

**HIGH COURT OF TRIPURA
AGARTALA**

RFA 06 OF 2019

Sri Pratap Chandra Das,
S/o Late Prasanna Kr. Das,
Village & P.O. - Jagannathpur,
P.S. - Kailashahar, Unakoti, Tripura.

---- Appellant.

Versus

Pravat Chandra Das having died, his heirs are:

1) Smt. Hira Bala Das,
W/o Late Pravat Ch. Das.

2) Sri Paltu Das,

3) Sri Pabitra Das,
S/o Late Pravat Chandra Das.

All of village-Sukantanagar, Kumarghat,
P.O. & P.S.-Kumarghat, Unakoti, Tripura.

4) Sri Parimal Ch. Das,

5) Sri Ratan Das,
S/o Late Pravat Ch. Das.

All of village & P.O. - Jagannathpur,
P.S. - Kailashahar, Unakoti, Tripura

6) Smt. Sukriti Das,
D/o Late Pravat Ch. Das,

Village - Boroitali, P.O. - Santail, P.S. - Kailashahar, Unakoti, Tripura.

7) Smt. Milan Das,
D/o Late Pravat Ch. Das,
South Panisagar, P.O. & P.S. - Panisagar, North Tripura.

8) Smt. Nisha Rani Das,

D/o Late Pravat Ch. Das,
Village - Mashauli, P.O. - Kanchanbari,
P.S. - Kumarghat, Unakoti, Tripura.

..... Principal Respondents.

Bipin Malakar having died his heirs :

9) (a) Sri Gourango Malakar,

(b) Sri Uma Charan Malakar,

All of village & P.O. - Kanchanbari,

P.S. - Kumarghat, Unakoti, Tripura.

10) Smt. Shefali Das,

W/o Parindra Das, Village & P.O.- Jagannathpur,

P.S. Kailashahar, Unakoti, Tripura.

..... Proforma Respondents.

For Appellant(s)	:	Mr. A. Pal, Advocate.
For Respondent(s)	:	Mr. H. Deb, Advocate.
Date of hearing	:	11.03.2022
Date of delivery of Judgment and order	:	08.07.2022
Whether fit for reporting	:	Yes

**HON'BLE MR JUSTICE ARINDAM LODH
HON'BLE MR JUSTICE S.G. CHATTOPADHYAY**

JUDGMENT & ORDER

(Arindam Lodh, J)

This is a first appeal filed under Section 96 read with Order 41 of the Code of Civil Procedure, 1908, challenging the legality and validity of the judgment and decree dated 31.01.2019, passed by

learned Civil Judge (Sr. Division), Court No.1, Kailashahar, Unakoti Tripura in Title Suit No.12 of 2017.

2. Facts of the case as surfaced, in brief, are that, the plaintiff-appellant, Pratap Chandra Das (here-in-after referred to as “plaintiff”) and late Pravat Chandra Das, i.e. the predecessor of defendant nos.1 to 8 (here-in-after referred to as “defendants”), were two brothers. The parents of these two brothers, namely, Late Prasanna Kumar Das together with Late Hiran Bala Das owned and possessed landed property measuring 14.77 acres described in the first schedule of the plaint. Late Prasanna Kumar Das and Late Hiran Bala Das sold the entire first schedule of land measuring 14.77 acres by sale deed No.1-2470, dated 28.04.1969 to Dharendra Ram Malakar and Kukil Ram Malakar. Thereafter, the said two purchasers sold a portion of the land measuring 10.34 acres out of 14.77 acres to the plaintiff-appellant by registered sale deed No.1-4959, dated 24.12.1969. It was also pleaded that the above mentioned two purchasers sold land measuring 9 kanis i.e. 3.60, acres and further land measuring 2 kanis 2 gandas 3 karas 3 durs i.e. 0.865 acres (out of 14.77 acres) to one Anima Sundari Paul by two registered sale deeds No.1-4716, dated 07.11.1969 and 1-4805, dated 26.11.1969. The said Anima Sundari Paul thereafter, also sold

