HIGH COURT OF TRIPURA
AGARTALA

RSA 14 OF 2022

1. **Sri Nakul Chandra Das (68 years)**
   S/o Lt. Sadhan Chandra Das

2. **Sri Prafulla Chandra Das (62 years)**
   S/o Lt. Sadhan Chandra Das

3. **Sri Prakash Chandra Das (60 years)**
   S/o Lt. Sadhan Chandra Das

4. **Sri Suresh Chandra Das (58 years)**
   S/o Lt. Sadhan Chandra Das

   Sl Nos. 1 to 4 are residents of village Satdubia, P.O. Fatikcherra, P.S. Sidhai, District-West Tripura.

...**Defendant-appellants**

Vrs.

1. **Sri Chanmohan Saha,**
   S/o Lt. Lalmohan Saha, resident of village Harinakhola, P.O. Fatikcherra, P.S. Sidhai, District-West Tripura.

…**Plaintiff-respondent**

2. **Sri Ratan Chakraborty**, S/o Lt. Ashutosh Chakraborty

3. **Sri Tapas Chakraborty**, S/o Lt. Ashutosh Chakraborty

   Both Sl. Nos. 2 & 3 are residents of village Bajalghat, P.O. Fatikcherra, P.S. Lefunga, District-West Tripura.

4. **Sri Sisir Ranjan Das**, S/o Lt. Pyari Mohan Das.

5. **Sri Dipak Das**, S/o Lt. Pyari Mohan Das.

6. **Sri Kusum Das**, S/o Lt. Pyari Mohan Das.

7. **Sri Nirmal Das,** S/o Lt. Pyari Mohan Das.

   Sl. Nos. 4 to 7 are residents of village Bajalghat, P.O. Fatikcherra, P.S. Lefunga, District-West Tripura.

8. **Sri Amal Das**, S/o Lt. Lal Mohan Das

9. **Sri Jahar Lal Das,** S/o Lt. Lal Mohan Das

   Sl. No. 8 & 9 are residents of village Satdubia, P.O. Fatikcherra, P.S. Sidhai, District-West Tripura.

…Proforma-respondents.

Present:

For the appellant(s) : Mr. D.R.Chowdhury, Sr. Advocate.
Mr. D. Deb, Advocate.

For the respondent(s) : Mr. P. Roy Barman, Sr. Advocate.
Mr. Samarjit Bhattacharjee, Advocate.

Date of hearing & delivery of judgment and order : 27.09.2023

Whether fit for reporting : YES

HON'BLE MR.JUSTICE ARINDAM LODH

Judgment & Order (Oral)

This is a second appeal filed by the appellants, the defendants in the original suit, under Section 100 of the Civil Procedure Code,1908 [for short, the "CPC"] against the Judgment and Decree dated 06.12.2021, passed by the learned Additional District Judge, Court No.2, West Tripura, Agartala in connection with Case No. TA 23/2018, whereby and whereunder the learned first appellate court had upheld and affirmed the judgment & decree dated 08.05.2018, passed by learned Civil Judge (Sr. Division), Court No.7, Agartala, West Tripura in connection with Case No. T.S. 47 of 2016.

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

> "*Brief facts leading to this appeal is that father of the plaintiff namely, Lalmohan Saha (now deceased) having record-of-right vide Khatian No.1322 in his favour was the owner in possession of the suit land. The father of plaintiff died on 17.08.1991 leaving behind the plaintiff and his mother Smt. Parul Bala Saha who also expired on 18.06.2009. On the death of his father the plaintiff and his mother applied for having mutation of the suit land in their favour and accordingly record of right was prepared jointly in the name of plaintiff and his mother. According to the plaintiff his father had been possessing the suit land by planting various fruit bearing trees thereon*

and after the death of his parents he was in possession of the suit land till 22.01.2014. On that day, i.e., on 22.01.2014 in the morning the plaintiff while paid a visit to the suit land found that the defendants had encroached the suit land taking over the possession denying his (plaintiff) right, title and interest thereon and constructed a small mud wall hut there-over. The plaintiff, therefore, stated to have made request to the defendants to vacate the suit land but refusal on the part of the defendants led the plaintiff to approach the trial court seeking declaration of his title along with other reliefs including consequential relief for recovery of possession. The plaintiff further added that during life time of his mother he along with his mother jointly had filed an application u/s 145 of Cr.P.C. with the SDM, Mohanpur vide Case No.03 of 2009 whereby SDM, Mohanpour vide his order dated 08.12.2015 has held the defendants as unauthorized occupiers of the suit land."

