

IN THE HIGH COURT OF TRIPURA
AGARTALA

R.S.A. No.21 of 2014

Shri Chitta Ranjan Debnath,
son of late Ramendra Baishnab
@ Ramendra Debnath, resident
of Village – Uttar Chandrapur,
P.S. Radhakishorepur, Udaipur,
South Tripura (now Gomati
Tripura) District.

..... Appellant

- V e r s u s -

- 1. Smti. Renu Bala Debnath,**
wife of late Lal Mohan Debnath.
- 2. Shri Rakesh Debnath,**
son of late Lal Mohan Debnath.
- 3. Smti. Pranati Debnath,**
daughter of late Lal Mohan Debnath.

All are residents of
Village – Uttar Chandrapur,
P.O. & P.S. Radhakishorepur,
Udaipur, South Tripura District
(now Gomati Tripura).

- 4. Smti. Minati Debnath,**
resident of Village – Holakhet,
P.S. Radhakishorepur, Udaipur,
South Tripura (now Gomati
Tripura).

..... Respondents

BEFORE
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the appellant : Mr. D. Bhattacharjee, Advocate.

For the respondents : Mr. B. Banerjee, Advocate.

Date of hearing : 12.12.2014

Date of delivery
of Judgment & Order : **26.02.2015**

Whether fit for reporting:

YES	NO
√	

JUDGMENT & ORDER

This is an appeal under Section 100 of the C.P.C requesting the legality of the judgment and decree dated 05.08.2013 delivered in Title Appeal No.22 of 2011 by the District Judge, South Tripura, Udaipur.

[2] The appellant is the defendant in the suit being Title Suit No.05 of 2010 filed for declaration of title, recovery of possession and perpetual injunction etc. by the respondents herein. The said suit has been decreed by the judgment and order dated 20.08.2011 by the Civil Judge, Sr. Division, South Tripura, Udaipur, hereinafter, the trial court, holding that:

"In this present case though the plaintiff side failed to produce the allotment order on the basis which they got allotment of the suit land, but they proved the record of right where the name of the plaintiff as mentioned as an allottee with an specific allotment order and as the defendant side has failed to prove contrary the entry made in the record of right of the plaintiff by adducing documentary evidence, hence, entries in the record of right of the plaintiff is presumed to be correct.

Hence from the above discussion made I am of the opinion that plaintiff side prove the right, title and interest over the A schedule land of the suit land and the plaintiffs side is entitled to get recovery of possession of Schedule 'B' land by evicting the defendant and plaintiffs are also entitled for declaration of confirmation of possession over the Schedule 'C' land."

[3] Aggrieved by the said judgment passed by the trial court, the appellant herein preferred an appeal under Section 96 of the C.P.C. being Title Appeal No.22 of 2011 in the court

of the District Judge, South Tripura, Udaipur, which has been dismissed by affirming the said finding in the following manner:

"2nd issue is about right, title and interest of the respondents over the 'A' schedule land and 3rd issue is whether the respondents are entitled to get recovery from the B schedule land, 4th issues is about declaration and confirmation over 'C' schedule land and 5th issues is about perpetual injunction. All these issues are related and these issues are taken together. While deciding the issues learned court below evaluated the evidence of the plaintiff respondent No.2, PW-1 Rakesh Debnath, P.W.2- Narayan Debnath, P.W.3- Ranjit Debnath and also analyze the evidence of appellant's side, D.W.1- Chitta Ranjan Debnath, D.W.2- Anil Chakraborty, D.W.3- Nepal Debnath, D.W.4-Benulal Bhowmik. Exbt.1 is the certified copy of Khatian. That Khatian disclosed the fact that the land under Dag No.1619 and 1623 was allotted in the name of Renubala Debnath and her husband Lal Mohan Debnath. Area of the land is .07 acres. It is true that the allotment order is not produced. But Khatian is definitely is a allotted Khatian. One of the allottee Lal Mohan Debnath died on 11.01.2008. Survivalship certificate is also produced which support that the respondents No.1,2,3 and 4 being legal heirs substituted Lal Mohan Nath, the original allottee of the land. The mater of cancellation of allotment is not subject matter of this case. The dispute arises in respect of possession of the land which was handed over to the appellant as alleged. It is alleged that the defendant appellant paid Rs.25,000/- as consideration money to the respondent No.1 and her husband. There is no documentary evidence in respect of payment of Rs.25,000/- for the purpose of the suit land under plot No.1619 and 1623 under Khatian No.870. This entry in the Khatian is not contradicted by any other document. The appellant himself admitted that the land was allotted in favour of the respondents. This fact admitted in para 15 of the written statement. The admission itself cannot create title no doubt, but the person who admitted it cannot deny later on, on the principles of estoppels. He is not allowed to blow hot and cold air in the same breath. No better evidence is given by the appellant to show that the land was purchased in the year 1998 by him. There is also no evidence to show that Rs.25,000/- was paid as

