

THE HIGH COURT OF TRIPURA AGARTALA

RSA NO. 81 OF 2011

Shri Sashikanta Sinha.,
Late Huna Sinha of Rajbari(Mandappara),
P.O & P.S: Dharmanagar, North Tripura,
Pin-799253

... **Appellant**

- Vs -

Shri Kartik Sinha.,
S/o Late Lachman Sinha of Rajbari(Mandappara),
P.O & P.S: Dharmanagar, North Tripura,
Pin-799253

... **Respondent**

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

For the appellant : Mr. C.S. Sinha,
Mr. J. Debbarma,
Advocates,

For the respondent : Mr. K.N. Bhattacharji,
Senior Advocate.
Ms. A. Sharma Lodh,
Ms. K. Sinha,
Advocates.

Date of hearing & delivery of
Judgment & order. : **16.11.2015.**

Whether fit for reporting :

Yes	No
	√

JUDGMENT & ORDER

This second appeal under Section 100 of the Code of Civil Procedure is directed against the judgment and decree dated 26.08.2011 passed by the learned Additional District Judge, Dharmanagar, North Tripura in Title Appeal No. 13 of 2011,

whereunder the learned Additional District Judge set aside and/or reversed the judgment and decree of dismissal dated 16.05.2011 and 27.05.2011 respectively passed by learned Civil Judge, Junior Division, Dharmanagar in Title Suit No. 32 of 2007.

2. Heard learned counsel, Mr. C.S. Sinha for the appellant and learned senior counsel, Mr. K.N Bhattacharji, assisted by learned counsel, Ms. A. Sharma Lodh for the respondent.

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

“I) Whether the finding of the first appellate Court is perverse?

ii) Whether the finding of the first appellate Court is beyond the pleadings of the parties.”

4. The respondent as plaintiff instituted Title Suit No.32 of 2007 seeking mandatory and perpetual injunction in respect of the suit pathway described in schedule 'B' and 'C' of the plaint. It is *inter alia* contended by the plaintiff that he purchased the land described in schedule 'A' of the plaint from the defendant by a registered deed of purchase on 23.01.2006. There was a pathway measuring 7 feet in breadth in south eastern boundary line of the plaintiff running towards east connecting Mandappara road and that road is the common pathway of both the plaintiff and the defendant.

The plaintiff alleged that on 03.02.2007, the defendant constructed a pucca collapsible gate in the eastern boundary line of

the defendant's homestead on 'B' schedule pathway and thereby created obstruction in the smooth use of the pathway by the plaintiff. The pathway has been described in the schedule 'B' of the plaint and the pucca collapsible gate allegedly constructed by the defendant has been described in the schedule 'C' of the plaint. The plaintiff prayed for removal of the gate constructed on the pathway and also prayed for injunction against the defendant from creating any obstruction in the smooth use of the pathway.

5. The defendant contested the suit by filing written statement contending that the land described in schedule 'A' of the plaint was sold by the defendant to the plaintiff and the plaintiff was permitted to use the pathway as described in schedule 'B' of the plaint. The defendant denied construction of any gate on 03.02.2007, on the eastern end of the pathway in the boundary land of the defendant and has prayed that the suit should be dismissed.

6. Considering the pleadings of the parties the Trial Court framed six issues namely:-

- “(i) Is the suit maintainable in its present form?***
- (ii) Is there any cause of action of the Suit?***
- (iii) Is the suit barred by limitation?***
- (iv) Has the defendants closed the entrance & exist path of the plaintiff?***
- (v) Is the plaintiff entitled to get decree as prayed for?***
- (vi) To what other relief/reliefs the parties are entitled to ?”***

7. In course of trial the plaintiff examined himself as P.W-1 and also examined two more witnesses, namely, P.W-2, Dipu Sinha

and P.W-3, Amar Chand Sinha. In support of his case the plaintiff proved the following documents :-

“ A) PLAINTIFF'S EXHIBITS:-

- 1) Exbt. 1:- Certified copy of Registered SaleDeed Filed by the plaintiff No. 1-2444 dated 23.10.2006 duly registered at Sub-Registry Office, Dharmanagar, North Tripura (4 sheets). (Without Objection)*
- 2) Exbt. 2 :- Certified copy of Khatian bearing No. 7110 of Mouja – Dharmanagar town, Tehsil – Dharmanagar. (Without objection)*
- 3) Exbt. 3 :- Certified copy of trace map of Mouja –Dharmanagar town sheet No.8 part) (without objection)”*