land measuring 0.865 acres and 2.80 acres (7 kanis) to the plaintiff (Pratap Chandra Das) by two separate sale deeds No.1-4885, dated 22.12.1970 and sale deed No.2-4884, dated 22.11.1970. Thus, it was the plea of the plaintiff that he became the owner of the entire first scheduled land, measuring 14.77 acres. It was further pleaded that out of 14.77 acres, the plaintiff subsequently sold 10 kanis 10 gandas i.e. 3.96 acres to the predecessor of defendants No.1 to 8, by registered sale deed No.1-7860, dated 19.12.1970 as mentioned in the second schedule of the plaint. Hence, the plaintiff remained the owner of land measuring 10.81 acres (14.77 acres - 3.96 acres). After the demise of Pravat Chandra Das on 25.02.1998, the legal heirs of Late Pravat Chandra Das, filed TS No.10 of 2004, against the plaintiff, alleging that they had been dispossessed by the plaintiff from the land measuring 3.96 acres. Subsequent to the aforesaid suit, the defendants gradually started to invade and dispossessed the plaintiff (since midst of September, 2013 to 15th February, 2015) from the 4th schedule suit land measuring 5.82 acres (10.81 acres - 4.99 acres)(as per side position 5.99 acres). As a result, the plaintiff continued to have in possession of land measuring 4.99 acres (10.81 acres - 5.82 acres) only of the third schedule as described in the plaint. Moreover, the

defendant nos.1 to 8 have illegally set up a homestead within the suit land. It was also pleaded that there were some anomalies in the position of the ROR and the R.S. khatian no.192 of the suit land and wrongly reflected the name of one disinterested person, namely Sefali Bala Das.

3. The defendants No.1, 2, 4, 6, 7 and 8 had contested the suit by way of filing a common written statement wherein they stated that the land measuring 1.30 acres under Khatian No.87, R.S. Plot No.955/2565, shabek dag No.149/800 out of the suit land described in 4th schedule of the plaint was originally belonged to (1) Rajranibala Das, (2) Jyotsna Rani Das and (3) Rashandra Das who on 24.04.1980 by executing a registered deed No.1-1644/1980 had sold out the suit land to the defendant No.4 and handed over the possession of the same land on 24.04.1980 and since then the defendant no.4 had been possessing the same land. It was also pleaded that the land measuring 9.52 acres under Khatian nos.91/1 and 91/2 of R.S. Plot No.1031 & 1032 were the joint property of the plaintiff and defendants, but the plaintiff was in possession of land measuring 8.80 acres, depriving the defendants. It was further pleaded that the land under khatian Nos.97/1 & 97/2 measuring 5.92 acres was the property of the plaintiff and the

defendants, and the plaintiff was in possession of land measuring 1.38 acres, whereas, the defendant nos.1 to 8 were in possession of land measuring 0.40 acres and the rest of land was in joint possession of plaintiff and defendant nos.1 to 8. It was further pleaded that defendant no.4 was the owner of land measuring 1.41 acres of land under khatian no.89. Thus, the defendants prayed for dismissal of the suit of the plaintiff.

4. The description of land as stated in the schedules are as under:-

1st. Schedule (Given as per the regd. Kabala dated 28.4.1969)

District Unakoti, Tripura, P.S.- Kailashahar, Porgona-Birchandranagar, Tehsil-earlier Birchandranagar now at Fatik Roy, mouja-Jagannathpur, Holding No. 85, old khatian No. 166, old c.s.plot no. $\frac{442}{785}$ and Holding No.77, old Khatian No.157, old c.s.plot nos.438/439 and 441/442/443/ $\frac{441}{786}$ / $\frac{501}{838}$, Holding No. 90, old Khatian No. 175, old c.s.plot no. $\frac{149}{800}$, in this block total land area 14.77 Ac., bounded as below:

North – Originally Bipin Malakar and Jogendra Malakar and Bhakta Malakar and Path of Prasanna Das,

South – Originally Joy Hari Das and Sanat Das and others,

East – Cherra(streamlet) and originally Gajendra Malakar,

West –Originally Bhakta Malakar and Banshi Ruhidas and also land boundary of Jagannathpur Tea Estate. Class of Land Basthu, Chara, Pukur and Tilla etc.