3. At the time of trial, after exchange of 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 cause of action to institute the suit?
III. Whether the plaintiff has right, title and interest over the suit land?
IV. Whether the plaintiff is entitled for recovery of khash possession of the suit land by evicting the defendants there from through by way of removing all obstructions therein?
V. Whether the plaintiff is entitled to get a decree as prayed for?
VI. Whether the defendants have been owning and possessing the suit land along with other co-sharers being lawful owners and bona fide possessors since long as per respective date of purchasing their land?
VII. To what other relief/reliefs parties are entitled?

4. Thereafter, evidences were adduced by both the parties and relevant documents had been brought on record being exhibited in accordance with law. On completion of recording evidence, the learned trial Judge having heard the arguments of the parties to the *lis* had decreed the suit in favour of the plaintiff declaring plaintiff's right, title and interest over the suit land described in the Schedule of the plaint directing the appellants/defendants to

hand over the vacant possession of the suit land to the respondent/plaintiff within two months from the date of the judgment.

5. Being aggrieved by and dissatisfied with the said judgment and decree passed by learned Civil Judge, Sr. Division, the appellants had preferred first appeal before the Court of learned District Judge, West Tripura Judicial District, Agartala. The said first appeal was transferred to the Court of learned Additional District Judge, Court No.2, West Tripura, Agartala for hearing. Learned Additional District Judge heard arguments of both the parties and upon hearing the submissions advanced by learned counsels appearing for the parties and having perused and considered the relevant documents had dismissed the appeal and affirmed the judgment and decree passed by learned trial Court.

6. Feeling aggrieved, the appellant/defendants have preferred the instant second appeal challenging the concurrent findings of fact arrived at by both the Courts below by decreeing the suit in favour of the respondent/plaintiff.

7. This Court at the time of admission of the instant second appeal, following substantial question of law has been formulated:

Whether the judgment and decree passed by learned Courts below are perverse being based on no evidence?

8. Based on the aforesaid substantial question of law, I have heard Mr. D.R.Cowdhury, learned senior counsel assisted by Mr. Dipak Deb, learned counsel appearing on behalf of the appellants/defendants and Mr. P. Roy Barman, learned senior counsel assisted by Mr. Samarjit Bhattacharjee and Mr. K. Nath, learned counsels appearing for the respondent/plaintiff.

9. Mr. Chowdhury, learned senior counsel criticizing the findings of the judgments of both the Courts below submitted that the learned Judges had failed to appreciate the material fact that the suit land described in the Schedule of the plaint attracts the boundary of the purchased land of the appellants/defendants and due to such non appreciation of fact or wrong appreciation of evidence, the judgments of both the Courts below suffer from perversity which require interference by this Court. Next submission of Mr. Chowdhury, learned senior counsel is that the respondent/plaintiff has wrongly mentioned the date on which the cause of action arose to institute the suit. To support his submission, Mr. Chowdhury has relied upon an inquiry report submitted by the Tehsildar during the course of a proceeding initiated by the Executive Magistrate under Section 145 of CrPC as well as the order passed by the concerned Executive Magistrate while deciding the dispute between the parties. According to Mr. Chowdhury, learned senior counsel the cause of action arose in the year 2009, but, not on 22.01.2014 as mentioned in the plaint since the respondent/plaintiff filed a complaint before the Executive Magistrate as regards the disputes cropped up between them for the land in question which is the subject matter of the present suit.

