

**THE HIGH COURT OF TRIPURA
AGARTALA**

RSA NO. 12 OF 2011

APPELLANTS :

- 1. Sri Hiran Miah,**
- 2. Sri Shah Alam,**
- 3. Sri Alamgir Hussain @
Alamgir,**

- All are sons of Late Apter Ali,
residents of Vill. Thakur Pukur,
P.S. Sonamura, District-West Tripura.

BY ADVOCATES :

Mr.K.N.Bhattacharjee,
Mr.R.C.Deb,
Mr.Kohinoor N Bhattacharjee,

- *Vs* -

RESPONDENT :

- 1. Sri Goutam Kumar Paul,**
Son of Sri Sudhir Kumar Paul,
Resident of Vill.-Santinagar,
P.S. Sonamura,
District-West Tripura,

BY ADVOCATE :

Mr. S. C. Das,

PROFORMA-RESPONDENTS :

- 2. Sri Animesh Paul,**
Son of Late Adhir Paul,

- 3. Smti. Pratima Paul,**
Wife of Late Adhir Paul,

- 4. Smti. Bijaya Paul,**
Wife of Sri Dulal Paul,

- All are residents of
Vill.-Santinagar,
P.O. Dhanpur, P.S. Sonamura,
Dist.-West Tripura.

5. Smti. Sankari Paul,
Wife of Sri Indrajit Paul,
resident of Vill-Sovapur,
P.S. Sonamura,
Dist.-West Tripura.

BY ADVOCATE :

Mr.D. Sarma,

**BEFORE
THE HON'BLE MR. JUSTICE S.C. DAS**

Date of hearing & delivery of
Judgment & order : **21.09.2015.**

Whether Fit for Reporting :

Yes	No
	✓

JUDGMENT & ORDER(ORAL)

This second appeal under Section 100 of the Code of Civil Procedure is directed against the judgment and decree dated 03.09.2010 passed by learned Additional District Judge, Sonamura, West Tripura in Title Appeal No.02 of 2010, whereunder he has affirmed the judgment and decree dated 17.02.2010 passed by the learned Civil Judge, Junior Division, Sonamura, West Tripura in Title Suit No. 19 of 2007.

2. Heard learned senior counsel, Mr. K. N. Bhattacharjee for the appellants and learned counsel, Mr. S. C. Das for the respondent No.1. No representation on behalf of the proforma respondents.

3. By order dated 23.02.2011 the second appeal has been admitted for hearing on the following substantial question of law :-

"Whether the learned courts below committed error by holding that the plaintiff acquired right, title and interest in respect of 'B' Schedule and 'C' Schedule land?"

4. In the course of hearing, on the submission of learned senior counsel, Mr. Bhattacharjee, which is not opposed by learned counsel, Mr. Das, the following substantial question of law has been formulated :-

"Whether the judgment and decreed passed by the trial Court in Title Suit No.19 of 2007 and affirmed by the appellate Court in the first appeal in Title Appeal No.02 of 2010 suffer from perversity?"

5. Respondent No.1 as plaintiff (hereinafter mentioned as 'plaintiff') instituted Title Suit No.19 of 2007 praying for declaration of title and confirmation of possession in respect of 'B' Schedule land, which is a part of land described in Schedule 'A' of the plaint and also for declaration of title and recovery of possession of 'C' Schedule land and for permanent injunction restraining the principal defendants, i.e., the appellants herein, (hereinafter mentioned as 'defendants') from entering into the suit land and/or disturbing the possession of the plaintiff.

