
(2015) 05 TP CK 0009
In the Tripura High Court
Case No : Regular Second Appeal No. 93 of 2007

Brajendra Das

APPELLANT

Vs

Kokil Basi Das and Others

RESPONDENT

Date of Decision : 08-05-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100, 96

Citation : (2015) 05 TP CK 0009

Hon'ble Judges : S. Talapatra, J

Bench : Single Bench

Advocate : D. Chakraborty, Senior Advocate and H. Laskar, for the Appellant; P. Datta, Advocates for the Respondent

Final Decision : Dismissed

Judgement

S. Talapatra, J.

1. This is an appeal under Section 100 of the C.P.C. from the judgment and decree dated 27.07.2007, delivered in Title Appeal No. 42 of 2003 by the Additional District Judge, West Tripura, Agartala, Court No. 3, affirming the finding returned by the judgment and decree dated 13.08.2003 delivered in Title Suit No. 36 of 2000 by the Civil Judge, Junior Division, Court No. 1, Agartala, West Tripura.

2. The suit has been instituted by the respondents for declaration of title and for recovery of possession by evicting the defendant-appellant herein, from the land as described in the Schedule-B of the plaint.

3. At the time of admitting this appeal, by the order dated 12.06.2009, the following substantial question of law has been formulated for hearing of the appeal:

"Whether the impugned judgments are the result of the wrong interpretation of the Survey Commission's report which affected the rights of the parties?"

4. The essential facts for appreciating the said substantial question of law may be introduced at the outset.

The respondents, the plaintiffs in the suit, became the owner of the land pertaining to the C.S Plot No. 1532 of Mouja-Bikramnagar. After death of the original owner, namely, Satish Chandra Das, the defendant-appellant herein, is in possession as the heir over a piece of land pertained to C.S. Plot No. 1534 in the adjacent right side of the suit land. The defendant-appellant had been forcibly occupied a small piece of land measuring 32 sq.ft. under C.S Plot No. 1532, constructed a part building thereon, despite objection raised by the plaintiffs. Hence, the suit for recovery of the said land described in the Schedule-B of the plaint. The defendant, the appellant herein, by filing a written statement has contended that the land under C.S. Plot No. 1534 is situate to the West of C.S. Plot No. 1532 owned by the plaintiffs. The plaintiffs are in possession over the said land except that part as described in the Schedule-B of the plaint.

5. The defendant has stated that, construction is confined to the C.S Plot No. 1534. The construction has come up on demolishing the old one. He has categorically asserted that he has not encroached any part of land covered by C.S. Plot No. 1532. As it appears from the records that, for determining the issue, whether the defendant has encroached any portion of C.S. Plot No. 1532, the trial court had engaged a Survey Commissioner for finding out whether the defendant encroached any part of C.S. Plot No. 1532 or not.

6. On the basis of the survey, the Survey Commissioner submitted his report on 30.06.2003 and the court below invited objection, if any, from the plaintiffs and the defendant, but none of them raised any objection. Thereafter, the trial court, by the order dated 14.07.2003, accepted the said report (Exbt.-C series) on admission. In the report, the Survey Commissioner has categorically observed that the western plot of C.S. Plot No. 1532, running from north to south, measuring 1 ft. 6 inches was under occupation of the defendant, Brajendra Chandra Das and the defendant claimed that he has no claim over the C.S. Plot No. 1532. Thus, the suit has been decreed. Hence, the defendant is to be evicted from the B Schedule land.

7. Against the said judgment and decree dated 13.08.2003 passed by the trial court, the appellant herein filed an appeal under Section 96 of the C.P.C. in the court of the District Judge, West Tripura, Agartala, being Title Appeal No. 42 of 2003. In the course of time, the said appeal was transferred to the court of the Additional District Judge, West Tripura, Agartala, Court No. 3 for hearing in accordance with law. By the impugned judgment and order dated 27.07.2007, the first appellate court has observed as under:-

"The defendant appellant is now estopped on the doctrine of acquiescence and waiver from raising any objection about correctness of the report of the Commissioner (Ext C series). The principle is that the party shall not be allowed to blow hot and cold simultaneously.

