

HIGH COURT OF TRIPURA
AGARTALA
RSA 28 OF 2022

Sri Biswajit Deb, son of late Ashutosh Deb,
resident of Matabari Tilla, Ompi Nagar,
P.O. Ompi Nagar, Sub-Division-Amarpur,
District-Gomati, Tripura.

...Defendant-appellant

Vrs.

Smt. Usha Rani Das, wife of late Sushil Das,
resident of Matabari Tilla, Ompi Nagar,
P.O. Ompi Nagar, Sub-Division:Amarpur,
District-Gomati, Tripura.

...Plaintiff-respondent

Present:

For the appellant(s) : Mr. D.K.Daschoudhury, Advocate.

For the respondent(s) : Mr. B. Banerjee, Advocate.

Date of hearing &
delivery of judgment : **30.09.2023**
and order

Whether fit for
reporting : YES

HON'BLE MR.JUSTICE ARINDAM LODH

Judgment & Order (Oral)

This is a second appeal under Section 100 of the Civil Procedure Code,1908 [for short, the "CPC"] against the Judgment and Decree dated 04.04.2022, passed by the learned Additional District Judge, Gomati Judicial District, Tripura in connection with Case No. TA 06/2018, whereby and whereunder the learned first appellate court had reversed the judgment & decree dated 28.06.2018, passed by learned Civil Judge (Sr. Division), Udaipur, Gomati Judicial District, Tripura in connection with Case No. T.S. 40 of 2016.

2. The plaintiff [respondent herein] instituted a suit for declaration of right, title and interest along with a prayer for recovery of khas possession and a decree for perpetual injunction against the defendant [appellant herein] in the Court of learned Civil Judge, Sr. Division, Gomati Judicial District, Udaipur, Tripura.

3. The facts of the case, as projected by learned First Appellate Court, may be reproduced here-in-below:

“The plaintiff’s (appellant herein) case, in brief, is that the suit land described in the Schedule of the plaint is a land measuring 0.13 acres appertaining to Khatian No.1086 of C.S.Plot No.465, Hal Plot No.676 under Mouja-Ompi Nagar which was originally belonged to Shri Nagar Bashi Debnath S/o-Late Mahendra Ch. Debnath of Bijoy Nagar, PS-Sidhai, District-West Tripura. The plaintiff purchased the suit land from its original owner namely Shri Nagar Bashi Debnath by a Registered Sale Deed vide No.1-264 dated 22-05-2007 at a consideration amount of Rs.35,000/- and after the purchase plaintiff got delivery of the possession from the vendor. According to the plaintiff due to unintentional mistake of the scribe of the Deed the boundary mentioned in the Deed was wrongly written though plaintiff subsequently mutated her name in the ROR of the purchased land and the land was recorded in the name of the plaintiff vide khatian No.1086 of Mouja-Ompi. The plaintiff was possessing the suit land on and from 10-05-2010 but defendant started spraying clouds about the right, title and interest of the plaintiff over the suit land and further declared that he would forcibly dispossessed the plaintiff. On 15-11-2020 at about 9:00 am the defendant along with hired people entered into the suit land and dispossessed the plaintiff from the suit land illegally. The plaintiff further alleged that as per her prayer the suit land was demarcated by the Tahashildar, as per the order of the SDM, Amarpur wherein the Tahashildar of Ompi Tahashil reported that the suit land was under the illegal possession of the defendant. Under the above facts the plaintiff filed this suit to declare the right, title and interest over the Schedule land of the plaint and for recovery of khas possession by evicting the defendant from the suit land by removing all obstructions created therein along with cost of the suit.”

4. Being summoned, the defendant appeared and contested the suit by filing written statement and on the basis of the pleadings, learned trial Court had framed the following issues:

- I. *Whether the suit is maintainable in its present form and nature?*
- II. *Whether the plaintiff has right, title and interest over the suit land mentioned in the Schedule of the plaint?*
- III. *Whether the defendant is in wrongful possession of the suit land?*
- IV. *Whether the plaintiff is entitled to get a decree as prayed for with any other relief or reliefs?*

5. On the basis of aforesaid issues, evidences were adduced by the plaintiff side, but, the defendant did not adduce any evidence. Thereafter, having heard the arguments of learned counsel appearing for the parties, the learned trial Court dismissed the suit instituted by the plaintiff.

6. Being aggrieved, the plaintiff has preferred first appeal before the Court of learned District Judge, Gomati Judicial District and the said first appeal was transferred to the Court of learned Additional District Judge, Gomati for hearing. Learned Addl. District Judge after hearing recorded a reversal decree vide judgment and decree dated 04.04.2022 and allowed the appeal with the following findings:

“15. *In Sunil Das vrs. Babul Das, case No. RSA 32 of 2013 our own High Court further observed in Para-14 that “..... The physical boundaries with efflux of time may change and unless properly clarified it may create serious confusion at sometimes. As such, it would be duty of the Civil Courts to prefer the description of the physical boundaries as given referring to the settlement records. The physical boundaries have their own advantages but when there is incongruity between the reference by settlement records and the physical boundaries, the physical boundaries may be kept aside for purpose of identification of the land.”*

16. *So, keeping in view the above position of law this Court is of the opinion that where the suit property can be ascertained by survey plot there is no bar to decree a suit on the basis of survey plots. In the present case the plaintiff has properly mentioned C.S. plot No.465 corresponding to Hal Plot No.676 in the schedule of her plaint which*

conformed with the settlement record vide Khatian No. 1086 i.e. Exhibit1. Hence, this Court differ with the view of the learned trial Court that the suit property is not identifiable for which the plaintiff sought relief.