10. Opposing the submissions of learned senior counsel appearing on behalf of the appellants/defendants, Mr. Roy Barman, learned senior counsel has submitted that this Court has limited jurisdiction to exercise its power under Section 100 CPC. Mr. Roy Barman, learned senior counsel would contend that even the Court will not interfere with a finding of fact which appears to be erroneous to the Court. To dislodge the findings of the Courts below, the Court exercising its jurisdiction under Section 100 of CPC must arrive at a finding which according to the Court is perverse and based on no

evidence. Learned senior counsel appearing for the respondent/plaintiff has argued that as regards the cause of action, both the Courts held that the respondent/plaintiff has been able to establish the cause of action as stated in the plaint. In the plaint, it is clearly stated at Para 8 that the cause of action of the suit arose on 22.01.2014 when the appellants/defendants dispossessed his possession over the suit land. The cause of action of a suit is a question of fact which was decided in favour of the plaintiff by both the Courts below. In view of this, in the opinion of this Court, this Court will not interfere with this concurrent finding of fact arrived at by both the Courts below. However, keeping in mind the argument advanced by learned senior counsel appearing on behalf of the appellants/defendants that the plaint of the plaintiff ought to have been rejected due to non-disclosure of cause of action as contemplated under Order VII, Rule 11 of CPC. This submission has led this Court to peruse Order VII (a), Rule 11 of CPC, which stipulates that the plaint shall be rejected where it does not disclose a cause of action. The cause of action to be mentioned in a suit depends upon the plaintiff. He is the best person when his right to possess a certain land is disturbed.

11. A three-Judge Bench of the Supreme Court in ***Shakti Bhog Food Industries Limited vrs. Central Bank of India & Anr.*** reported in (***2020) 17 SCC 260,*** Para 7, 9 and 10 held thus:

> **"*7.*** *Indeed, Order 7 Rule 11 CPC gives ample power to the court to reject the plaint, if from the averments in the plaint, it is evident that the suit is barred by any law including the law of limitation. This position is no more res integra. We may usefully refer to the decision of this Court in Ram Prakash Gupta v. Rajiv Kumar Gupta [(2007) 10 SCC 59]. In paras 13 to 20, the Court observed as follows: (SCC pp. 65-66)*
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> *"13. As per Order 7 Rule 11, the plaint is liable to be rejected in the following cases:*
>
> *'(a) where it does not disclose a cause of action;*
>
> *(b) where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so;*

(c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp paper within a time to be fixed by the court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provisions of Rule 9;'

14. In Saleem Bhai v. State of Maharashtra [Saleem Bhai v. State of Maharashtra, (2003) 1 SCC 557] it was held with reference to Order 7 Rule 11 of the Code that:

'9. ... the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power ... at any stage of the suit — before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Rule 11 Order 7 CPC, the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage....' (SCC p. 560, para 9).

15. In ITC Ltd. v. Debts Recovery Appellate Tribunal [(1998) 2 SCC 70] it was held that the basic question to be decided while dealing with an application filed under Order 7 Rule 11 of the Code is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order 7 Rule 11 of the Code.

16. "The trial court must remember that if on a meaningful—not formal—reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should exercise its power under Order 7 Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of action, [it has to be nipped] in the bud at the first hearing by examining the party searchingly under Order 10 CPC."

(See T. Arivandandam v. T.V. Satyapal [(1977) 4 SCC 467], SCC p. 468.)

17. It is trite law that not any particular plea has to be considered, and the whole plaint has to be read. As was observed by this Court in Roop Lal Sathi v. Nachhattar Singh Gill [(1982) 3 SCC 487] , only a part of the plaint cannot be rejected and if no cause of action is disclosed, the plaint as a whole must be rejected.

18. In Raptakos Brett & Co. Ltd. v. Ganesh Property [(1998) 7 SCC 184] it was observed that the averments in the plaint as a whole have to be seen to find out whether clause (d) of Rule 11 Order 7 was applicable.

19. In Sopan Sukhdeo Sable v. Charity Commr. [(2004) 3 SCC 137] this Court held thus: (SCC pp. 146-47, para 15)

'15. There cannot be any compartmentalisation, dissection, segregation and inversions of the language of various paragraphs in the plaint. If such a course is adopted it would run counter to the cardinal canon of interpretation according to which a pleading has to be read as a whole to ascertain its true import. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction or words or change of its apparent grammatical sense. The intention of the party concerned is to be gathered primarily from the tenor and terms of his pleadings taken as a whole. At the same time it should be borne in mind that no pedantic approach should be adopted to defeat justice on hair-splitting technicalities.'

