

**IN THE HIGH COURT OF TRIPURA**  
**AGARTALA**

**R.S.A. No. 07 of 2010**

- 1. Smt. Hemlata Ghosh,**  
wife of late Satish Chandra Ghosh,  
Pragati Road, Krishnanagar, P.S.  
West Agartala, District – West  
Tripura.
- 2. Shri Pradip Ghosh,**  
son of late Satish Chandra Ghosh,  
Pragati Road, Krishnanagar, P.S.  
West Agartala, District – West  
Tripura.
- 3. Shri Ajit Ghosh,**  
son of late Satish Chandra Ghosh,  
Pragati Road, Krishnanagar, P.S.  
West Agartala, District – West  
Tripura.
- 4. Shri Rabi Ghosh,**  
son of late Satish Chandra Ghosh,  
Pragati Road, Krishnanagar, P.S.  
West Agartala, District – West  
Tripura.
- 5. Shri Asit Ghosh,**  
son of late Satish Chandra Ghosh,  
Pragati Road, Krishnanagar, P.S.  
West Agartala, District – West  
Tripura.
- 6. Smt. Rina Ghosh,**  
wife of Shri Sentu Ghosh,  
D/O- late Satish Chandra Ghosh,  
P.O. Durjoynagar, P.S. Airport,  
District – West Tripura.

..... **Appellants**

**- V e r s u s -**

- 1. Rani Bala Acharjee, \*\*\*\***  
wife of late Naresh Chandra  
Acharjee, Pragati Road,  
Krishnanagar, P.S. West Agartala,  
District – West Tripura.

**2. (On death is substituted by the LRs, the respondents herein) Nani Gopal Acharjee \*\*\*\***

**[On death is substituted by the LRs]**

- (a) Smt. Dipali Acharjee (wife),**
- (b) Sri Dilip Acharjee (son),**
- (c) Smt. Rupali Acharjee (daughter),**
- (d) Sri Pradip Acharjee (son),**
- (e) Smt. Sima Acharjee (daughter),**
- (f) Smt. Gopa Acharjee (daughter),**

All are residents of Krishnanagar,  
Pragati Road, P.S. West Agartala,  
District – West Tripura.

**3. Shri Haridas Acharjee,**  
son of late Naresh Chandra  
Acharjee, Pragati Road,  
Krishnanagar, P.S. West Agartala,  
District – West Tripura.

**4. Shri Dwijen Acharjee,**  
son of late Naresh Chandra  
Acharjee, Pragati Road,  
Krishnanagar, P.S. West Agartala,  
District – West Tripura.

**5. Shri Ranjit Acharjee,**  
son of late Naresh Chandra  
Acharjee, Pragati Road,  
Krishnanagar, P.S. West Agartala,  
District – West Tripura.

**6. Shri Sanjit Acharjee,**  
son of late Naresh Chandra  
Acharjee, Pragati Road,  
Krishnanagar, P.S. West Agartala,  
District – West Tripura.

**7. Shri Sujit Acharjee,**  
son of late Naresh Chandra  
Acharjee, Pragati Road,  
Krishnanagar, P.S. West Agartala,  
District – West Tripura.

8. **Shri Ajit Acharjee,**  
son of late Naresh Chandra  
Acharjee, Pragati Road,  
Krishnanagar, P.S. West Agartala,  
District – West Tripura.
9. **Shri Swarajit Acharjee,**  
son of late Naresh Chandra  
Acharjee, Pragati Road,  
Krishnanagar, P.S. West Agartala,  
District – West Tripura.
10. **Shri Bikash Acharjee,**  
son of late Naresh Chandra  
Acharjee, Pragati Road,  
Krishnanagar, P.S. West Agartala,  
District – West Tripura.
11. **Smt. Gita Deb,**  
wife of late Kartik Lal Deb,  
village– Agunya Mura, P.S. Sidhai,  
District- West Tripura.
12. **Shri Sankar Deb,**  
son of late Kartik Lal Deb,  
village– Agunya Mura, P.S. Sidhai,  
District- West Tripura.
13. **Smt. Uma Rani Deb,**  
daughter of late Kartik Lal Deb,  
village– Agunya Mura, P.S. Sidhai,  
District- West Tripura.
14. **Shri Dipak Deb,**  
son of late Kartik Lal Deb,  
village– Agunya Mura, P.S. Sidhai,  
District- West Tripura.
15. **Smt. Biplab Deb,**  
son of late Kartik Lal Deb,  
village– Agunya Mura, P.S. Sidhai,  
District- West Tripura.
16. **Smt. Sikha Dutta,**  
wife of Shri Satyendra Dutta,  
daughter of late Kartik Lal Deb,  
village- Tarapur (Mohanpur) (Opp.  
to Kamakhya Mandir), P.S. Sidhai,  
District – West Tripura.