consideration money. It is admitted position that the appellant did not file any suit for specific performance of contract to prove that they were always ready to perform their side of contract. From the evidence adduced by the respondents side it appears that the part of the suit land under B schedule was allowed to be possessed by the appellant in the year 2006. The respondents allowed them to possess it as permissive possessor. Going through settlement record such permissive possession, however, not found. After lapse of some years in the year 2009 respondents claimed to get back the land for their own purpose and the appellant refused. One photo copy of allotment is found which is for land measuring .07 acres under Dag No.1619 and 1623. Allotment Khatian No.870 is prepared in the name of Renubala Debnath and her husband Lal Mohan Debnath. Nothing contrary is found to disbelieve this Khatian which clearly reflects the ownership of the respondents. Therefore, the learned court below viewed that the oral contract between the parties not proved by convincing evidence. The advance payment or any hand note not proved. In this regard learned court below referred the decision published in AIR 2004 SC 1801, AIR 2000 SC 1729. After discussion and analysis of the evidence on record learned court below viewed that the plaintiffs side have proved their right, title and interest over schedule A land. Appellant side admitted possession over 'B' schedule land. As per contention of the appellant the land was occupied on the basis of agreement since 1998. But the appellant could not produce any convincing evidence to prove such oral contract and possession on payment of Rs.25,000/-. The matter of cancellation of record of right is not the matter of discussion in the civil court. It is admitted position that the appellant is in possession of the suit land which is owned by the respondents. The evidence on record convincingly proved the title of the respondents over 'B' schedule land which is under occupation of the appellant. So, the respondents are entitled to get decree for recovery of possession by dispossessing the appellant from the 'B' schedule land. Being title holder of the remaining 0.02 acres of land under C schedule, the plaintiff respondents are entitled to get decree for confirmation of possession and perpetual injunction. The learned court below rightly passed the order of eviction and perpetual injunction and this court do not consider it

proper to interfere with the decision arrived upon."

[4] It is apparent from the finding of the appellate court that the record of right was cancelled by the competent authority despite that the appellate court based on 'the further evidence' has observed that the evidence on the record convincingly proved the title of the respondents over the Schedule-B land which is under occupation of the appellant. So the respondents are entitled to get decree for recovery of possession of the Schedule-B land from the appellant. This finding is under challenge in this appeal.

[5] While admitting this appeal, by the order dated 25.09.2014, the following substantial question law was formulated:

"Whether the first appellate court was correct by rejecting the prayer for adducing additional evidence as regards the cancelation of the source of title, the order of the allotment, by the order dated 16.05.2013 passed in the Title Appeal No.22 of 2011 and what would be the consequence of such cancellation of the allotment order if admitted?"

[6] At the outset when the matter is taken up for hearing, Mr. B. Banerjee, leaned counsel appearing for the appellant has emphatically submitted that the prayer for additional evidence has been correcting rejected by the first appellate court as no evidence which emerges subsequent to the decree cannot be allowed to be brought on the record of evidence and hence, according to him, this appeal is not

maintainable on the substantial question of law as formulated by this Court since that question is bound to debase the very foundation of this appeal. Whether this appeal is at all maintainable or not, this aspect with concurrence of the learned counsel appearing for the parties is taken up first.

[7] Mr. B. Banerjee, learned counsel has submitted that by filing an application under Order XLI Rule 27 of the C.P.C., the appellant herein prayed for leave to introduce one order dated 12.10.2012 passed by the Sub-Divisional Magistrate, Udaipur Sub Division cancelling the allotment order which is instrument of title in respect of the suit land, as the additional evidence. On the face of the serious objection, the appellate court rejected such prayer by the order dated 16.05.2013 in T.A. No.22 of 2011.

[8] Mr. D. Bhattacharjee, learned counsel appearing for the respondents has submitted that the legality of the said order is under challenge by this appeal as the appellant is entitled to challenge any order passed in a proceeding in the appeal in view of Section 107 of the C.P.C. For purpose of reference, the order dated 16.05.2013 is extracted hereunder:

"Learned Advocate for the appellant is present.