So on analysis of the entire materials and legal position of law I have absolutely no hesitation to hold that the learned court below analysed and evaluated the entire case on the proper perspective and had arrived at a correct decision."

8. Against such concurrent finding of fact, this appeal has been preferred by the defendant. As Mr. D. Chakraborty, learned senior counsel has raised that the report of the Commissioner (Exbt-C) is not distinct and on the basis of that no decision should have been taken. For dispelling any ambiguity, this Court asked by the order dated 24.02.2014 for re-survey. The relevant part of the order dated 24.02.2014 is extracted hereunder:

"At the midst of the hearing it has surfaced that the surveyor report, Exbt.C series, as presented before the Court, is not on some points very categorical. Even though there are some general outlines about the measurement of the land in question or the measurement of the land, part of RS Plot No. 1532 which has been claimed to have been under the possession of the defendant.

After examining the said report, Exbt.C series, this Court is of the opinion that as a measure, in exception to the procedure, this Court should direct a competent survey knowing person having knowledge over the technical survey of the land to resurvey the land in question for purpose of distinctly identifying the plots and their measurement and thereafter to identify the piece of land belonging to the RS Plot No. 1532 which has been stated to be under possession of Shri Brajendra Chandra Das, who is sharing the western boundary as the owner in the possession of the part of RS Plot No. 1534. Both the plots are from Mouja-Bikramnagar and respectively pertained to Khatian No. 82 (for RS Plot No. 1532) and Khatian No. 2170 (for RS Plot No. 1534).

For that purpose, the Director of Settlement and Land Records, Government of Tripura is directed to engage one of the departmental surveyor to do that job and for that purpose the Registry of this Court will supply a copy of this order along with two Khatians as referred and the settlement map as available in the records to the Director of Settlement and Land Records within a period of 15 days from today. The Director of Settlement shall send the report to this Court within two months from the date of receipt of the copy of this order along with those records. The report as stated shall be prepared by a surveyor of the department delineating the position and possession of the land as pertaining to those RS Plots No. 1532 and RS Plot No. 1534 and the possession in respect of each of the plots supported by a hand sketch map for future use by this Court. In the report, if any piece of land, pertaining to RS Plot No. 1532 is found under possession of Shri Brajendra Chandra Das, the appellant, that part/piece of land be properly identified.

It is further mentioned that if any piece of the plots are in possession of any person who is not recorded as the owner in the Khatian be categorically mentioned. The measurement and the size of the land be properly marked in the hand sketch map by the said surveyor.

The learned counsel for both the parties shall deposit the estimated cost in equal share to the Director of Settlement and Land Records after the estimate of the expenditure is prepared by him. It is made further clear that for the purpose of survey the notice may be given to the learned counsel on record either by the Director of Settlement and Land Records or by the surveyor who will be engaged by the Director of Settlement and Land Records.

One day's pay and allowances for the day when the said surveyor would visit shall be made part of the expenditure."

9. For a further report on surveying the Plots No. 1532 and 1534 as stated, the Director of Land Records and Settlement, deputed one of the experienced Kanungoes and other two officers to assist him for surveying those plots. They filed the report in this court on 23.05.2014, but on perusal of the said report, by the order dated 14.11.2014, the Surveyor was asked to appear in person for making some clarifications. On the face of the reservation expressed by the counsel, the Surveyor namely Dulal Chandra Das, Kanungo, has submitted that erroneously the east and the west boundaries have not been properly demarcated and measured, he prayed for further survey of the land. He also prayed for time for submitting a fresh report after removing those ambiguities. This court permitted to furnish a fresh report by incorporation and all the materials of the report by removing errors and ambiguities. He filed the new report on 12.02.2015.

10. The said new report has been marked by this court Exbt.C.1 series (8 pages). From the report it has appeared that the appellant, defendant in the suit, has been occupying Block C of the sketch, plot No. 1532 pertained to Khatian No. 1532, Mouza Bikramnagar, measuring 28.33 sq.ft.