2nd Schedule

District Unakoti, Tripura, P.S.- Kailashahar, Porgona-Birchandranagar, Tehsil-earlier Birchandranagar now at Fatik Roy, mouja-Jagannathpur, old Khatian no. 157, Holding No. 77,

old c.s.plot no. 441 Corresponding to R.S. 1053 of area ' 70 Ac. Of R.S. Khatian No. 91/1. And old c.s.plot No.441 Corresponding to R.S.plot No. 1053 of area '70 Ac. Of R.S. Khatian No. 91/1, and old c.s. plot No. $\frac{501}{838}$ corresponding to R.S. plot No. 1054 of area 1.26 Ac. Of R.S. Khatian No. 91/2, respectively of class Na1 and Tilla, in total 1 and area 3.96 Ac. (i.e. about 10 Kanies), being bounded as below:

North – Big Ail and further north_Pratap Ch. Das,

South – Possessor-Rama Kanta Das,

East – Earlier Prasanna Kr. Das now Pratap Ch. Das,

West – Home-stead of Prasanna Das now of Parimal Das and other heirs of Late Pravat Das.

3rd Schedule (Land in possession of plaintiff)

District Unakoti, Tripura, P.S.- Kailashahar, Porgona-Birchandranagar, Tehsil-earlier Birchandranagar now at Fatik Roy, mouja-Jagannathpur

Sl. No.	R.S.K hatian No.	R.S.plot No.	Class of land.	Area in acres	Remarks, if any
1	91/1	1044	Pukur	0.30	All these plots are in single block with boundaries as below. North-village path and others, South-Heirs of late Pravat Das, East-Cherra and village path, West-Illegal occupiers heirs of late Pravat Das.
2	91/2	1043	Pukurpar	0.20	
3	91/2	1047	Viti Tilla	0.52	
4	91/1	1046	Bagan Tilla	0.62	
5	91/2	1048	Tilla	0.45	
6	91/1	1049	Tilla	0.34	
7	91/2	1052/2436	Vita Tilla	0.14	
8	91/1	1052	Tilla	1.80	
9	91/2	1052/2436	Lunga	0.12	
10	97/2	965(P)	Tilla	0.50	
				Total- 4.99 Ac.	

4th Schedule (Suit land)

District Unakoti, Tripura, P.S.- Kailashahar, Porgona-Birchandranagar, Tehsil-earlier Birchandranagar now at Fatik Roy, mouja-Jagannathpur.

<i>Sl. No.</i>	<i>R.S.Khatian No.</i>	<i>R.S.plot No.</i>	<i>Class of land.</i>	<i>Area in acres</i>
1	87	955/2565	Lunga	1.30
2	91/1	1031	Lunga	0.24
3	91/1	1032	Nal	0.48
4	97/2	961	Tilla	1.60
5	97/2	963	Lunga	0.30
6	97/2	965	(Part in Tilla western portion)	1.12
7	97/1	959	Lunga	0.20
8	97/1	960	Bastu Tilla	0.20
9	192	954	Lunga	0.55
				<i>Total-5.99 Ac. About 15 Kanies</i>

5. After exchange of pleadings, learned trial court framed the following issues:

(i) Whether the suit is maintainable?

(ii) Whether the plaintiff purchased the whole 1st schedule land of plaint measuring 14.77 acres?

(iii) *Whether the plaintiff remained the owner of land measuring 10.81 acre after sale from her purchased land?*

(iv) *Whether the plaintiff has any right, title and interest over the 4th schedule land of plaintiff?*

(v) *Whether the defendants No.1 to 8 gradually w.e.f the middle of September, 2013 to 15.02.2015 illegally dispossessed the plaintiff from the suit land described in 4th schedule of plaintiff?*

(vi) *Whether the 4th schedule land of khatian No.87, R.S. Plot No. 955/2565 is purchased by defendant No.4 from the original owners?*

(vii) *Whether the 4th schedule land of khatian No.91/1, R.S. Plot No. 1031 and 1032 and khatian No.97/1 and 97/2 are joint property and in joint possession of plaintiff and defendants?*

(viii) *Whether the plaintiff is entitled to the mesne profit as claimed?*

(ix) Whether the plaintiff is entitled to the relief as prayed for and or any other relief/reliefs in this suit?

6. The suit was proceeded *ex parte* against the defendant Nos.3,5,9(a),9(b) as they failed to file written statement.

7. I have gone through the judgment of learned court below passed in TS 12/2017. Learned trial court after hearing the parties to the *lis* and considering the evidence and materials on record decided issue nos. II , III,IV,V,VIII and IX against the plaintiff i.e. the appellant herein and issue nos. VI decided in favour of the defendant . Issue no. I and VII was decided in favour of the plaintiff. Ultimately, the suit of the plaintiff was dismissed on contest with cost.