Learned Advocate for the respondents is also present.

Written objection filed against the prayer filed under Order 41 Rule 27 of the C.P.C.

Heard both sides.

Learned advocate for the appellant filed another prayer for giving additional evidence. This additional evidence is the certified copy of the petition filed by the respondents side in the case before the Hon'ble High Court vide W.P.(C) No.68 of 2013.

Learned advocate for the appellant submits that the primary document i.e. the Khatian on the basis of which the decree was given by the learned court below is already cancelled by the revenue court. The decision of the revenue court is to be incorporated as evidence for just decision of the case.

On the other hand, learned advocate for the respondents argues that the operation of the order of the revenue court is already stayed by the order of the Hon'ble High Court in W.P.(C) 68/2013. As the operation of that order is stayed, so it cannot be taken into consideration by the civil court.

Learned advocate for the appellant then submits that different facts were placed before the Hon'ble High Court for getting the stay order. So, that petition which is contradictory with the submission before this court is required to be given in this cases as additional evidence.

I have considered the submission of both sides. Gone through the petition and the written objection.

Admittedly, the order of the S.D.M., Udaipur dated 12.10.2012 is stayed by the Hon'ble High Court in case No.W.P.(C) 68/2013. As the operation of that order is stayed, so the order of S.D.M. which is a public document cannot be taken into consideration for just decision at this stage. Writ petition filed by the respondents side before the Hon'ble High Court under Article 226 of the Constitution of India for getting stay order is not a matter for consideration to decide the case. In the writ petition nature of relief sought is of different category and it is before the domain of the Hon'ble High Court. Civil Court cannot take into consideration the writ petition which was filed before the Hon'ble High Court. So, the writ petition pending before the Hon'ble High Court cannot be considered as evidence in the Civil Court.

Therefore, the prayer filed by the appellant for taking into consideration of the

writ petition filed by the respondents before the Hon'ble High Court is unreasonable and not relevant. Therefore, this prayer for giving additional evidence in respect of the order of the S.D.M, Udaipur and the writ petition filed before the Hon'ble High Court, stands rejected."

[Emphasis added]

[9] Mr. B. Banerjee, leaned counsel appearing for the appellant in support of his contention placed reliance on a decision of the apex court in **Syed and Company and others vs. State of Jammu and Kashmir and others**, reported in **1995 Supp (4) SCC 422**, where the apex court has enunciated the law as under:

"10. We have carefully considered the above submissions. We are of the view that no exception could be taken to the judgment of the High Court. No doubt a prayer was made before the prescribed authority by the State requesting that a decree might be granted for the amount of price of timber extracted by the party. But that prayer alone was not enough. The pleadings ought to have been there as to what exactly was the basis of the prayer. We are afraid that the entire case of the State before the prescribed authority proceeded only with reference to royalty and interest thereof, but not with reference to the price of the timber. It is true that in **Malik Abdul Ahmad Shaj Jalil Ahmad Akhtar: AIR 1982 J & K 16** it has been held that the prescribed authority under Section 52 is empowered to determine the price of timber extracted. The State at that stage, should have amended the pleading and incorporated the basis for the claim for the price of timber. But for reasons best known the State merely took out an application under Order 41 Rule 27 to lead in evidence. Of course, evidence could have been allowed if there were pleadings to that effect. In this case, there was none. It is settled law that no evidence can be let in without the pleading. The High Court was fully justified in rejecting the application."

[Emphasis added]

[10] Having regard to **Syed and Company and others vs. State of Jammu and Kashmir and others**, Mr. Banerjee, learned counsel has submitted that the appellant made an adventurous expedition to introduce the said cancellation order issued by the Sub-Divisional Magistrate inasmuch as there is no such pleading in the written statement in this regard. He has placed further reliance on another decision of the apex court in **Prataprai N. Kothari vs. John Braganza**, reported in **1999 AIR SCW 1284**, where the apex court has reiterated the law as under:

“10. Reliance was sought to be placed on the additional evidence admitted by the learned Single Judge during the pendency of the appeals to prove that the appellant had title to the property. It is settled law that in the absence of any plea, no evidence is admissible. The Single Judge of the High Court overlooked that when there was no plea or issue on the question of title, no evidence whatever was admissible regarding the same. He acted beyond his jurisdiction in permitting additional evidence to be filed in appeals.”