11. Mr. D. Chakraborty, learned senior counsel appearing for the appellant, has fairly submitted that the land of the defendant pertained to the revisional Khatian No. 2170 and within the periphery of RS Plot No. 1534/6790 with an area of 0.010 acre, corresponding to 2 Karas 1 dhur according to the local measurement and corresponding to 436 sq. ft. At the time of local investigation, land measuring 317.38 sq. ft. was found in possession of the defendant-appellant within the periphery of RS Plot No. 1534 and land measuring 28.33 sq.ft. has been found within the periphery of RS Plot No. 1532 under his possession. Thus total land under possession of the defendant-appellant within the periphery of aforesaid RS Plots is 345.71 sq.ft. whereas the defendant-appellant is entitled to 436 sq.ft. within the periphery of RS Plot No. 1534, but the land measuring 317.38 sq.ft. was found in possession of the defendant-appellant in the said R.S Plot, with deficit of area measuring 118.62 sq. ft. He is entitled to 436 sq.ft. according to the title deed. He has further submitted that, on the other hand, R.S Plot No. 1532 recorded in the name of the predecessor of the plaintiff-respondents, namely Satish Chandra Das in Khatian No. 82 of Mouja Bikramnagar comprised of an area of 0.020 acre, corresponding to 1 ganda 2 dhurs, according to the local measurement, 871 sq.ft. whereas in the

Commissioner's report, total area of the plot No. 1532 has been found to be 1061.62 sq.ft..

12. On appreciation of the report of the local investigation, it appears that from R.S Plot No. 1532 the plaintiff has clear title over a piece of land measuring 0.020 acre, corresponding to 1 ganda 2 dhurs, according to the local measurement 871 sq.ft., whereas at the time of local inspection, physical area of the said R.S plot was found to be 1061.62 sq.ft..

13. Mr. Chakraborty, learned senior counsel, has submitted that if the total area of R.S plot No. 1534 and R.S plot No. 1532 as recorded in the title deeds are taken care of, the physical area as surveyed would be almost the same, but the plot-wise division of the land was not properly made because of erroneous drawing up of the map during the last revisional settlement operation, giving rise to the dispute between the parties. Mr. Chakraborty, learned senior counsel has submitted that unless the records maintained by the Land Records and Settlement Authority are corrected the dispute perhaps cannot be resolved.

14. Mr. P. Datta, learned counsel appearing for the respondents has submitted that since it is an admitted position that the defendant-appellant does not have any right whatsoever on land pertaining to plot No. 1532, it clearly transpires that he has been illegally occupying the land described in the Schedule B in the suit. He has further submitted that there is no infirmity in the concurrent finding returned by the first appellate court.

15. Having regard to all aspects and submission made formally by Mr. D. Chakraborty, learned senior counsel, this court is of the considered opinion that the Schedule B land does not measure 32 sq.ft. as claimed by the plaintiff-respondents, but it measures 28.33 sq.ft. in terms of the report of the local inspection, Exbt.C.1 series (8 pages). The plaintiff-respondents are therefore entitled to recover the land described in the Schedule-B of the suit land measuring 28.33 sq.ft. by evicting the defendant-appellant.

16. This court has observed that, at no point of time the appellant asked for mediation, rather he has insisted that his occupation is entirely on C.S plot No. 1534, but what has transpires is that the defendant-appellant has encroached a part of the C.S plot No. 1532 measuring 28.33 as shown in the Block-C of the hand-sketch map prepared by the Surveyor. As such, nothing can be done at this stage to mediate the dispute for mitigating the loss, the defendant-appellant might face during the execution of the decree.

17. Having held so, this appeal being devoid of merit, is dismissed subject to the finding as to the measurement of Schedule B land. Place the Exbt.-C/1 series documents in the proper file of Title Suit No. 36 of 2000.

18. The decree be prepared accordingly.

Send down the LCRs forthwith.