6. The case of the plaintiff, in short, is that the suit land described in Schedule 'A' of the plaint along with other lands originally belonged to his grandfather, Shital Chandra Paul. The

said Shital Chandra Paul died leaving behind two sons, namely, Sudhir Kumar Paul and Adhir Paul and four daughters, namely, Bani Bala Paul, Rani Bala Paul, Suniti Bala Paul and Kalyani Paul. There was amicable partition of the suit land among the legal heirs of Shital Chandra Paul and the plaintiff purchased the suit land, measuring 1.50 acres, from his father Sudhir Chandra Paul and Bani Bala Paul (sister of Sudhir Chandra Paul) by dint of Exbt.-4, a registered sale deed dated 04.02.2006. The purchased land of the plaintiff corresponds to Hal Plot No.1353 of Khatian No.582 of Mouja-Manarchak, Revenue Circle-Sonamura, Sub-Division-Sonamura (Exbt.1). It is alleged by the plaintiff that the principal defendants on 20.06.2006 dispossessed him from 'C' Schedule land and on 08.05.2007 threatened the plaintiff to dispossess from 'B' Schedule land, which is a part of the purchased land of the plaintiff of Hal Plot No.1358 of Khatian No.582. The plaintiff, therefore, sought for decree as per his prayer.

7. Principal defendants, i.e., appellants herein, by filing a joint written statement, *inter alia*, contended that the suit land has not been described properly in the plaint since the boundary mentioned in the plaint is vague and within that boundary there was no Jote land belonged to the plaintiff. The suit land is a forest land and the defendants are possessing the suit land. It is also contended that the defendant No.1 is residing in the 'C' Schedule land for more than 20 years.

8. Proforma defendant Nos.2 to 5 also submitted a written statement, but did not ultimately contest the suit.

9. Considering the pleadings of the parties, the trial Court framed six issues, namely :

"(i) Whether the suit is maintainable in its present form and nature.

(ii) Whether the plaintiff has right, title, interest over the 'B' Schedule land.

(iii) Whether the plaintiff has title over the 'C' Schedule land.

(iv) Whether the plaintiff is entitled to recovery of possession of 'C' schedule land by evicting the defendants and demolishing the hut constructed by the defendants.

(v) Whether the plaintiff is entitled to get the decree as prayed for.

(vi) Whether the plaintiff is entitled to get any other relief/reliefs."

10. In course of trial, the plaintiff adduced both oral and documentary evidence. The principal defendants, i.e. the appellants herein, also adduced oral evidence and no documentary evidence adduced. The trial Court decided the issues in favour of the plaintiff and decreed the suit.

11. Aggrieved, the principal defendants, i.e., the appellants herein, preferred Title Appeal No.02 of 2010 and the appeal has been dismissed by the impugned judgment passed by learned Additional District Judge, Sonamura, West Tripura and hence, this second appeal.

12. Learned senior counsel, Mr. Bhattacharjee, appearing for the appellants submitted that the suit land as

claimed by the plaintiff originally belonged to Shital Chandra Paul and after the death of Shital Chandra Paul there was no partition of the suit land and other land between the legal heirs of Shital Chandra Paul. So, the plaintiff cannot claim any right over the suit land in view of the purchased deed, marked as Exbt.-4. He has also contended that the boundary description of the suit land given in the plaint is confusing and uncertain and the plaintiff and his witnesses in their cross-examination stated about a different boundary of the suit land, which makes it clear that the suit has been instituted on vague description of land and the trial Court as well as the appellate Court ignored the same and mechanically passed the impugned judgment and decree. It is also submitted by learned senior counsel, Mr. Bhattacharjee that the defendants are occupying forest land and defendant No.1 is residing there by constructing his house. The plaintiff did not pray for any local investigation of the suit land as to whether it is a Jote land or forest land in view of the pleadings of the defendants and so, the judgment and decree suffer from perversity. He has further submitted that the plaintiff claimed that there was a demarcation made by Sub-Divisional Magistrate, but no such document produced and so, plaintiff has no leg to stand in respect of identification of the suit land.

13. Mr. Das, learned counsel for the plaintiff-respondent has submitted that the plaintiff has proved his case by adducing documentary as well as oral evidence in respect of his title and possession of the suit land. He has categorically submitted that

plot No.1358 of Khatian No.582 (Exbt.-1) consists land measuring 4.18 acres, out of which the plaintiff purchased 1.50 acres, which is described in Schedule 'B' and 'C' of the plaint. The plaintiff sought decree as per the record of right and the boundary description has been given in the schedule of the plaint, which is in existence. The plaintiff was not in confusion about his Jote land and therefore, there was no necessity for the plaintiff to pray for a local investigation and/or a survey commission. The defendants claimed that they are possessing forest land, but in support of their claim they could not produce any document to show that they are in forest land.