[11] In addition to the plea of absence of the pleading, Mr. Banerjee, learned counsel has placed reliance on the decision of the apex court in **Nasib Kaur & Ors. vs. Col. Surat Singh(Deceased) through L.Rs. & Ors.**, reported in **2013 AIR SCW 1299** as regards the scope of interference by the High Court with the concurrent finding. It has been enunciated by the apex court in **Nasib Kaur & Ors. vs. Col. Surat Singh(Deceased) through L.Rs. & Ors.** as under:

"11. The Plaintiff, however, contended in the second appeal before the High Court that material evidence had not been taken into consideration by the first appellate court and the High Court has framed the following substantial question of law:

Whether the Courts below have failed to consider the material evidence on record?"

Having framed the substantial question of law, the High Court should have pointed out in the impugned judgment the material evidence which had not been considered by the first appellate court, which if considered, would have established ownership of the plaintiff to the suit property. Instead of pointing out the material evidence which has not been considered by the first appellate court, the High court has made its own assessment of the entire evidence as if it was the first appellate court and held that the plaintiff was the owner of the suit property and was entitled to possession of 17 karams X 45 karams of land depicted in letters EHGF in the site plan Ex.PW-9/A and that he was also entitled to the relief of permanent injunction restraining the Plaintiff from raising any construction in the said property or alienating the said property. The High Court has itself noticed in the impugned judgment that the land depicted in the site plan Ex.PW-9/A as EHGF was delivered to Col. Girdhar Singh and his family members at the time of execution of the sale deed by the Plaintiff as Attorney of Nanak Singh on 19.07.1979 and the appellants had taken possession of the aforesaid land from Col. Girdhar Singh and his family members in 1987. The appellants were, thus, in legal possession of the suit property and the High Court in exercise of its powers under Section 100, CPC could not have reversed the findings of the trial court and the first appellate court and decreed the suits for declaration of title and for recovery of possession and injunction in favour of the Respondents so as to adversely affect such legal possession of the appellants.

12. In *Achintya Kumar Saha v. Nanee Printers and Ors.* (AIR 2004 SC 1591) (SUPRA) cited by learned counsel for the respondents, this Court found that the main issue around which the entire case revolved was whether the agreement dated 05.07.1976 was a license or a tenancy and though this issue was before the trial court and the agreement was held to be a licence,

the lower appellate court had not adjudicated upon this issue and this Court held that when the core issue is not adjudicated upon, it raises a substantial question of law under Section 100, CPC. In the present case, the core issue was whether the plaintiff was the owner of the suit property and the first appellate court has held in C.A. No. 1721 on 20.03.2004 that the plaintiff has not been able to prove his ownership over the suit property and has further held in C.A. No. 16-T filed on 19.09.1990 that the plaintiff's own admitted case in the plaint is that the appellants had purchased the suit property from Col. Girdhar Singh and his family members and were in possession of the same and hence the Plaintiff was not entitled to declaration of his title, recovery of possession and injunction. In this case, therefore, the first appellate court had decided the core issue against the Plaintiff and no substantial question of law arose for decision in this case by the High Court under Section 100, CPC."

[12] From the other side, Mr. D. Bhattacharjee, learned counsel appearing for the respondents while responding to the submission made by Mr. Banerjee, learned counsel appearing for the appellant has taken this Court to the written statement filed by the appellant herein to demonstrate that it has been pleaded by the appellant, the defendant in the suit, in Para-19 of the written statement as under:

"19. That the answering defendant also filed an application before the DM & Collector, South Tripura, Udaipur for redress and the answering defendants submits the photocopy of Khatian No.870 under Mouza Uttar Chandrapur, original of which remained in the custody of plaintiffs and he also submits hand sketch Map of suit plot No. 1623, 1623, R.S. Plot No.1622 and other adjacent plots under Mouza-Uttar Chandrapur No.41, Sheet No.2(P) of T.K. Matabari and the answering defendant crave the leave of the court filed the certified copies before the court of at the time of examination of the witnesses and also pray

before the Court to file any other documents if available during the course of trial."