17. In view of the aforesaid discussions, this Court finds that the learned trial Court was in error and guided by some misconception of law and thereby dismissed the suit of the plaintiff i.e. the present plaintiff-appellant vide decree dated 03.07.2018 in TS 40 of 2016 over the "Schedule C" land. Accordingly the judgment and decree dated 03.07.2018 passed by the learned Civil Judge (Sr. Divn.), Gomati District, Udaipur in TS 40 of 2016 is hereby reversed being devoid of merits. The right, title and interest of the plaintiff-appellant over the suit land is hereby declared and she is entitled to recovery of khas possession of the suit land by evicting the defendant therefrom. Hence, the Appeal is allowed.

Considering the factual aspects of this case parties are directed to bear their own costs.

Thus the appeal is hereby disposed of on contest.

Prepare decree accordingly."

In view of the aforesaid judgment, decree was prepared.

7. Feeling aggrieved, the appellant/defendant has preferred the instant second appeal challenging the findings of learned first appellate Court whereby the suit was decreed in favour of the respondent/plaintiff.
8. At the time of admission of the instant second appeal, following substantial questions of law have been formulated:

(i) Whether a sale deed without correction of identification of land where the suit land is identified both by survey number and boundary description which are contradictory to each other held to be valid and can be relied on?

(ii) Whether the report of the Tehshilder without proving it by examination of the maker can be relied on as to the identification of the suit land as proper evidence of possession?

9. Heard Mr. D.K.Daschoudhury, learned counsel appearing for the appellant [the original defendant] and Mr. B. Banerjee, learned counsel appearing for the respondent [the original plaintiff]. The parties will be addressed here-in-below according to the original suit.

10. During the course of hearing, Mr. Daschoudhury, learned counsel appearing for the defendant has relied upon the findings of the learned trial Judge wherein, learned Judge observed that the land was not identified because of an error in mentioning the boundary in the sale deed.

11. I have gone through the findings of learned trial Judge where he discussed this issue at Para 7 of the judgment. According to me, learned trial Court had totally misdirected himself. It is no more *res integra* that the physical boundaries with efflux of time may change and unless properly clarified it may create serious confusion in identifying the suit land. As such, it would be the duty of the Civil Courts to prefer the description of the physical boundaries as given in reference to the settlement records. The physical boundaries have their own advantages, but, when there is incongruity between the reference of settlement records and the physical boundaries, the physical boundaries may be kept aside for purpose of identification of the land.

12. In the context of the present case, Order VII, Rule 3 of CPC may be reproduced, which reads as under:

“3. Where the subject-matter of the suit is immovable property—Where the subject-matter of the suit is immovable property, the plaintiff shall contain a description of the property sufficient to identify it, and, in case such property can be identified by boundaries or numbers in a record of settlement or survey, the plaintiff shall specify such boundaries or numbers.”

13. On plain reading of the above provisions, it emerges that a property can be identified either by a boundary or by any other specific description. Learned first appellate Court in his findings had referred to the decision of *Subhaga & Ors. Vrs. Shoba & Ors., (2006) 5 SCC 466*, wherein

the Supreme Court held that – “*a property can be identified either by boundary or by any other specific description is well established.*”

14. In the case of ***Monoranjan Dutta Vrs. Narayan Dhar, (2007) 2 GLR 593***, the Gauhati High Court at Para 10 has held that –

“Admittedly, in the instant case, no such boundary or number of the record of settlement or survey is provided by the plaintiff in the plaint. Now, the question is to whether the provisions of Order 7, Rule 3 is to be interpreted as a mandatory one, non-compliance of which would be fatal to the validity of the decree. Order 7, Rule 3 has been amended by the High Court by adding certain portion at the end of the Rule like that of the amendment made by the Calcutta High Court, which reads as follows:-

“and where the area is mentioned, such description shall further state the area according to the notation used in the record of settlement or survey, with or without, at the option of the party, the same area in terms of the local measures.”

In fact the said amendment of the Rule was originally made by the Calcutta High Court and the same is continuing even after creation of the Gauhati High Court, covering as of Calcutta High Court.”

15. Again, I may profitably refer the case of ***Zarif Ahmaed Vrs. Mohd. Farooq, (2015) 13 SCC 673***, where the Supreme Court has held that – *Object of Order VII, Rule 3 is that the description of the property must be sufficient to identify it. The property can be identifiable by boundaries or by number in a public record of settlement or survey. It can be described even by plaint map showing the location of the disputed immovable property.*

16. Applying the aforesaid principles in the present case, it is seen that the suit land is clearly identifiable by mentioning the survey plot numbers and there is no confusion in it. When the land can be clearly identified, then, the principle that boundary will prevail over the plot numbers, when there is contradiction in mentioning the plot numbers and the boundary, in that case, the principle that boundary will prevail over the plot numbers will not apply. The principle that the boundary will prevail over the plot numbers, will be

applicable only when it is not possible to identify the land by the survey plot numbers, and there is apparent contradiction between the plot numbers and the boundary. As I said earlier, in the present case, the plaintiff has been able to establish the correctness of the plot numbers in his plaint which conform the plot numbers mentioned in her sale deed making the suit land easily identifiable.

17. In the above conspectus, I find no infirmity in the findings of the learned First Appellate Court in taking a view different than that of the view of the learned Trial Court thereby confirming the judgment and decree passed by learned First Appellate Court. As a corollary, the instant second appeal stands dismissed.

JUDGE

SANJAY GHOSH Digitally signed by SANJAY GHOSH
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