**17. Sudhangshu Acharjee**  
[On death, is substituted by the LRs]

- (a) Smt. Sita Acharjee (wife),**
- (b) Sri Subhash Acharjee (son),**
- (c) Smt. Sucharita Acharjee (daughter),**  
wife of Sibdas Acharjee, Sibtali,  
Kumarghat, P.S. Kumarghat,  
District – North Tripura.
- (d) Smt. Sebika Acharjee,**  
daughter of late Sudhangshu Acharjee,
- (e) Lt. Devika Acharjee,**  
daughter of late Sudhangshu Acharjee,

All are residents of Pragati Road,  
Krishnanagar, P.S. West Agartala,  
District – West Tripura.

**[\*\*\*\* As per order dated 13.01.2011  
passed in CM Appl. No.87 of 2010, the  
name of the respondent No.1, namely  
Rani Bala Acharjee has been deleted]**

**[\*\*\*\* As per order dated 13.01.2011  
passed in CM Appl. No.82 of 2010, the  
legal heirs of the respondents No.2 & 17  
have been substituted]**

..... Respondents

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

For the appellants : Mr. D.C. Saha, Advocate  
For the respondents : Mr. N. Majumder, Advocate  
Date of hearing : **10.03.2015**  
& delivery of Judgment & order

Whether fit for reporting : 

|     |    |
|-----|----|
| YES | NO |
|     | √  |

**JUDGMENT & ORDER (ORAL)**

Heard Mr. D.C. Saha, learned counsel appearing for the appellants as well as Mr. N. Majumder, learned counsel appearing for the respondents No.2(a) to 10. None appears for the remaining respondents when the matter is taken up for hearing. The respondent No.1 has died leaving his legal heirs i.e. respondents No.2(a) to 10.

**[2]** This is an appeal under Section 100 of the C.P.C. against the judgment and decree dated 23.07.2009 delivered in Title Appeal No. 41 of 2002 by the Addl. District Judge, No.2, West Tripura, Agartala.

**[3]** This appeal was admitted by the order dated 17.02.2011 on the following substantial question of law:

**Whether in view of the judgment and decree dated 17.01.1985 passed in T.S. No.04 of 1979, the present suit was barred by Section 11 of C.P.C. i.e. the law of *res judicata* and if, whether courts below committed error by deciding the suit in favour of the plaintiff?**

**[4]** Mr. D.C. Saha, learned counsel appearing for the appellants has submitted that by the judgment dated 17.01.1985 delivered in Title Suit No.04 of 1979, the Addl. Munsiff, Agartala, West Tripura has observed as under:

**The plaintiff (PW-1) stated on oath that the B – Schedule land is the suit land which was let out to the Defendant No.1. After that a suit for specific performance of contract bearing No.T.S.71/62 was brought before Sadar Munsiff against the plaintiff wherein it was observed (Exbts- 1 & 2) that the defendant No.1 is in possession of the suit land by virtue of a deed of agreement and it was further observed that the plaintiff settled to sell the land to the defendant No.1 at a compensation of Rs.400/- and towards**

that consideration the defendant No.1 paid Rs.101/- as earnest money. This fact has been admitted by the plaintiff in his cross-examination also. It has been further admitted by the plaintiff (PW-1) in his cross-examination that on the basis of the said contract defendant No.1 took delivery of possession of the suit land. The defendant no.2 (DW-1) stated on the basis of the contract as aforesaid, defendant No.1 took delivery of possession of the suit land as a part performance of the said contract and after that he purchased the front portion of the suit land from the defendant No.1 and has been in possession of the suit land since 19 years back.