20. For our purpose, clause (d) is relevant. It makes it clear that if the plaint does not contain necessary averments relating to limitation, the same is liable to be rejected. For the said purpose, it is the duty of the person who files such an application to satisfy the court that the plaint does not disclose how the same is in time. In order to answer the said question, it is incumbent on the part of the court to verify the entire plaint. Order 7 Rule 12 mandates where a plaint is rejected, the court has to record the order to that effect with the reasons for such order."

*** *** ***

9. *We may also advert to the exposition of this Court in Madanuri Sri Rama Chandra Murthy v. Syed Jalal [(2017) 13 SCC 174 : (2017) 5 SCC (Civ) 602] . In para 7 of the said decision, this Court has succinctly restated the legal position as follows: (SCC pp. 178-79)*

"7. The plaint can be rejected under Order 7 Rule 11 if conditions enumerated in the said provision are fulfilled. It is needless to observe that the power under Order 7 Rule 11 CPC can be exercised by the Court at any stage of the suit. The relevant facts which need to be looked into for deciding the application are the averments of the plaint only. If on an entire and meaningful reading of the plaint, it is found that the suit is manifestly vexatious and meritless in the sense of not disclosing any right to sue, the court should exercise power under Order 7 Rule 11 CPC. Since the power conferred on the Court to terminate civil action at the threshold is drastic, the conditions enumerated under Order 7 Rule 11 CPC to the exercise of power of rejection of plaint have to be strictly adhered to. The averments of the plaint have to be read as a whole to find out whether the averments disclose a cause of action or whether the suit is barred by any law. It is needless to observe that the question as to whether the suit is barred by any law, would always depend upon the facts and circumstances of each case. The averments in the written statement as well as the contentions of the defendant are wholly immaterial while considering the prayer of the defendant for rejection of the plaint. Even when the allegations made in the plaint are taken to be correct as a whole on their face value, if they show that the suit is barred by any law, or do not disclose cause of action, the application for rejection of plaint can be entertained and the power under Order 7 Rule 11 CPC can be exercised. If clever drafting of the plaint has created the illusion of a cause of action, the court will nip it in the bud at the earliest so that bogus litigation will end at the earlier stage."

10. *Keeping in mind the well-settled legal position, we may now proceed to analyse the averments in the plaint, as filed by the appellant, to discern whether it was a fit case for rejection of the plaint under Order 7 Rule 11(d) CPC. As noticed from the trial court judgment, it is evident that the trial court did not make any attempt to analyse the plaint in the manner predicated in the aforesaid decisions. Even the District Court dealing with the first appeal and the High Court with the second appeal omitted to do so. It is the bounden duty of the court to examine the plaint as a whole and not selected averments therein. For that, we need to advert to the averments in the plaint. Paras 8 to 15 of the plaint, which according to us, are the relevant averments, read as follows:*

"8. That the facility as referred to in the foregoing paras was extended with effect from 1-4-1997 and somewhere in the month of July 2000, it was noticed by the plaintiff that the defendants were charging interest/commission @ Rs 4 per thousand rupees on local cheques and drafts in an arbitrary manner in violation of the assurance given to the plaintiff.

9. That after the detection of the above overcharging of interest/commission, the plaintiff sent a letter to the defendants on 21-7-2000 complaining about the overcharging and thereafter, the interest/commission was charged as per assurance given.

10. That the amount overcharged as commission/interest was not refunded to the plaintiff and the plaintiff sent the following letters addressed to the Bank i.e. General Manager and Senior Manager indicating therein that the amount overcharged should be refunded to the plaintiff with interest thereon:

Letters dated 12-10-2000, 24-10-2000, 30-10-2000, 7-11-2000, 24-12-2000, 1-3-2001, 28-3-2001, 22-5-2001 and 20-6-2001. In all the above letters requests were made to clarify as to how the commission were calculated and deducted from the plaintiff.

