

THE HIGH COURT OF TRIPURA
AGARTALA

RSA NO. 13 OF 2011

APPELLANT :

Sri. Nani Gopal Deb,
S/O. Late Umesh Chandra Deb,
Vill. Chandrapur, P.O. Reshambagan,
P.S. East Agartala, District West Tripura.

BY ADVOCATES :

Mr. P. K. Dhar,
Mr. H. Chakraborty,

- Versus -

RESPONDENT :

Sri. Sudhir Ranjan Deb,
S/O. Late Harendra Chandra Deb,
Vill. Ambagan, P.O. & P.S. Bishalgarh,
District West Tripura.

BY ADVOCATES :

Mr. D. R. Chowdhury,
Mr. S. Sarkar,
Mr. D. Deb.

PROFORMA-RESPONDENTS:

1. Sri. Sushen Deb,
S/O. Late Harendra Chandra Deb,
Resident of Dhaleswar,
(Near Prachya Bharati School),
Agartala, P.O. Dhaleswar, P.S. East Agartala,
District West Tripura.

2. Sri. Pradip Deb,
S/O. Late Harendra Chandra Deb,
Resident of A.D. Nagar, P.O. A. D. Nagar,
Near T.V. Tower, P.S. West Agartala,
District West Tripura.

3. Sri. Sasanka Deb,
S/O. Late Harendra Chandra Deb,
Resident of Niharnagar, P.O. Belonia,
P.S. Belonia, District South Tripura.

4. Smti. Kalpana Deb,
W/O. Sri Asit Deb,
Resident of Bijoy Kumar Chowmuhani,
P.O. Agartala, P.S. West Agartala,
District West Tripura.

5. Smti. Santi Rani Deb (Das),
W/O. Sri Narayan Das,
Resident of Abhoynagar, P.O. Abhoynagar,
P.S. East Agartala,
District West Tripura.

6. Smti. Tulsi Deb (Debbarma),
W/O. Sri Pallab Debbarma,
Resident of Gakulpur, P.S. R. K. Pur,
P.O. Udaipur, District South Tripura.

7. Smti. Mallika Deb (Roy),
W/O. Sri Ranjit Roy,
Resident of Village Madhupur, P.O. Madhupur,
P.S. Amtali, District West Tripura.

BY ADVOCATES :

None.

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

Date of hearing and delivery
of Judgment and Order : **15.06.2015.**

Whether fit for reporting : **Yes.**

JUDGEMENT AND ORDER(ORAL)

This second appeal under Section 100 of the Code of Civil Procedure, 1908 is directed against the judgment and decree dated 19.11.2010 passed by learned Additional District Judge, West Tripura, Agartala(Court No.3) in Title Appeal No. 18 of 2009, whereunder the learned Additional District Judge set aside the

order dated 23.09.2009 passed by the learned Civil Judge, Junior Division, Agartala, West Tripura in Title Suit No. 85 of 2008.

2. Heard learned counsel, Mr. P. K. Dhar for the defendant-appellant and learned counsel, Mr. D. R. Choudhury for the plaintiff-respondent.

3. The second appeal has been admitted for hearing on the following substantial question of law :-

"Whether the learned first appellate court committed error by holding that civil court has jurisdiction to entertain a suit in respect of 'Bargadar', under the provision of Section 46-B(2) of the TLR And LR Act, 1960 and Section 188 of the said Act?"

4. The respondent No.1 as plaintiff (hereinafter mentioned as 'plaintiff') instituted Title Suit No. 85 of 2008 seeking declaration and perpetual as well as mandatory injunction in respect of the suit land described in the schedule of the plaint against the defendant No.1-appellant (hereinafter mentioned as 'defendant No.1').

5. The plaintiff, *inter alia*, contended that the suit land originally belonged to his predecessor, Bindu Basi Choudhury and the defendant No.1 was recorded as a Bargadar by the revenue authority since long and the defendant No.1 used to cultivate the land and would give 50% of the crops yielded in the suit land. The defendant No.1 suddenly stopped giving of 50% of the crops and also was trying to transfer the suit land and, therefore, the plaintiff instituted the suit seeking the following reliefs :-

"A. a decree for declaration for the Plaintiff's right, title and interest over the suit land,

B. a decree for declaration that the Defendant is a 'Bargadar' of the Plaintiff in the suit land as per provision of Section 111 of the TLR and LR Act having the right of cultivation in the suit land on behalf of the Plaintiff and to share the crops produced by cultivation on the suit land by the Defendant and the ratio of 50% and to pay the 50% share of the crops to the Plaintiff.

