

**IN THE HIGH COURT OF TRIPURA
AGARTALA**

R.S.A. No.43 of 2010

Howarun Bibi @ Howarun Nessa Khatoon,
wife of late Alek Miah, resident of
village – Barbond, P.O. Tilla Bazar,
P.S. Kailashahar, North Tripura.

..... **Appellant**

- V e r s u s -

- 1. Md. Abdul Matin,**
son of late Abdul Aziz of Barbond, P.O.
Tilla Bazar, P.S. Kailashahar, North
Tripura
- 2. Mostafa Miah**
- 3. Manaur Ali alias Manour Miah**
- 4. Emad Miah alias Emad Ali**
- 5. Mashab Ali alias Maohab Miah**
- 6. Jakir Hossain alias Monai Miah**

All are sons of late Alek Miah of
village- Barbond, P.O. Tilla Bazar,
P.S. Kailashahar, North Tripura.

..... **Respondents**

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

For the appellant	:	Mr. A.K. Bhowmik, Sr. Advocate Mr. R. Dutta, Advocate.				
For the respondents	:	Mr. D.K. Das Chowdhury, Advocate				
Date of hearing and delivery of Judgment and Order	:	25.03.2015				
Whether fit for reporting	:	<table border="1"><thead><tr><th>YES</th><th>NO</th></tr></thead><tbody><tr><td></td><td>√</td></tr></tbody></table>	YES	NO		√
YES	NO					
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JUDGMENT & ORDER (ORAL)

Heard Mr. A.K. Bhowmik, learned senior counsel assisted by Mr. R. Dutta, learned counsel appearing for the appellant as well as Mr. D.K. Das Chowdhury, learned counsel appearing for the respondents.

[2] This appeal under Section 100 of the C.P.C. was admitted to be heard on the following substantial questions of law:

(i) Whether the Respondent could be allowed to file suits after suit against the Appellant on the same cause of action and if did so whether is all those suits would not be barred under Order -2 Rule 2 of the Civil Procedure Code?

(ii) Whether the Suit for perpetual injunction of the plaintiff (Respondent of the instant Appeal) is dismissed on contest on the ground that he was not in possession of the suit land had any right to file a fresh suit for recovery of possession of the suit land and if he did so whether would it not attract the section 11 of the code of civil procedure?

[3] Mr. Bhowmik, learned senior counsel appearing for the appellant has taken this Court to the relevant fact necessary for appreciating the substantial question of law. The respondent No.1 filed the suit for declaration of right, title and interest, possession and perpetual injunction. The respondent No.1 claimed that on the total land measuring 0.34 acres comprised in the First Schedule to the plaint, he has the title and interest. Out of the said land, a land measuring 0.13 acres has been described in the Second Schedule.

The plaintiff, the respondent No.1 has been dispossessed by the appellant and the respondents No.2 to 6. However the remaining land of the First Schedule has been described in the Third Schedule, which, according to the respondent No.1, is under his possession and therefore, he sought a decree of confirmation and the consequential relief of the perpetual injunction against the appellant and the respondents No.2 to 6 herein. For the land as described in the Second Schedule, the respondent No.1 prayed for a decree of eviction against the defendants, the appellant and the respondents No.2 to 6. He has also claimed the ownership of the hut standing on the Fourth Schedule as appended to the plaint. The appellant herein by filing the written statement had entirely denied the title of the respondent No.1 contending that '*the plaintiff has no right, title and interest at any time in any manner*'. As the appellant, Howarun Bibi, has entirely denied the title of the respondent No.1 over the suit land, meaning the entire tract of the land over which he has claimed the ownership. However, Mr. Bhowmik, learned senior counsel has pointed out that the other defendants except the appellant, did not contest the suit. Initially, on the basis of the pleadings, the following issues were framed by the Civil Judge, Jr. Division, Kailashahar:

(1) Is the suit is maintainable in its present form?

(2) Has the plaintiff any cause of action to file this suit?

(3) Whether the story of possession and dispossession is true?

(4) Is plaintiff entitled to get the decree as prayed for?

(5) To what other relief/reliefs the parties are entitled?