11. That the Assistant General Manager, Shri P.S. Bawa of Regional Office-B, Delhi vide letter dated 9-7-2001 informed the plaintiff that the comments of the branch office have been invited on the representation of the plaintiff in respect of the local cheques/DDs discounted during the relevant period and the matter will be decided as early as possible. No progress was made in the matter and the plaintiff had to submit the letter dated 31-10-2001 to the Hon'ble Finance Minister, Government of India, New Delhi.

> *12. That the defendants have charged interest for some time for the actual number of days for the defendants remained out of funds.*
>
> *13. That vide letter dated 8-5-2002, the Senior Manager informed the plaintiff that the cheques were being purchased at the prevailing rates. That reply was given to sidetrack the real issue in respect of which the letter dated 9-7-2001 was received from Shri P.S. Bawa, Assistant General Manager of Regional Office as referred to in the foregoing paras.*
>
> *14. That, thereafter, the plaintiff sent letters dated 12-7-2002, 22-9-2002, 24-3-2003 along with which the details of the proposed/estimated excess amount charged were given and it was requested that a sum of Rs 31,57,484 approximately appears to have been charged in excess of what should have been actually charged and the exact amount should be calculated and refunded to the plaintiff. No reply was given by the Bank to these letters.*
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> *15. That, the Senior Manager of Defendant 2 vide letter dated 19-9-2002 had informed that everything was done according to the rules and the matters need not be pursued any further, and thereafter, the plaintiff sent another letter dated 3-6-2003."*
>
> *(emphasis supplied)*

12. In a recent decision, the Hon'ble Supreme Court in ***Civil Appeal No.5841 of 2023 (Arising out of S.L.P.(Civil) No.35740 of 2017)***, titled as ***Keshav Sood Vrs. Kirti Pradeep Sood & Ors.*** has interfered with the order of the learned Single Judge rejecting the plaint under Order VII, Rule 11 of CPC. In that aspect, the Supreme Court while dwelling upon the scope of Order VII, Rule 11 has held at Para 5 that –

> *"5. As far as scope of Rule 11 of Order VII of CPC is concerned, the law is well settled. The Court can look into only the averments made in the plaint and at the highest, documents produced along with the plaint. The defence of a defendant and documents relied upon by him cannot be looked into while deciding such application…."*

13. In the instant case, learned senior counsel appearing on behalf of the appellants/defendants has given much emphasis on the inquiry report submitted by a Tehsildar and the order passed by the concerned Executive Magistrate in a proceeding under Section 145 of CrPC. There is no quarrel at the Bar that exercise of jurisdiction under Section 145 of CrPC is quasi judicial. Any inquiry report submitted by a Tehsilder in a proceeding under Section 145 of CrPC would not be taken into evidence as a matter of right. The inquiry report submitted by a Tehsildar in a proceeding under Section 145 CrPC is not a public document. To introduce the inquiry report submitted in a

proceeding under Section 145 of CrPC, in a civil proceeding, it is the burden upon the party who relies upon such report to call the person/officer concerned who enquired and furnish the report. That officer or the person concerned must adduce evidence only thereafter such report would be taken and considered to be an evidence in a civil suit. The order of any Magistrate or a Court, undoubtedly, a public document. Now, the question is whether the order passed in a proceeding under Section 145 of CrPC would have a binding effect on deciding a civil suit by a Civil Court? The answer perhaps is in negative. The object of Section 145 of CrPC is to prevent breach of peace as regards the disputes arising out of a land or water. The proceeding under Section 145 CrPC will not decide the title of a person over a land or water. Any finding arrived at by a quasi judicial authority like the Executive Magistrate as regards the title and possession of a party will not be a binding upon a Civil Court. Rather, the findings and decision of the Civil Court has the binding effect over right, title and interest as well as the possession of a party over a suit land. The situation can be looked into in another way also. The argument advanced by learned senior counsel appearing on behalf of the appellants/defendants are that the cause of action in instituting the instant suit arose in the year 2009 when the respondent/plaintiff had filed an application under Section 145 of CrPC raising the disputes between the possession/occupation of the suit land. Even if this argument is accepted by this Court, then, also the period of limitation to institute the present suit is within the period of limitation as contemplated under Article 64 of the Limitation Act. A suit based on title under Article 64 of the Limitation Act has to be filed/instituted within a period of 12 years from the date of dispossession. Here, the suit has been instituted in the year 2014. So, even if

the cause of action arose in the year 2009, the present suit has been filed within the period of limitation.