C. a decree for declaration that the Defendant on violation of the terms and conditions of 'Barga right' as well as non-performance of the obligation towards the Plaintiff over the suit land for non-payment of the share of the crops to the Plaintiff for a long period has lost the 'Barga right' over the suit land and to hand over the possession of the suit land to the Plaintiff in pursuance of a decree of mandatory injunction.

D. That, a decree for permanent injunction restraining the Defendant or his agent or agents from making any kind of transfer/sell, mortgage, lease etc. to any person or persons or Institution.

E. a decree for cost.

F. a decree for such other relief or reliefs in which the Plaintiff is entitled as per his pleadings."

6. The defendant No.1, i.e., the appellant herein, contested the suit by filing written statement, *inter alia*, contending that he was never a Bargadar under the plaintiff and his predecessor and that in 1977 he came into possession of the suit land unlawfully and possessing the same adversely denying the title of the rightful owner. He has also contended that the suit land was recorded in his name as Bargadar in a revenue case, i.e., M.R. Case No.2353 of the year 1977 under Section 46(2) of Tripura Land Revenue and Land Reforms Act, 1960 (for short 'TLR & LR Act') and the suit seeking declaration as a Bargadar is not maintainable since it is barred by law and further that the

defendant No.1 challenged the order recording him as a Bargadar by filing a revisional application before the revenue authority.

7. The trial Court took up the question of maintainability and jurisdiction as a preliminary issue and by impugned order dated 23.09.2009 held that the suit is barred by Section 46(B) and Section 188 of the TLR & LR Act and accordingly, dismissed the suit.

8. Aggrieved, the plaintiff preferred Title Appeal No.18 of 2009 before the learned District Judge and the learned Additional District Judge, Court No.3, West Tripura, Agartala by the impugned judgment and decree dated 19.11.2010 set aside the order dated 23.09.2009 passed by the learned Civil Judge, Junior Division, Agartala, West Tripura and remanded the suit to the Court of learned Civil Judge, Junior Division, Agartala for trial of the suit.

9. It is argued by learned counsel, Mr. Dhar that the plaintiff sought for declaration that the defendant No.1, i.e., the appellant herein, is a Bargadar and also sought for permanent injunction against the defendant that he shall continue as a Bargadar and shall continue to give the plaintiff 50% of the share of the produce from the land and such question can be decided only by the revenue authority as prescribed under Sections 46(A) and 46(B) of the TLR & LR Act and, therefore, the trial Court rightly dismissed the suit on the point of maintainability and jurisdiction. The appellate Court committed a serious wrong in interfering with

the order of dismissal and hence, the judgment and decree passed by the appellate Court is liable to be interfered.

10. Mr. Choudhury, learned counsel for the respondents submitted that the defendant No.1 has already been adjudicated as a Bargadar by the revenue authority in M.R. Case No.2353 of 1997 on 14.06.1977 and the defendant No.1 continued as a Bargadar, but suddenly he had stopped payment of the share of crops in terms of his status as Bargadar and also was trying to transfer the suit land and, therefore, the plaintiff instituted the suit, which cannot be held barred by any law.

11. Admittedly the suit has been instituted for declaration that the plaintiff has got right, title and interest in the suit land and also prayed for declaration that the defendant No.1 is a Bargadar and is bound to give 50% of the crops of the suit land in terms of his status as Bargadar and further prayed for permanent as well as mandatory injunction as a consequential relief.

12. The defendant by filing written statement contended that he entered into the suit land in the year 1977 unlawfully and acquired title by adverse possession and that he is not a Bargadar. Such an issue has to be decided in a Civil Suit and it cannot be said that the Civil Court has no jurisdiction to decide such issues involved between the plaintiff and defendant No.1.

13. The learned Additional District Judge in para 8 of the judgment has observed thus :-

"8. The bone of contention of the appeal is whether the civil court has got jurisdiction to decide the suit bearing No. T. S. 85 of 2008 filed by the plaintiff-appellant.