[13] Mr. Bhattacharjee, learned counsel thereafter has submitted that the said petition was filed before the District Collector, the statutory authority to allot the land in favour of any person or to cancel the same. Thus, it would be grossly inappropriate to say that there was no pleading in the written statement as regards the cancellation proceeding. He has emphatically submitted that the order of the appellate court by rejecting the application for the additional evidence and the impugned judgment and decree are all the outcome of misconception of law and as such, interference from this Court is warranted for justice. He has placed reliance on **P. Purushottam Reddy and another vs. M/s. Pratap Steels Ltd.**, reported in **AIR 2002 SC 771**, where it has been held as under:

"14.The subsequent events which are material or ought to be noticed by the appellate Court are only two i.e. (i) communication of the order of the competent authority (Urban Land Ceiling) holding the land of the appellants to be within ceiling limits, and (ii) order of the BFIR to be a sick company. These two events are subject matter of documentary evidence and almost admitted between the parties. The High Court can be requested to take note of such subsequent events by bringing the relevant documents on record which being public documents would not require any formal proof. The High Court may take note of such subsequent events and test the validity of judgment under appeal by reference to those events also or mould the relief suitably and as may be considered necessary."

[14] According to Mr. Bhattacharjee, learned counsel that the order of cancellation is no doubt is a public document in terms of Section 74 of the Evidence Act and hence, even though the said order has come up subsequent to the decree under challenge, there was no preclusion for admitting such document which has serious bearing on the question of title.

[15] Mr. Bhattacharjee, learned counsel has also referred another decision of the apex court in **North Eastern Railway Administration, Gorakhpur vs. Bhagwan Das (D) by Lrs.**, reported in **AIR 2008 SC 2139** where it has been enunciated that:

11. We have considered the submissions of the learned counsel in the light of the documents on record. We are constrained to observe that the High Court has altogether failed to consider the application filed by the appellant under Order 41 Rule 27 C.P.C. We also feel that even the application under Order 6 Rule 17 C.P.C. has not been dealt with in its correct perspective and the High Court was in error in rejecting the same on the sole ground that such an application was not maintainable at the stage of second appeal.

12. Though the general rule is that ordinarily the appellate court should not travel outside the record of the lower court and additional evidence, whether oral or documentary is not admitted but Section 107 C.P.C., which carves out an exception to the general rule, enables an appellate court to take additional evidence or to require such evidence to be taken subject to such conditions and limitations as may be prescribed. These conditions are prescribed under Order 41 Rule 27 C.P.C. Nevertheless, the additional evidence can be admitted only when the circumstances as stipulated in the said rule are found to exist. The circumstances under which additional evidence can be adduced are:

(i) the court from whose decree the appeal is preferred has refused to

admit evidence which ought to have been admitted, (clause (a) of Sub rule (1)) or

(ii) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within the knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, [clause (aa) of sub-rule (1) inserted by Act 104 of 1976)] or

(iii) the appellate court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause. [clause (b) of Sub rule (1)].

[Emphasis added]

[16] Mr. Bhattacharjee, learned counsel has also relied on another decision of the apex court in **Kausalyabai and Akkabai (Dead) by LR. vs. Harishchandra Munnalal Gupta**, reported in **(2009) 5 SCC 129**, but this Court does not find that it has no relevance in the context of this appeal. However, the decision of the apex court as relied by Mr. Bhattacharjee, learned counsel in **Shyam Gopal Bindal & others vs. Land Acquisition Officer & another**, reported in **AIR 2010 SC 690** is certainly relevant. In **Shyam Gopal Bindal & others vs. Land Acquisition Officer & another** it has been held that the documents which are required for a just decision of a case and could not be brought on record cannot be precluded from being introduced invoking the provisions of Order XLI Rule 27 of the C.P.C. It has been held by the apex court in no unequivocal word that the documents sought to be

produced are Judicial Orders declaring the ownership rights of the appellants, those have a crucial bearing on the merits of the claim put forward by the appellants. It was pleaded by the appellant that the original plaintiff having died during the pendency of the civil suit the documents could not be brought on record as they were not aware of the orders. A prayer was duly made before the Appellate Court which was reported before the High Court for remanding the matter with an opportunity to adduce the additional evidence. In the fact and circumstances of that case, the apex court was of the opinion that the Appellate Court as also the High Court erred in law in not accepting the application for additional evidence and not remanding the matter back to the trial court.