14. Order VII, Rule 11 of CPC gives ample power to the Court to reject a plaint filed by a plaintiff if it is evident from the plaint itself that the suit is barred by law of limitation. Applying the principles laid down here-in-above by the Hon'ble Supreme Court, I may un-hesitantly hold that the present suit has been filed where there is a definite cause of action to institute the suit. The claim of the respondent/plaintiff for recovery of possession of the suit land is based on title. He has asserted in his plaint that he has been dispossessed from the suit land on 22.01.2014 by the appellants/defendants. I have noticed that the Executive Magistrate in the proceeding under Section 145 of CrPC had passed order in the year 2015 i.e. after the institution of the present civil suit. More so, it is evident that when the disputes was sub judice before the Court of Executive Magistrate, the respondent/plaintiff instituted the suit with a definite pleading in the plaint that he had been dispossessed on 22.01.2014 that gave rise to a cause of action to institute the suit for recovery of possession of the suit land from the appellants/defendants.

15. From the aforesaid decisions rendered by Supreme Court, it is aptly clear that the Court can look into only the averments made in the plaint and at the highest, documents produced along with the plaint. The appellants/defendants and the documents relied upon by them cannot be a deciding factor to decide the question of cause of action.

16. In the light of above, I have no hesitation to come to a finding that the respondent/plaintiff had a definite cause of action to institute the present suit and it was instituted within the period of limitation.

17. This view of mine is supported by a decision of the Supreme Court in a case of ***Arshad Sk. & Anr. vrs. Bani Prosanna Kundu & Ors.,*** reported in ***Civil Appeal No.4805 of 2014*** (***Arising out of SLP (C) No.12773 of 2009)*** where the Supreme Court has clearly held that in a dispute in a conveyance deed between the area and description of boundary, the description of boundary would prevail.

18. Accordingly, the question raised by learned senior counsel appearing on behalf of the appellants/defendants regarding cause of action of the suit land has been answered.

19. The next question to be decided whether the findings of the learned Courts below in regard to the title of the respondent/plaintiff over the suit land is correct or suffers from perversity.

20. This issue has been dealt with by learned trial Court in Para 7 & 8, which, for convenience may be reproduced here-in-below, in extenso:

> *"7. Issue Nos. 3 & 4:*
>
> *In these issues it has to be decided whether the plaintiff has right, title and interest over the suit land and whether the plaintiff is entitled for recovery of khash possession of the suit land by evicting the defendants therefrom through by way of removing all obstructions therein.*
>
> *From the claim of the plaintiff in the suit it appears that, the subject-matter of the suit is relating to land measuring 1.73 acres of Tilla and bagan (Tilla class of land) appertaining to khatian bearing no.1322, C.S. Plot No.6394 and 6393 corresponding to R.S. Plot Nos.8200,8204, 8205,8208 and 8209/12635 of Mouja & Tehsil-Fatikcherra under Revenue Circle & Sub-Division-Mohanpur, West Tripura. The evidences found on record in relation to the subject-matter of the suit land shows that, plaintiff is the real owner by virtue of having inherited as legal heirs from the original owner of the suit land namely, Lal Mohan Saha (since deceased). The documentary evidence marked as Exbt.1 and Exbt.3 shows that the suit land originally belonged to the Government of Tripura under whom the father of the plaintiff was possessing the suit land as Raiyati and subsequently, after the death of said Lal Mohan Saha, the record of rights over the suit land was entered in the name of the mother of the plaintiff and the plaintiff himself as Raiyati No.1 and Raiyati No.2 vide in khatian bearing No.1322. As the mother of the plaintiff has also expired*

in view of the documentary evidence marked as Exbt.4, so, the suit land exclusively appears to have been owned by the plaintiff.