According to provision of Section 53 A of the Transfer of Property Act:

"Where any person contracts to transfer for consideration any immovable by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty, and the transferee has, in part performance for the contract taken possession of the property from any part thereof, or the transferee being already in possession continues in possession in part performance of the contract has done some act in furtherance of contract, and the transferee has performed or willing to perform his part of the contract, then notwithstanding that the contract, though required to be registered, has not been registered or where is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefore by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession other than a right expressly provided by the terms of the contract."

It is further noticed from the deposition of the D.W.1 that as per order in the document marked Exbts. 1 & 2 and as per the said direction defendant No.1 deposited the balance amount of Rs.299/- in the local treasury by means of treasury challan marked Exbt.A. So, I find that according to provision of Section 53-A of Transfer of Property Act, the defendant No.1 has complied with the direction of the court, and completed the contract by depositing the balance amount in the treasury by means of a challan as aforesaid and it is also noticed from the deposition of the plaintiff (PW-1) that the defendant No.1 has been in possession of the suit land since the time of initial agreement. It is also further noticed that the defendant No.1 has been possessing the said land continuously as per provision of the Section 53-A of the Transfer of Property Act and as such the said defendant is entitled to maintain possession over the suit land

in accordance with the law as provided in the Section mentioned above. It is further noticed from the deposition of the defendant No.1 (DW-1) that the defendant No.1 transferred a portion of the suit land to him and accordingly he has been possessing the said portion since 19 years back by virtue of his purchase. It is further noticed from the deposition of DW-1 that the plaintiff by suppressing the real fact, has brought this suit for declaration of title and for khas possession although the plaintiff had already lost his title and interest over the suit land. In view of the discussion as above the suit of the plaintiff is not maintainable in its present form and nature. Hence, issue No.1 & 3 are decided against the plaintiff.

[5] It has been further observed in the said judgment that:

It is noticed from the deposition of the plaintiff (PW-1) and from the deposition of the DW-1 that the defendant No.1 entered into an agreement with the plaintiff for purpose of the suit land and it is also noticed from the documents marked Exbts. 1 & 2 that the plaintiff received Rs.101/- from the defendant No.1 by way of earnest money and as a part performance, the defendant No.1 took delivery of possession of the suit land after that as per decision of the court, defendant No.1 deposited the balance amount Rs.229/- in favour of the plaintiff by a treasury challan marked Exbt.A, inappropriate Head of Account in due time. Thus I find that the defendant No.1 had already complied with the terms and condition of the contract and after that a portion of the suit land was sold to defendant No.2. So, I find that the plaintiff suppressing the real fact brought this suit who has already parted with his right, title, interest and possession over the suit land, hence, the plaintiff is not entitled to get any decree of khas possession of 'B' schedule land. So, this issue is also decided against the plaintiff.

[6] Mr. Saha, learned counsel appearing for the appellants has submitted that the suit land as described in the Title Suit No.04 of 1979 is identical to the suit land in Title Suit No.46 of 2000. Despite such finding, the plaintiffs who are the legal heirs of Naresh Chandra Acharjee have instituted the title suit related to this appeal

for declaration and recovery of possession from the defendants. The defendants are the appellants herein.