Sub-Section (1) OF Section 46B of T.L.R. & L.R. Act provides that-

"Notwithstanding anything contained in any other law for the time being in force, no order or other proceedings whatsoever under section 46A shall be questioned in any civil court and no civil court shall entertain any suit or proceedings in respect of any matter mentioned in that section."

It appears from the sub-section 1 of Section 46B of T.L.R. & L.R. Act that no order or proceeding under Section 46A, i.e., in respect of register of Bargadar shall be questioned in civil court and no civil court shall entertain any such suit or proceeding in respect of register of Bargadar. Here in this case the plaintiff-appellant admitted the defendant -respondent No.1 as Bargadar as recorded by the revenue authority. He does not challenge the order of the revenue authority in respect of status of the defendant as Bargadar and so I find that the order of the revenue authority is not challenged by the plaintiff-appellant and in view of the above facts I do hold that the jurisdiction of the Civil Court is not based as the order of the revenue authority is not challenged/questioned. At the same time the revenue authority has got no jurisdiction to decide the title of the plaintiff-appellant and also on the prayer of the permanent injunction against the defendant which is exclusively the jurisdiction of the civil court. So, in view of the findings above I am of the opinion that the learned court below has committed error in holding that the civil court has got no jurisdiction to try the suit filed by the plaintiff-appellant.

It is important to note here that the plea taken by the defendant-respondent in his written statement appears to be self contradictory. Once he stated that he is not the Bargadar under the plaintiff-appellant and on the contrary it is contended that he acquired title of the suit land by adverse possession. What I find here is that the main contention of the defendant-respondent is that he acquired title by the adverse possession and to frustrate the suit he has taken the plea that he is not the Bargadar though finally published record of right vide khatian No. 3928 submitted by the defendant-respondent clearly shows that he is a recorded Brgadar of permanent character. It is further important to note here that the

defendant-respondent in his written statement at para-18 admitted the facts that his name was recorded as Bargadar in respect of the suit land by the revenue authority vide order dated 14.6.1977 in M.R. Case No. 2353 under Section 46(2) of T.L.R. & L.R. Act. I have also gone through the photocopy of certified copy of order dated 14.6.1977 in M.R. Case No. 2353 under Section 43(2) of T.L.R. & L.R. Act which is found consistent with the submission of the defendant-respondent in para-18 of his written statement. So, from his admission as well as from the photo copy of order of M.R. Case No.2353 it is found that the defendant-respondent is a recorded Bargadar in respect of the suit land and his contention that he is not a Bargadar appears to be incorrect and thus I find that the plea that he is not a Bargadar is taken by the defendant-respondent is only to frustrate the suit filed by the plaintiff-appellant."

14. I am in full agreement with the above finding of the learned Additional District Judge in respect of the maintainability of the civil suit instituted by the plaintiff. A civil Court's jurisdiction cannot be put in a watertight compartment. Only the issue in respect of the status of a Bargadar has to be decided by the revenue authority as prescribed under the TLR & LR Act. Here the plaintiff instituted the suit not to decide the status of a Bargadar but to declare that the defendant No.1, who has already been adjudicated as a Bargadar shall continue as such and shall make payment of the share of the crops in terms of Barga cultivation.

15. Section 46(A) of the TLR & LR Act prescribes the provision in respect of register of Bargadars and Section 46(B) has barred the jurisdiction of the civil Court to decide the issue in respect of a Bargadar.

16. In the present suit the plaintiff did not come before the civil Court to decide the status of defendant No.1 whether a Bargadar or not? It is the case of the defendant No.1 also that he was decided as a Bargadar in a M.R. Case in the year 1977 and based on that the plaintiff prayed for declaration that the defendant No.1 is a Bargadar. The defendant however, pleaded that he filed revision petition against recording of his name as a Bargadar, but there is neither any revision case number nor any order passed by the revenue Court. Even if there was a revisional application, the plaintiff's suit cannot be dismissed on the ground of maintainability or jurisdiction what had been done by the trial Court. The appellate Court rightly set aside the order passed by the trial Court and I find no infirmity in the judgment dated 19.11.2010 passed by the learned Additional District Judge in Title Appeal No.18 of 2009.

17. The second appeal, therefore, stands dismissed. The trial Court should frame issues on the basis of pleadings of the parties and decide all the issues involved between the parties in the suit after recording evidence according to law.

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

JUDGE