8. Being aggrieved by and dissatisfied with the aforesaid judgment and decree, the plaintiff-appellant has preferred the instant first appeal before this court.

9. I have heard Mr. A. Pal, learned counsel appearing on behalf of the appellant. I have also heard Mr. H. Deb, learned counsel appearing on behalf of the respondents.

10. Mr. Pal, learned counsel for the appellant has fairly submitted that the only ground he likes to agitate that the

defendants/respondents have admitted in their earlier suit that the appellant was the owner of 14.77 acres of land and for that reason they cannot retract from their statements made in TS 10 of 2004 (Ext-12), but, the learned trial Judge could not appreciate such admission of the defendants for which this court should interfere with the findings of the learned trial Judge.

11. I have perused the judgment passed by the learned trial Judge. In my opinion, the following discussions would be relevant to decide the aforesaid question posed by learned counsel appearing on behalf of the appellant which are extracted here-under:

“ From Ext. 12, the judgment of TS 10 of 2004, I find, in the said case, the defendant No. 1 to 8 pleaded that the plaintiff purchased 14.77 acre of land including the land of previous khatian No. 157 and present khatian No.91/1 & 91/2 of C.S.Plot Number(shabek) No.501/838 Hal 1054 and shabek C.S.Plot No.441 and hal 1053 by registered sale deed No. 2470 dated 29.04.1969. Thus, I find, purchase of 14.77 acre land by plaintiff was stated by the defendant No.1 to 8 in TS 10 of 2004. However, from the pleading and evidence, I find, plaintiff merely purchased 10.34 acre land by Ext.2 (sale deed No.1-4959 dated 24.12.1969), 0.865 acre (2 kani 2 ganda 3 kara 3 dur) by Ext. 5 (Sale deed No.1-4885 dated 22.12.1970), and 2.80 acre of land (7 kani) by Ext.6 (sale deed No.1-4884 dated

22.12.1970). Thus, by way of purchase the plaintiff became the owner of total land measuring (10.34 acre+ 0.086 acre+ 2.80 acre) 14.005 acre only and not 14.77 acre.

9. The plaintiff pleaded and adduced evidence that out of purchased land after sale of land measuring 10 kanis 10 ganda of land (3.96 acre) by plaintiff to defendant No.4, the plaintiff remained the owner of 10.81 acre of land. But, I find, out of purchased land measuring 14.005 acre as stated above, the plaintiff sold land measuring 10 and half kani (4.04 acre). Thus, after sale, the plaintiff remained owner of land measuring (14.005-4.20) 9.805 acre only and not as claimed by plaintiff of land measuring 10.81 acre. As plaintiff claimed to be in possession of 3rd schedule land of plaintiff measuring 4.99 acre out of his remaining land, I find, the remaining land of the plaintiff stands (9.80 acre – 4.99 acre) 4.81 acre. Therefore, the claim of the plaintiff of dispossession of his remaining land measuring 5.99 acre as described in 4th schedule land of the plaintiff appears to be excess claim of his alleged entitlement of remaining land.

10. In this case, the plaintiff claimed to be the owner of land measuring 1.30 acre of khatian No.87 of R.S. plot No. 955/2565. From Ext.1, the sale deed jointly executed by four owners including plaintiff, I find, it is specifically and clearly mentioned that land measuring 2.10 acre of land was sold by seller No.1 Prasanna Kumar Das of land of khatian No.166, Plot No.442/785 out of total land measuring 5 kani 5 ganda 3 kara 1 kranta 10 dur of holding No.85 and seller No.2 and 3, the plaintiff and predecessor of

defendant No.1 to 8 sold land measuring 11 acre 7 shatak of khatian No.157 of holding No.77 of Plot No.483, 439, 441, 442, 443, 441/786, 501/838 and seller No.4 Hiran Bala Das sold land measuring 1.60 acre of holding No.90 khatian No.175, dag No. 149/800. Thus, I find, from khatian No. 175, dag No. 149/800 only land measuring 1.60 acre was sold and the same is ultimately purchased by the plaintiff. From Para 4 of the plaint and Para 5 of examination in chief of PW.1 and PW.2, it can be found that there are total land measuring 3.60 acre in khatian No. 175, old C.S. Plot No. 149/800. Thus, after sale of land measuring 1.60 acre there remains further land measuring 2.00 acre. Hence, it cannot be said that plaintiff purchased the whole land of dag No.149/800 of khatian No.175. Therefore, any sale either prior or after of the sale by four owner either to the alleged disinterested person namely Sefali Bala Das by Ext.H, the sale deed No.1-5463 dated 26.12.1966 for land measuring 0.70 acre and to the vendor of the defendant No.4 by Ext.A, the sale deed No.1-5462 dated 26.11.1969 for land measuring 1.30 acre [Total (0.70 acre + 1.30 acre=) 2.00 acre] out of the remaining 2.00 acre of land by Hiran Bala Das is proper. Thus, I find, the purchase of land measuring 1.30 acre by defendant No.4 from his vendor and sale of the said land by Hiran Bala Das to the vendor of the plaintiff are not prejudiced to the plaintiff.