8. The defendant examined himself as D.W.1 and also examined two more witnesses, namely, D.W.2, Arun Kumar Sinha and D.W.3, Biswajit Roy and in support of his case the defendant proved two documents marked as exhibit-'A' and exhibit-'B', which are as follows :-

“B) Defendants Exhibits :-

- 1) Exbt.A:- Original sale deed No. 1-142 dated 16.01.2001 executed between Sashi Kanti Sinha & Swapan Ch. Saha, Sadhan Ch. Saha, Jitendra Ch. Saha & Nikhal Ch. Saha. (without objection)*
- 2) Exbt. B:- Original khatian No. 5108 under Mouja–Dharmanagar town in the name of Shri Sashi Kanta Sinha (Without objection)”*

9. The Trial Court decided issue No.4 against the plaintiff and hence dismissed the suit but directed that the defendant should not lock the gate described in schedule 'C' of the plaint and that such locking will cause unnecessary hardship to the plaintiff.

10. Aggrieved, the plaintiff preferred Title Appeal No.13 of 2011 before the learned Addl. District Judge, Dharmanagar and learned Addl. District Judge allowed the appeal and accordingly, decreed the suit.

11. Felt aggrieved, the defendant preferred the present second appeal.

12. It is submitted by learned counsel, Mr. Sinha that the land of schedule 'B', i.e., the pathway is the jote land of the defendant and so the defendant has the right to have a gate at the entry point of his house and keep it under lock and key. There was no new gate constructed on 03.02.2007 and it was a gate already in existence when 'A' schedule land was sold to the plaintiff. He has further submitted that this Court while admitting the appeal passed an interim order that there should be two locks in the gate one by the plaintiff and another by the defendant and that position may continue.

13. On the contrary, learned senior counsel, Mr. Bhattacharji has submitted that the pathway described in schedule 'B' of the plaint is a common pathway meant for both the plaintiff and the defendant. The defendant sold out the 'A' schedule land to the plaintiff showing the pathway described in schedule 'B' of the plaint as the common pathway and that is the only pathway for egress and ingress of the plaintiff from his premises. The defendant constructed the gate on the pathway in the south end of his homestead creating obstruction in the smooth use of the pathway by plaintiff and that is an admitted position for which the plaintiff instituted the suit. Since it is a common pathway to be used by the

plaintiff and defendant, the defendant cannot put a permanent gate and keep it under lock and key causing inconvenience to the plaintiff.

14. I have meticulously gone through the pleadings, evidence and the judgments passed by the Courts below. It is an admitted position that 'B' schedule land is the pathway commonly used by the plaintiff and the defendant. It is also an admitted position that the defendant sold 'A' schedule land to the plaintiff showing 'B' schedule land as the common pathway to be used by the plaintiff and the defendant. According to the plaintiff, the defendant constructed a collapsible gate on 03.02.2007 on the 'B' schedule land in the eastern corner of the defendant's house. Whereas defendant contended that it was the gate originally existing before sale of land to the plaintiff.

15. Be that as it may, it is an admitted position that 'B' schedule land is the common pathway of the plaintiff and defendant. So, the defendant has no right to construct or keep any collapsible gate or iron gate or any other form of gate in the pathway commonly used by the plaintiff and the defendant. If any party put any gate on the common pathway, definitely it will cause inconvenience to the other party. The Trial Court while deciding issue No.4 also felt it and directed that the defendant should not lock the gate, but decided the suit against the plaintiff. The appellate Court while deciding issue No.4 has held that since 'B' schedule land is a common pathway of the plaintiff and the defendant, the defendant should not keep any gate creating obstruction in the use of the pathway by the plaintiff.

16. I have meticulously gone through the pleadings and evidence and I find no perversity in the findings given by the first appellate Court. I am in full agreement with the first appellate Court that the suit pathway being the common pathway cannot be obstructed by the defendant and hence the judgment and decree passed by the appellate Court is affirmed. The second appeal accordingly stands dismissed.

17. Costs to be borne by the parties of their own.

JUDGE

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