[7] There is no dispute that the defendant No.1, namely Kartik Lal Deb, in Title Suit No.04 of 1979 instituted another suit for specific performance being Title Suit No.71 of 1962. That suit was decreed in favour of the said defendant No.1 Kartik Lal Deb by the judgment and decree dated 31.03.1965. It is also to be noted that the predecessors in interest of the plaintiffs had handed over the suit land to the defendant No.1 and he was in possession. Having regard to such fact and circumstances, the said finding on interpreting the provisions of Section 53-A of the Transfer of Property Act was returned in the Title Suit No.04 of 1979. It has been urged by Mr. Saha, learned counsel that the decree dated 31.03.1965 was challenged in Title Appeal No.31 of 1965 but the said first appeal was dismissed on 07.03.1966. Thereafter, a second appeal being Second Appeal No 25 of 1966 was preferred and on consideration, the same was dismissed by the Judicial Commissioner, Tripura by the judgment and decree dated 13.01.1971. Thus the decree passed in Title Suit No.71 of 1962 reached its finality and as such, Mr. Saha, learned counsel submits that the declaration that has been made by the judgment and decree dated 31.03.1965 cannot be unsettled by the subsequent suit between the same set of parties. Mr. Saha, learned counsel, therefore, has submitted that the finding returned by the Civil Judge, Sr. Division, West Tripura, Agartala by the judgment dated 04.07.2002 delivered in Title Suit No.46 of 2000 is purportedly illegal and unsustainable in law. He has further

submitted that the said suit was barred by the principles of *res judicata* and accordingly, the subsequent suit is not maintainable under Section 11 of the C.P.C.

**[8]** From the other side, Mr. N. Majumder, learned counsel appearing for the respondents No.2(a) to 10 has submitted that the submission made by Mr. Saha, learned counsel appearing for the appellants is wholly incorrect as while the decree for the specific performance of the contract of sale was put in execution, a compromise was struck between the legal heirs of the predecessors in interest of the plaintiffs and said Kartik Lal Deb and Kartik Lal Deb adjusted the decree by abandoning any claim on the suit land. He has referred to the finding of the trial court reads as under:

**"A decree of the specific performance contract of sale does not create interest in the immovable property contracted to be sold. It only gives a right to the decree holder to enforce the decree through the instrumentality of the Court and he gets the right of the J.D. at the time of execution. But, in this instant suit the decree was not executed but it was adjusted and the D.H. Kartik Lal Deb did not get the title of the land. A contract for sale creates no right in the land contracted to be sold. A decree for specific performance only entitles the decree holder to enforce the decree by execution but the decree is frustrated by compromise and adjustment. So, Kartik Lal Deb did not get the land and his contract to transfer the land to the predecessor-in-interest of defendants, create no interest for the defendants. Defendants are inducted into the land by the permissive possessor Kartik Lal Deb. They have no right in the suit land. Plaintiffs are entitled to get declaration that they are the co-sharers of the suit properties to the extent of 50% along with pro-defendant No.13 and entitled to recover the possession of the B-Schedule land by eviction of the defendant Nos. 1 to 5 and entitled to get no other reliefs."**

**[9]** Having regard to this factual aspect as emerged, this Court has scrutinized the records to find out what was the basis of such finding as returned by the trial court and affirmed by the first appellate court. It appears that the plaintiffs brought on records the following documentary evidence in addition to others:

**(i) certified copy of the petition of Kartik Lal Deb in T.S. Ex.(T) 16 of 1997, Exbt.F.**

**(ii) certified copy of the orders passed in the execution case dated 18.06.1999 (Exbt.G series) and the order dated 05.09.1999 (Exbt.F) and one cancellation of power of attorney (Exbt.C) were also brought on record.**

**[10]** It appears from the order dated 18.06.1999 that one application under Order XXII Rule 3 of the C.P.C. was filed on 19.05.1999. By the said application, it has been placed on records that on receipt of an amount of Rs.5,000/- (Rupees Five thousand) from the judgment debtor, the decree holder (Kartik Lal Deb) has repatriated his right over the decreetal land and he has relinquished his right in favour of the judgment debtor. It has also surfaced that the attorney of the decree holder raised some objections regarding the maintainability of such compromise.