[17] In this case in hand, the appellate court rejected the prayer for adducing the order of cancellation of the allotment which was gathered by the disclosure made under Right to Information Act. For purpose of reference, the cancellation order and the direction to record the name of the allotted land in the name of the appellant as the allottee in the Khatian are entirely extracted hereinafter. Even the copy of the order passed by the Sub-Divisional Magistrate, Udaipur, Gomati, Tripura is placed hereunder, one after another:

“In the Court of the Sub-Divisional Magistrate
Udaipur, Gomati District

ORDER SHEET

Sri Chitta Ranjan Debnath S/O Ramananda Bishnab alias Ramananda Debnath of Uttar Chandrapur	Vs.	Smt. Renubala Debnath, W/O Lal Mohan Debnath & Others of Uttar Chandrapur
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Proceeding under Section of the
TLR & LR Act, 1960 for cancellation of

Allotment Order

<i>Name of T.K. :- Matabari</i>		<i>Name of Mouja : - Uttar Chandrapur</i>
<i>Sl. No</i>	<i>Date of Order</i>	<i>Order</i>
1.	12/X/12	Notice duly served, returned file with records. Sri Rakesh Debnath, S/O- Lt. Lal Mohan Debnath appeared in person. On being asked whether he is in possession over the land in question, Sri Rakesh Debnath replied in the negative. Further, added that the land is under the possession of Chitta Rn. Debnath for the past 5-6 years. Sri Chitta Rn. Debnath appeared and contradicted. Stated that he has been possessing 0.05 acres of land spread over 2(two) Nos. R.S. Plot-1619 and 1623 for 0.03(0.02+0.01) and 0.02 acres is R.S. Plot No.-1622 by constructing dwelling house there for the past 12 years. Sri Benulal Bhowmik, S/O- Manoranjan Bhowmik appeared and stated that the land in question measuring 0.05 acres is under possession of Sri Chittta Rn. Debnath. Sri Anil Chakraborty, S/O- Lt. Jadab stated that he is well aware of the fact that a consideration money was exchanged between Sri Chitta Rn. Debnath and Sri Lal Mohan Debnath and his family members. At that time he was the Pradhan of a certain Panchayet. He confirmed the fact that a consideration money in the tune of Rs.25,000/- was exchanged between both the parties, of which he was a witness. Sri Rakesh Debnath denied the fact but failed to prove the contrary As per

	statement of ex-pradhan it is evident that Sri Chitta Rn. Debnath has been possessing the land since 1994 A.D. i.e. during the year when the allotment was formally made in favour of Lal Mohan Debnath and Renu Bala Debnath. The Tripura Land Revenue (Allotment of Land) Rules, 1980 has stated that allotment is made for agricultural purpose and also for construction of dwelling house. As apparent from the Col.-9 of Khatian No.870 it was evidently allotted for agricultural purpose. The conditions as laid down in the relevant Rules, <u>the allottee shall have to cultivate the land by himself</u> (Sec. Rules-5). It is once again reiterated that the O.P. viz. Rakesh Debnath, Renu Bala Debnath has admitted in Para-5 of the Plaint in c/w TS Case No.05/2010 that they have will fully allowed Sri Chitta Rn. Debnath to construct dwelling house thereon and take possession as required. By doing so, the O.P. have violated Rule 5 of TLR & LR(Allotment of Land) Rules, 1980. Thus, the allotte has committed a breach of the condition as mentioned in TLR & LR (Allotment of Land) Rules 1980 and therefore the allotment order of below mentioned schedule:- <table><tr><th>T.K.</th><th>Mouja</th><th>Kh. No.</th><th>R.S. Plot No.</th><th>Total Area</th><th>Possession of Sri Chitta Rn. Debnath</th></tr><tr><td>Matabari</td><td>Uttar Chandrapur</td><td>870</td><td>1623 1619</td><td>0.01 0.06</td><td>0.005 <u>0.025</u> 0.03</td></tr></table> is hereby cancelled. Subsequently, the plot area will be recorded in favour of Sri Chitta Rn. Debnath. The O.P. denied to put his signature on the order sheet, hence his signature could not be obtained. Matter is hereby called off and disposed. Arrange for sending a copy of the order to the Tdr., I/C, CLR Section, & party concerned.	T.K.	Mouja	Kh. No.	R.S. Plot No.	Total Area	Possession of Sri Chitta Rn. Debnath	Matabari	Uttar Chandrapur	870	1623 1619	0.01 0.06	0.005 <u>0.025</u> 0.03
T.K.	Mouja	Kh. No.	R.S. Plot No.	Total Area	Possession of Sri Chitta Rn. Debnath								
Matabari	Uttar Chandrapur	870	1623 1619	0.01 0.06	0.005 <u>0.025</u> 0.03								

“In the Court of the Sub-Divisional Magistrate
Udaipur, Gomati District

ORDER SHEET

Proceeding U/S Sub-Rule (VII) of Rule 15 of the
TLR & LR (Allotment of Land) Rules 1962 & Sub-
Rule (vi) of Rule 12 of the TLR & LR Rules 1980
for Cancellation of Allotment order.