14. This is an appeal against concurrent finding of two Courts below. The appellant challenged the decree on the ground of perversity that the trial Court and the appellate Court failed to consider the evidence on record. The plaintiff claimed title over 1.50 acres of land of plot No.1358 of Khatian No.582(Exbt.-1) by purchase from his father and aunt by dint of Exbt.-4. Exbt.-1 is a Khatian in the name of Shital Chandra Paul, i.e., grandfather of the plaintiff. It is a finally published Khatian. Exbt.-4 is the purchased deed of the plaintiff of the year 2006. But no Khatian has been prepared in the name of the plaintiff. The plaintiff stated that there was oral partition among the legal heirs of Shital Chandra Paul and there is such a recitation in the document, i.e., title deed dated 09.06.2000 (Exbt.-5) executed between Sudhir Kumar Paul, purchaser and Smti. Suniti Bala Paul and Smti. Rani Bala Paul, sellers. The said

document shows that there was an oral partition among the legal heirs of Shital Chandra Paul, but as per the oral partition no Khatian was prepared in the names of legal heirs of Shital Chandra Paul. The trial Court and appellate Court considered the oral and documentary evidence and arrived at a finding that the plaintiff has proved his case that he has purchased the suit land described in Schedule 'B' and 'C' of the plaint and accordingly, decreed the suit. There is evidence on record to support the finding arrived by the trial Court and the appellate Court.

15. The defendant-appellants only claim that they are in forest land and the description of the boundary given by the plaintiff is not correct. The suit has been decreed as per the description of land given in the plaint, which means that the decree has been passed for the Jote land record in Khatian No.582, Plot No.1358. The plaintiff cannot go beyond that Jote land recorded in Khatian No.582, even if there is some discrepancy in the boundary description. The specific description of the suit land has been in the schedule referring to Khatian No.582, Hal Plot No.1358, which has been decreed in favour of the plaintiff and no forest land has been decreed in favour of the plaintiff. The defendants' specific case is that they are occupying forest land and they are not occupying Jote land of the plaintiff.

16. The Proforma defendants though submitted written statement, but did not ultimately contest the suit and did not adduce any evidence. So, while the plaintiff has based his claim

on the basis of the Jote right of the land recorded in the Khatian in the name of his grandfather, which he claimed to have purchased by the registered deed, he has a better footing to have a decree in his favour. The Proforma defendants did not adduce any evidence to demolish the case of the plaintiff that the plaintiff has acquired no right, title and interest in the suit land.

17. In the given facts and circumstances of the case, it is quite immaterial as to whether there was any local investigation and/or survey commission to determine the suit land since the defendants' specific case is that they are on forest land and they are not occupying the Jote land of the plaintiff. I cannot agree with the submission of learned senior counsel that since there was no survey commission for determination of the Jote land of the plaintiff, the findings of the Courts below were perverse. No doubt the finding was cryptic, but is based on the pleadings and the evidence on record and so perversity cannot be imputed in respect of the findings of both the Courts below. No doubt the plaintiff did not produce any records of demarcation by the SDM, but that cannot frustrate the case of the plaintiff. The plaintiff also did not get a Khatian prepared in his name as per his purchased deed. But it is clear from his purchased deed that he has purchased the land of plot No.1358 of Khatian No.582 in the name of Shital Chandra Paul, his grandfather. Therefore, in view of the documentary and oral evidence adduced by the plaintiff, I am of considered opinion that the decree passed by the trial

Court and affirmed by the appellate Court do not suffer from perversity and hence, the second appeal stands dismissed.

18. Send back the lower Court records along with a copy of this Judgment.

JUDGE