That apart, the sale by Hiran Bala Das to the vendor of the defendant No. 4 is prior sale and shall prevail.”

12. I have considered the above discussions of the learned trial court. On scrutiny of all the documents, sale deeds as well as the record of rights (khatians), I do not find any error of facts in the findings of the learned trial court when he held that:

“Thus, considering all, I find it cannot be said that the plaintiff purchased the whole 1st schedule land of plaintiff measuring 14.77 acres. I am also unable to say that plaintiff remained owner of land measuring 10.81 acre after sale from the purchased land. It also cannot be said that plaintiff has any right, title and interest over the 4th schedule land of plaintiff.”

13. Regarding the controversies raised in this appeal as afore-stated by learned counsel appearing on behalf of the plaintiff-appellant, I am also in agreement with the view taken by the learned trial court as to how the court should read and construe the pleadings of the parties. It is settled law that mofussil pleadings are to be considered as a whole, liberally and must be construed reasonably.

14. The Hon’ble Supreme Court in *Devasahayam vs. P. Savithramma*, reported in (2005) 7 SCC 653 held that:

“The pleadings as are well known must construed reasonably. The contention of the parties in their pleadings must be culled out from reading the same as whole. Different consideration

on construction of pleadings may arise between pleadings in the mofussil courts and pleadings in the original side of the High Court.”

In this respect, the Hon’ble Supreme court in *Des Raj and Ors. vs. Bhagat Ram (Dead) By Lrs. And Ors.*, reported in 2007 (2) SCC 641, held that:

“It may be true that in his plaint, the plaintiff did not specifically plead ouster but mofussil pleadings, as is well known, must be construed liberally. Pleadings must be construed as a whole.”

15. That apart, in the opinion of this court, any statement or pleadings cannot falsify the documentary evidences adduced by the parties. The learned trial court having gone through the evidences and materials on records came to a finding that the contesting defendants have made no contradictory pleading. The documents being considered, it is found that the suit land is not covered by the sale deeds of plaintiff, for which, it can be said that the defendants correctly pleaded that the sale deeds of plaintiff do not attract suit land. In earlier suit i.e. TS 10 of 2004, the defendants merely pleaded that plaintiff purchased 14.77 acres of land including 2nd schedule land of plaint of this suit (which was suit land of TS 10 of 2004) and, therefore, the plea

of the defendants in this case that the plaintiff did not purchase the suit land (4th schedule land of plaintiff of the suit) is not contradictory as suit land does not fall within the purchased land of the plaintiff.

16. *In furtherance thereof, it is the settled proposition of law that title to land cannot pass by admission when the statute requires a deed. Ordinarily, in civil suits pleadings in most of the cases are based on documents/records; however, sometimes pleadings are made on the basis of one's own knowledge, or information gathered from reliable source, or sometimes may be based on one's own perceptions. But, in case of conflict, without any sort of debate, the documentary evidence relating to a particular fact in issue that supports the pleadings of a party shall prevail over the pleadings based on such knowledge/information, or perception, etc. that run in contra to the contents of such documents/records. As a sequel, admission of a party in regard to particular fact in issue which is inconsistent to the contents of a document, then, such admission shall not dislodge the proven documentary evidence.*

(Emphasis supplied)

17. In the light of the above legal and factual aspects, the instant appeal is devoid of merits and thus dismissed. The findings and the decisions thereupon returned by learned Civil Judge, Senior Division while dealing with all the issues are hereby affirmed.

Accordingly, the judgment and decree passed by learned trial court remain undisturbed.

Send down the LCRs.

JUDGE

JUDGE

Puspita/Snigdha