Sri Chitta Ranjan Debnath S/O Ramananda Bishnab alias Ramananda Debnath of Uttar Chandrapur	Vs.	Smt. Renubala Debnath, W/O Lal Mohan Debnath & Others of Uttar Chandrapur
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Name of T.K. :- Matabari		Name of Revenue Mouja : - Uttar Chandrapur
Sl. No	Date of Order	Order
1.	12/X/12	Extract copy of order. Notice duly served return filed with records. Sri Rakesh Debnath, S/O- Lt. Lal Mohan Debnath appeared in person on being asked whether he is in possession over the land in question, Sri Rakesh Debnath replied in the negative. Further, added that the land in under the possession of Chitta Rn. Debnath for the past 5-6 years. Sri Chitta Rn. Debnath appeared and contradicted stated that he has been possessing 0.05 acres of land spread over 2(two) Nos. R.S. Plot-1619 and 1623 for 0.03(0.02+0.01) and 0.02 acres is R.S. Plot No.-1622 by constructing dwelling house there for the past 12 years. Sri Benulal Bhowmik, S/O- Manoranjan Bhowmik appeared and stated that the land in question measuring 0.05 acres is under possession of Sri Chittta Rn. Debnath. Sri Anil Chakraborty, S/O- Lt. Jadab stated that he is well aware of the fact that a consideration money was exchanged between Sri Chitta Rn. Debnath and Sri Lal Mohan Debnath and his family members. At that time he was the Pradhan of a certain Panchayet. He confirmed the fact that a consideration money is the tune of Rs.25,000/- was exchanged between both the parties, of which he was a witness.

	Sri Rakesh Debnath denied the fact but failed to prove the contrary As per statement of ex-pradhan it is evident that Sri Chitta Rn. Debnath has been possessing the land since 1994 A.D. i.e. during the year when the allotment was formally made in favour of Lal Mohan Debnath and Renu Bala Debnath. The Tripura Land Revenue (Allotment of Land) Rules, 1980 has stated that allotment is made for agricultural purpose and also for construction of dwelling house. As apparent from the Col.-9 of Khatian No.870 it was evidently allotted for agricultural purpose. The conditions as laid down in the relevant Rules, the allottee shall have to cultivate the land by himself (Sec. Rules-5). It is once again reiterated that the O.P. viz. Rakesh Debnath, Renu Bala Debnath has admitted in Para-5 of the Plaint in c/w TS Case No.05/2010 that they have willfully allowed Sri Chitta Rn. Debnath to construct dwelling house thereon and take possession as required. By doing so, the O.P. have violated Rule 5 of TLR & LR(Allotment of Land) Rules, 1980. Thus, the allotte has committed a breach of the condition as mentioned in TLR & LR (Allotment of Land) Rules 1980 and therefore the allotment order of below mentioned schedule:- <table><tr><th>T.K.</th><th>Mouja</th><th>Kh. No.</th><th>R.S. Plot No.</th><th>Total Area</th><th>Possessi on of Sri Chitta Rn. Debnath</th></tr><tr><td>Mata bari</td><td>Uttar Chandr apur</td><td>870</td><td>1623 1619</td><td>0.01 0.06</td><td>0.005 0.025 0.03</td></tr></table> is hereby cancelled. Subsequently, the plot area will be recorded in favour of Sri Chitta Rn. Debnath. The O.P. denied to put his signature on the order sheet, hence his signature couldn't be obtained. Matter is hereby called off and disposed. Arrange for sending a copy of the order to the Tdr., I/C, CLR Section, & party concerned. Sd/- Sub-Divisional Magistrate Udaipur, Gomati District	T.K.	Mouja	Kh. No.	R.S. Plot No.	Total Area	Possessi on of Sri Chitta Rn. Debnath	Mata bari	Uttar Chandr apur	870	1623 1619	0.01 0.06	0.005 0.025 0.03
T.K.	Mouja	Kh. No.	R.S. Plot No.	Total Area	Possessi on of Sri Chitta Rn. Debnath								
Mata bari	Uttar Chandr apur	870	1623 1619	0.01 0.06	0.005 0.025 0.03								

Government of Tripura Office of the Sub-Divisional Magistrate Udaipur, Gomati District, No.F.5(26)-SDM/UDP/REV/2012/176-78 Dated, the 21th Mar, 2013 Copy to: 1. The In-Charge, CLR Section, Udaipur Revenue Circle for information with a request to arrange necessary correction in the ROR. 2. The Tehsildar Matabari T.K. for information and necessary action. 3. Sri Chitta Ranjan Debnath S/O- Lt. Ramananda Baishnab alias of Ramananda Debnath of Uttar Chandrapur for information. Sub-Divisional Magistrate Udaipur, Gomati District <i>Sd/</i> <i>(Pankaj Chakraborty)</i> Sub-Divisional Magistrate, Udaipur, Gomati Tripura		

[18] Mr. Banerjee, learned counsel having referred to the impugned judgment and decree has also submitted that the respondents herein by filing a writ petition has challenged the said order dated 12.10.2012 and obtained a stay order. Thus, the appellant will not be benefited by the said order in any manner.

