

**HIGH COURT OF TRIPURA  
AGARTALA**

**RSA No.2 of 2015**

**Shri Chandan Bikash Barua,**  
son of late Purnendu Bikash  
Barua, resident of P.O & P.S.  
Kanchanpur [near Kanchanpur  
H.S. (+2 stage) School, District-  
North Tripura

..... **Appellant**

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

1. **Sri Chandan Bhattacharjee,**  
son of late Upendra Bhattacharjee
2. **Sri Swapan Kumar Barua,**  
son of late Hemanta Lal Barua

-both are residents of P.O & P.S.  
Kanchanpur [near Kanchanpur  
H.S. (+2 stage) School, District-  
North Tripura

..... **Respondents**

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For the appellant : Mr. D.R. Choudhury, Adv.  
For the respondents : Mr. P.K. Pal, Adv.

Date of hearing and delivery : **31.07.2018**  
of Judgment & Order

Whether fit for reporting : 

Yes	No
	✓

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**BEFORE**  
**THE HON'BLE MR. JUSTICE S. TALAPATRA**

**JUDGMENT & ORDER [ORAL]**

Heard Mr. D.R. Choudhury, learned counsel appearing for the appellant as well as Mr. P.K. Pal, learned counsel appearing for the respondents.

**[2]** This is an appeal by the plaintiff-appellant under Section 100 of the CPC from the judgment dated 12.08.2014 delivered in Title Appeal No.14 of 2013 by the Addl. District Judge, Dharmanagar, North

Tripura by affirming the judgment dated 07.11.2013 delivered in T.S. 01 of 2012 by the Civil Judge, Jr. Division, Kanchanpur, North Tripura.

**[3]** At the time of admission of the appeal, the following substantial question of law was formulated by the order dated 23.11.2015

**"Whether findings of the Trial Court affirmed by the appellate Court in respect of the possession over the suit land is perverse."**

However, the right to raise further substantial question of law at the time of hearing was reserved by the said order dated 23.11.2015.

**[4]** Mr. Choudhury, learned counsel appearing for the appellant has submitted that acceptance of the demarcation report pertaining to the land as recorded in Khatian Nos.138,418 & 423 of Mouja and Tehsil Kachari- Kanchanpur [Exbt.5 series] is grossly illegal as both the documents were accepted without examining its author, even though the document cannot be categorized as the public document. Thus, there was no compliance of Section 67 of the Indian Evidence Act. Mr. Choudhury, learned counsel has further submitted that if the author was adduced as a witness of the defence, the plaintiff would have got a reasonable opportunity to cross-examine him in respect of the said demarcation report but that opportunity since was not given to the plaintiff-appellant, the decision of the trial court as well as the first appellate court has been rendered illegal and hence, it warrants interference by this court.

**[5]** From the other side, Mr. P.K. Pal, learned counsel appearing for the respondents has at the first instance referred to the averments made in the written statement filed by the defendants [at Para-18] where the following has been asserted:

**"That, with regard to the Para 13 of the plaint it is not fact that the plaintiff has applied for demarcation of the suit land before the Ld. SDM, Kanchanpur, but with no fruitful result."**

**[6]** The plaintiff cannot deny the fact that the issue of demarcation has been raised by him in Para-13 of the plaint. For purpose of reference, the entire text of Para-13 of the plaint is reproduced hereunder:

**"13. That, it is to be mentioned here that the plaintiff applied for demarcation of the suit land before the Ld. SDM, Kanchanpur, but with no fruitful result."**

**[7]** True it is that the plaintiff in the plaint did not state that in the demarcation report [Exbt.5], the possession of the defendants was confirmed. That constitutes a serious suppression of the material fact. But at the instance of the defendants, the said report [Exbt.5] was placed in the evidence, which stands to confirm the possession of the defendants. Based thereon, both the courts below have affirmed possession of the defendants by dismissing the suit as well as the appeal. This court does not find any infirmity in such finding as returned by the trial court as well as by the appellate court inasmuch as the said demarcation report [Exbt.5] was an outcome of the proceeding unleashed by the plaintiff. Accordingly, this appeal does not hold any merit and hence, it is dismissed.

Draw the decree accordingly.

Send down the LCRs thereafter.

**JUDGE**

*Sujay*