**[11]** Having regard to the respective contentions, the execution court by the order dated 18.06.1999 passed in case No. Ex.(T) 16 of 1997 has observed as under:

**In view of my foregoing discussions, I come to the conclusion that the Attorney has lost all his force to take any step in the present proceeding on behalf of the D.H. due to cancellation of the Power of Attorney.**

**Now the question is whether the compromise petition filed by the D.H. and J.Ds U/Or. 23, Rule 3 C.P.C. is maintainable. Order 23, Rule-3 deals with the circumstances when a compromise**

**petition is filed by the parties in a pending suit on the basis of which the court has been empowered to pass a decree. So it is clear that an application U/Or. 23, Rule-3 C.P.C. is not applicable in case of an execution proceeding. However, when a decree has been otherwise adjusted in whole or in part to the satisfaction out of court, the D.H. may certify such payment of adjustment to the court U/Or. 21, Rule-2 C.P.C. and thereafter the necessary order may be passed.**

**With the above observation, the application U/Or.23 Rule 3 of the C.P.C. stands dismissed.**

**[12]** It has been observed in the order dated 05.07.1999 passed in case No. Ex.(T) 16 of 1997 that '*since the decree has been passed adjusted out of court to the satisfaction of the D.H. there is no necessity of proceeding with the Execution case. So the execution proceeding is disposed of U/O- 21 Rule -2 of C.P.C.*' There cannot be any uncertainty that the suit can be adjusted despite pendency of the execution proceeding, in terms of the provisions of Order XXI Rule 2 of the C.P.C. Apart that, there is no dispute that the defendants do not have any title over the suit land. They have claimed possession on the land through Kartik Lal Deb. According to them, Kartik Lal Deb had entered into an agreement that after settlement of the case, he would sell out the land to them. Thus, the trial court has observed that they are having permissive possession and that cannot be otherwise described.

This fact however, has not been much highlighted in the memorandum of appeal by the present appellants. Even no mention of that adjustment has been made in the said appeal. The principal ground of objection that has been agitated is that the suit being Title Suit No.46 of 2000 is hit by the principles of *res judicata* on the face

of the judgment and decree dated 17.01.1985 delivered in Title Suit No.04 of 1979. In addition thereto, the defendants, the respondents herein have tried to make out a case of adverse possession over the Schedule-B land. According to them, they have been possessing the suit land adversely since 1960. In view of the adjustment made, it cannot be held that the suit is barred by the principles of *res judicata* inasmuch as by way of adjustment, the decree holder (Kartik Lal Deb) has relinquished his all rights and title over the suit land. Therefore, the observation made in the said judgment dated 17.01.1985 cannot have any bearing on the subsequent suit. After adjustment a new right have emerged in favour of the predecessors of the plaintiffs. As such, it has been rightly held that the suit is not hit by the principles of *res judicata* by the courts below. So far the another ground of objection as regards the adverse possession over the suit land as raised in this appeal is concerned, this Court has straightway rejected the said ground as this Court has not taken any cognizance of the said ground at the time of admission. It appears from Para-14 of the written statement filed by the appellants that they have pleaded that the possession of the Schedule –B land was handed over to the deceased Kartil Lal Deb in pursuance to the deed of agreement i.e. '*bainapatra*' which was executed on 19.02.1960 and possession of the Schedule-B land was handed over to Kartik Lal Deb as he acquired right and interest over the said land and as per the finding of the trial court in Title Suit No.04 of 1979, this fact has acquired finality as the trial court has returned the finding that Naresh Chandra Acharjee parted with the right and interest as well

as possession over the schedule-B land. Kartik Lal Deb inducted Satish Ch. Ghosh as permissive possessor during pendency of the litigation. It has been submitted that the deceased, Satish Ch. Ghosh i.e. predecessor in interest of the defendants had been possessing the schedule-B land since 1960 and this possession was hostile to the right, title and interest of the plaintiffs herein. It is apparent that Kartik Lal Deb was the contingent possessor and the defendants, the appellants herein have pushed their feet into the shoe of Kartik Lal Deb. Therefore, the claim of adverse possession cannot be sustained. Moreover, as Kartik Lal Deb has adjusted his claim over the suit land, the possessor under him cannot be permitted to raise the plea of adverse possession. As such, this appeal is devoid of merit and accordingly, the same is dismissed.

Prepare the decree accordingly.

Send down the LCRs thereafter.

**JUDGE**

*Sujay*