[19] It thus appears to this Court that there is no dispute that such order dated 12.10.2012 has been passed by Sub-Divisional Magistrate having serious bearing on the title of the suit land. Hence, by rejecting the prayer for adducing additional evidence prior to pronouncement of the judgment, the appellate court has committed serious illegality inasmuch

as the said order dated 12.10.2010 being an order of the Revenue Officer in exercise of his statutory powers under Tripura Land Revenue and Land Reforms Act, 1960 and the Allotment Rules made thereunder is a public document. It has been already noted that the appellant by filing the written statement has raised the plea, he has filed a petition for cancellation of the allotment order in question as regards the suit land vis-à-vis the allotment in favour of the predecessor of the respondents herein. As such, it cannot be stated that there is not pleading at all. Even in the first appellate stage the defendant had opportunity to amend the written statement for incorporating the subsequent event which are so material and relevant in absence of those there would have been no adjudication of the dispute, which the appellant has omitted to do.

[20] In **North Eastern Railway Administration, Gorakhpur vs. Bhagwan Das (D) by Lrs.**, the apex court while culling out the ambit of Order XLI Rule 27 of the C.P.C. has emphatically observed as under:

"13. It is plain that under Clause (b) of Sub rule (1) of Rule 27 Order 41 C.P.C., with which we are concerned in the instant case, evidence may be admitted by an appellate authority if it 'requires' to enable it to pronounce judgment 'or for any other substantial cause'. The scope of the rule, in particular of Clause (b) was examined way back in 1931 by the Privy Council in *Parsotim Thakur and Ors. v. Lal Mohar Thakur and Ors* [AIR 1931 PC 143]. While observing that the provisions of Section 107 as elucidated by

Order 41 Rule 27 are clearly not intended to allow litigant, who has been unsuccessful in the lower court, to patch up the weak parts of his case and fill up omissions in the court of appeal, it was observed as follows:

'Under Clause (1) (b) it is only where the appellate Court 'requires' it, (i.e., finds it needful) that additional evidence can be admitted. It may be required to enable the Court to pronounce judgment or for any other substantial cause, but in either case it must be the Court that requires it. This is the plain grammatical reading of the sub-clause. The legitimate occasion for the exercise of this discretion is not whenever before the appeal is heard a party applies to adduce fresh evidence, but 'when on examining the evidence as it stands some inherent lacuna or defect becomes apparent.'"

Thus, whether the appellate court requires the 'additional evidence' to pronounce the judgment or for any other substantial costs would be of paramount importance. The requirement of the court is not subjective wilderness but focused on the point or the issue to be adjudicated for delivering the justice. In this case, the order of cancellation of the allotment touches the core issue of the suit, relating to the title of the suit land and hence, unceremonious rejection of the prayer for adducing the additional evidence is unacceptable.

[21] On the first blush though the submissions made by Mr. Banerjee, learned counsel appears attractive but on an overall appreciation, particularly on scrutiny of the order passed by the SDM, this Court is unable to accept his submission that the finding returned in this regard does not call

for any intervention. Hence, the impugned judgment and decree is interfered with and set aside. However, this Court on considerations of the nature of dispute, but without assessing the impact of such cancellation of the allotment order is of the opinion that it would be appropriate and better recourse to remand the matter to the first appellate court for rehearing the appeal afresh after allowing the appellant to place on record the order dated 12.10.2012 passed by the SDM as the additional evidence. For this purpose, the order dated 16.05.2013 passed in Title Appeal No.22 of 2011 is also set aside. The respondents, the plaintiffs of the suit as well be allowed to place on record any material as rebuttal to the said order dated 12.10.2012. On completion of that exercise, the appellate court shall dispose of the appeal in accordance with law.

[22] Having held so, this appeal stands allowed to the extent as indicated above.

Prepare the decree accordingly.

Send down the LCRs.

JUDGE

Sujay