The question or the dispute that arises between plaintiff and defendants in respect to the R.S. Plot No.8209/12635 corresponding to Khatian bearing No.1322. Over this plot of land the defendants claimed in the suit to have purchased the same from the father of the plaintiff. On close scrutiny of the evidences on hand, it appears that, the plot number of the land over which the defendants claimed to have been related in the instant suit in fact, appears no relation at all in the instant suit. The particular plot of land of the instant suit, though might have fallen within the above mentioned plot number in question of the corresponding khatian, but, actually, it appears that the suit land does not fall within the said plot number to which defendants claimed to have purchased from the father of the plaintiff. The claim of the plaintiff in the suit appears to have been strengthened more in view of the contents of documentary evidence marked as Exbts. 6/A and 6/B. The documentary marked as exbt.6/A and 6/B equipped the plaintiff with more teeth in the suit that the concerned Revenue Court i.e. the Court of Executive Magistrate, Mohanpur, West Tripura has declared that the plaintiff to be the rightful owner of the suit land on the basis of the evidences found on the record and declared the defendants as unauthorized occupier.

The evidences of the defendants side placed before this Court appears to have no relation with the subject-matter of the suit. The documentary evidences marked as Exbt.A/1 to Exbt.O has no corresponding relation to the suit land comprising 1.73 acres of land of Khatian bearing No.1322 of C.S. Plot Nos.6393 and 6394 and R.S. Plot Nos. 8200,8204,8205,8208 and 8209/12635 of Mouja & Tehsil-Fatikcherra under Revenue Circle & Sub-Division Mohanpur, West Tripura. In this respect, the defendants side failed to disprove the claim of the plaintiff and rebutted back the evidences so submitted in the instant suit.

The documentary evidences marked as Exbt.1, Exbt.3 & Exbt.6/A to 6/B clearly shows that the plaintiff is the real owner having right, title and interest over the suit land and is entitled for recovery of khas possession of the suit land by evicting the defendants therefrom through by way of removing all obstructions therein. So, in view of the foregoing discussions and findings made thereof, the defendants are illegal occupier and possessing the suit land unauthorizedly and unlawfully.

Hence, issue nos. 3 & 4 are decided in favour of the plaintiff and against the defendants.

8. Issue No.5:

Issue No.5 deals with whether plaintiff is entitled to get a decree as prayed for in the suit land.

In the suit, plaintiff having been already established his right, title and interest over the suit land, along with entitlement for recovery of the possession of the suit land by evicting the defendants therefrom through by way of removing all obstructions therein, so, rightly is entitled to get the decree as prayed for in the suit. Further, issue nos. 1 & 2 are also decided in his favour. The defendants could not able to disprove the claim of the plaintiff with proper and sound evidence in the suit.

Hence, issue no.5 is also decided in favour of the plaintiff and against the defendants."

21. The aforesaid findings of the learned trial Court has been dwelled upon by the learned first appellate Court at Para 8 of the judgment, which may be reproduced here-in-below *in extenso*:

> *"8. There is no amount of doubt that the plaintiff has claimed his title over the suit land on the strength of the khatian bearing No.1322 (both Exhibit 1 and 3). According to the plaintiff his father Lal Mohan Saha was the owner in possession of the suit land and on the death of his father, he along with his mother Parul Bala Saha had inherited the entire suit land. His mother being died, he became the sole owner of the suit land. It is not in dispute that the father of the plaintiff was the owner in possession of the suit land. The defendant Nos. 1, 2 and 14 have, however, claimed that the defendant No.14 had purchased a land measuring 3 kanis out of the suit land on the strength of a registered sale deed bearing No.1-1796, dated 26.02.1979 (Exbt.A). With a view to ascertain if the land involved in Exbt.A attracts the suit land, when we dwell upon the Exbt.A it appears that the land involved therein was recorded under plot Nos. 803,804 and 806 of holding No.1063 whereas the suit land is comprised in plot Nos.6394, 6393 in four parts. There is nothing in the evidence to show that the land involved in Exbt. A is/was the part and parcel of the suit land. It was further claim of the defendant Nos. 1, 2 and 14 that one Gita Rani Saha had purchased a land measuring 1.31 acres on the strength of registered sale deed bearing No.4588, dated 14.08.1978 (Exbt.C) from the father of plaintiff. The land so purchased on the strength of Exbt. C also do not appear to be the part and parcel of the suit land. Moreover, the land under Exbt. C is a ditch (pond) and Viti class of land whereas the entire suit land is Tilla class of land and as such claim of the defendant Nos. 1, 2 and 14 on the basis of Exbt.C has no leg to stand upon.*
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> *The defendant Nos. 3 to 6 and 9 to 13 have further claimed that father of defendant Nos. 3 to 6, namely, Sadhan Ch. Das had purchased a land measuring 2 kanis on the strength of registered sale deed No.9159, dated 16.11.1965 (certified copy proved as Exbt.E) also do not attract the suit land mainly on the reason that the land involved in Exbt.C were the part and parcel of Taluk No.82 and there is nothing to show in the evidence on record that the suit land was recorded in khatian No.1322 (Exbt.1 and 3) deriving from Taluk No.82. The claim of aforesaid defendants on the strength of registered sale deed dated 27.11.1967 (Exbt.J) and sale deed bearing No.1-4309, dated 27.06.1966 (Exbt.L) also stand similar to that of Exbt.E. It follows, therefore, the claim of the defendants as to sale of the parts of suit land by the father of the plaintiff stands not proved. Learned trial court while recording its findings in regards to the title of the plaintiff over the suit land had also subscribed the same view as we held herein-above. I, therefore, find nothing to interfere with the findings of the trial court as to the declaration of title of the plaintiff over the suit land. The findings of the trial court as to recovery of possession of the suit land also stands good and does not require any interference. However, it is admitted position of the fact that the plaintiff having not in possession of the suit land has*

> *sought for recovery of possession and as such the plaintiff being not in possession of the suit land, his claim of granting perpetual injunction stands devoid of merit. Accordingly, the relief as to perpetual injunction so granted by the trial court cannot stand and accordingly, stands set aside."*

22. From the above discussions on the pleadings and materials brought on record, both the Courts below came to a clear finding that the title deeds executed in favour of the predecessor of the appellants/defendants which they purchased from the father of the respondent/plaintiff in the year 1965 did not tally with the Plot nos., Khatian nos. mentioned in the Schedule of the plaint. Learned senior counsel appearing on behalf of the respondent/plaintiff has given much emphasis that there is no dispute that the respondent/plaintiff has been possessing the land within the periphery of the boundary mentioned in the Schedule of the plaint and in that case, when there is dispute between the Plot Nos. and Khatian Nos, settled proposition of law is that the boundary will prevail over the Dag Nos., Plot Nos. and Khatian Nos. i.e. the survey settlement records of the Government. There is no dispute in regard to the proposition of law that boundary will prevail over the Plot Nos./Khatian Nos. when there is dispute, but, in the instant case, both the Courts below held that the sale deeds under which the predecessors of the appellants/defendants purchased the land from the father of the respondent/plaintiff does not tally with the suit land, then, this Court in exercise of its jurisdiction under Section 100 of CPC will not disturb these concurrent findings of fact arrived at by both the Courts below. More so, it is noticed that the appellants/defendants did not make any effort to trace out the exact land in question they wanted to identify because it is their specific case that they have been possessing the land which they had purchased by registered sale deeds in the year 1965 from the father of the

respondent/plaintiff. They have not prayed for appointment of any Survey Commissioner to controvert the position, location and status of the suit land to substantiate their claim. Inconsistent to their claim, it is the findings of both the Courts below that the schedules mentioned in their title deeds do not tally with the suit land of the instant suit.

23. In view of this clear concurrent findings of fact, I do not find any ground to interfere and dislodge the findings of the Courts below as regards the title of the respondent/plaintiff over the suit land.

Accordingly, the instant second appeal stands dismissed.

The judgment and decree passed by the Courts below stand affirmed and upheld.

JUDGE