appeal too.

[19] According to this Court, even if the parties agreed, then also, the first appellate Court should not have taken up the appeal for hearing before disposal of the amendment petition as well as the petition for adducing additional evidence as the parties

aggrieved by the order passed in the amendment petition are entitled to approach the higher forum challenging the order in the amendment petition. Thus, according to this Court learned first appellate Court committed error in deciding both the amendment petition and the petition for adducing additional evidence along with the appeal.

[20] More so, amendment at the appellate stage is not wholly barred by the provisions of the Code of Civil Procedure if such amendment is required in the interest of justice and if cause of action is not altered or nature of suit is not changed. Accordingly, substantial questions of law No. 1 is answered and the judgment of the appellate court dated 08.08.2008 is hereby set aside and the matter is remitted back to the learned District Judge, South Tripura, Udaipur (now Gomti District) i.e. the first appellate Court to decide the amendment petition as well as the petition for adducing additional evidence first and thereafter to hear the appeal in accordance with law providing opportunities to the parties. The parties are directed to appear before the learned District Judge on 23.11.2015.

[20] At this stage, Mr. Bhattacharji, learned counsel for the respondents submits that the defendants, respondents herein, had not filed any objection to the prayer for amendment. Thus, the defendants are also at liberty to file objection against the prayer

for amendment and also to the prayer for adducing additional evidence, if so advised. Send down the LCRs.

JUDGE

Mdn/A