[4] The Civil Judge, Jr. Division, Kailashahar, North Tripura based on the judgment dated 23.08.2006 delivered in Title Suit No.40 of 2005 decreed the suit but the said judgment dated 23.08.2006 was appealed against in Title Appeal No.46 of 2006 in the Court of the District Judge, North Tripura, Kailashahar which in course of time was transferred to the court of Additional District Judge, North Tripura, Kailashahar. The Additional District Judge after hearing the appeal substantially and discussing the points so identified observed as under:

Since the plaintiff has brought this seeking declaration of title over the suit land and on the other hand the defendant is also claiming her title over the suit land on the strength of 'kabirnama' so in my considered opinion for fair ends of justice the amendment petition filed by the defendant should have been allowed. Since the amendment petition has not been allowed by the trial court I am of the view that the defendant-appellant has been seriously prejudiced. Both the parties should be given all opportunity to set up their respective claim over the suit land.

[5] Having thus observed, the appeal as filed by the appellant herein was allowed and the judgment dated 23.08.2006 passed in Title Suit No.40 of 2005 was set aside remitting the matter back for rehearing. Despite that no issue as regards the title was framed by the trial court, as would be evident from the judgment dated 20.02.2009, the Civil Judge, Jr. Division, Kailashahar has just replicated the issues, those were framed earlier without looking at

the said observation returned by the first appellate court by the judgment dated 21.03.2009 passed in Title appeal No. 46 of 2006. On discussing the materials as placed in the evidence, the suit was dismissed.

[6] The respondent No.1 herein being aggrieved by the said judgment dated 22.02.2009 delivered in Title Suit No.40 of 2005 preferred an appeal under Section 96 of the C.P.C. in the court of the District Judge, North Tripura, Kailashahar being Title Appeal No.46 of 2009. The said appeal has been allowed by the impugned judgment dated 24.07.2010 by decreeing the suit on declaring the right, title and interest of the plaintiff over the land measuring 0.28 acres under Khatian No.946, dag No. Sabek 1388, 1399, 1400 and part of dag No.1401/2086 with consequential relief as sought. At the same time the decree for evicting the defendant has also been passed. For returning the said finding, the first appellate court has observed on relying on a decision of Gauhati High Court in **On The Death of Nagen Hazarika His L/R Kanchan Hazarika and Ors. vs. Monorama Sharma**, reported in **2007(2) GLR 403** that:

"Title" is a broad expression in law, which need not always be understood as akin to ownership. The expression "title" conveys different forms of right to a property, which can include a right to possess such property. Lawful possession of immovable property in a situation where ownership in an absolute term is yet to be established confers good title on the possessor as against the whole world except the true legal owner of such property. Such "title" has to be recognized by the courts against all except the true owner.

[7] Thereafter, the first appellate court observed that the respondent did not get possession over the whole property as there was dispute over the title. The dispute as regards the joint property which was though partitioned and sold out by the transferee of the plaintiff-appellant, continued to remain unresolved. No mutation was given for the land measuring 0.34 acres. The defendant, Howarunessa Bibi proved her possession and title over the land measuring 0.06 acres by giving Khatian and title deed. Accordingly, the title of the plaintiff has been declared over a land measuring 0.28 acres. That was never the case of the plaintiff. The plaintiff has categorically pleaded that he has been dispossessed from an area of land measuring 0.13 acres over which a GCI roof hut is also standing. Apart that, the dispute relating to the title never fell for adjudication in the trial as there was no issue on that aspect. Even the first appellate court without framing any issue in this regard suddenly came to the conclusion on the basis of the records available. This is definitely not the process by which a civil court would decide a dispute. The issue must be specific precise to the dispute and conceivable to the parties, so that they can lead adequate evidence in support or against the issue or for better elucidation, else there would be failure of justice and hence, the fundamental principles of the process are jealously guarded.

[8] Having thus observed, this Court is of the opinion, nonetheless with sufficient reservation, that the impugned judgment

dated 24.07.2010 requires interference for substantial ends of justice, else there would be multiplicity of litigations. Accordingly, the impugned judgement dated 24.07.2010 is set aside and quashed and the suit is remitted back to the court of the Civil Judge, Jr. Division, Kailashahar, North Tripura for retrial from the stage immediately after filing of the written statement. It is directed further that the trial court shall frame an issue over the dispute relating to the title of the land described in the First Schedule and the trial court may even frame other additional issues if the court is so persuaded from the pleadings. Thereafter, the parties may be allowed to lead their evidence. On recording of the evidence and affording the opportunity to hearing to the parties, the suit shall be decided as early as possible having regards to its long pendency.

Accordingly, this appeal is allowed to the extent as indicated above.

Prepare the decree accordingly.

Send down the LCRs thereafter.

JUDGE

Sujay