
(2016) 04 TP CK 0008
In the Tripura High Court
Case No : RFA No. 15 of 2012

Jyotirmoy Choudhury and Others

APPELLANT

Vs

Tapash Choudhary and Others

RESPONDENT

Date of Decision : 06-04-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96

Citation : (2016) 04 TP CK 0008

Hon'ble Judges : S. Talapatra, J.

Bench : Single Bench

Advocate : S. Deb, Senior Advocate and S. Datta, Advocate, for the Appellant;
S.M. Chakraborty, Senior Advocate and D. Das, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

S. Talapatra, J.—1. This is an appeal from the judgment and decree dated 30.05.2012 delivered in Title Suit (P) No. 29/2007 by the Civil Judge, Senior Division, West Tripura, Agartala (Court No. 1). The suit filed by the appellants was for partition of a Hindu joint property.

2. The suit land according to the plaintiffs originally belonged to Gakul Chandra Chowdhury and on his death his heirs inherited the property. The heirs continued to possess the land, but during the survey settlement operation, the suit land was recorded in the khas khatian, showing as the Government land. On the basis of such khatian, the Collector allotted the land in favour of Karunamoy Bhattacharjee and Amulyadhan Bhattacharjee (two ex-servicemen), but those ex-servicemen could not get their possession as the legal heirs of Gakul Chandra Chudhury were in physical possession. As a result Karunamoy Bhattacharjee and Amulyadhan Bhattacharjee instituted two title suits, being T.S. No. 28/1969 and T.S. No. 29/1969 respectively in the court of the Subordinate Judge, West Tripura, Agartala (now, the Civil Judge, Senior Division, West Tripura, Agartala, Court No. 1). By virtue of the judgment dated 30.12.1971 those suits were decreed in favour of Karunamoy Bhattacharjee and Amulyadhan Bhattacharjee.

Against the said judgment dated 30.12.1971 two separate appeals were filed before the District Judge, West Tripura, Agartala under Section 96 of the CPC.

3. Two separate appeals were filed before the District Judge, West Tripura, Agartala under Section 96 of the CPC, being Title Appeal No. 12/1981 and Title Appeal No. 13/1981. By the common judgment dated 15.11.1988, the first appellate court had dismissed the appeals filed by the defendants in Title Suit No. 28/1969 and Title Suit No. 29/1969. However, the common judgment dated 15.11.1988 was challenged by them by filing two separate second appeals, being Second Appeal No. 5/1989 and Second Appeal No. 6/1989 in the Gauhati High Court. By the common judgment and order dated 30.04.1997 those second appeals were allowed, observing inter alia:

"On a perusal of the judgment passed by the learned District Judge in the aforesaid appeals it appears that the learned District Judge has found the suit land within the patta and sale deeds of the defendants exbt.B/2 and B/3. The learned District Judge has relied on the paper of the Settlement department and the learned District Judge has construed the proceeding under Section 15 of the TLR and LR Act as a proceeding under Chapter XIII of Part V of the TLR and LR Act. For determination of excess land beyond ceiling limit proceedings are required to be drawn up under Chapter XIII part V of the TLR and LR Act. It appears from the exbt.A/8 that the ASSO passed an order on 9.3.65 in a proceeding under Section 15 of the TLR and LR Act which runs as follows:--

"Notice duly served. Return file with records. Case No. 236 and 239 taken up together. All the parties enjoying lands together. Their family members are 32 and settled are 17.95 acres in these two cases. Besides this, they have got two other jotes when applicant admitted that they possessed about 19 acres of land. The settled land which the applicants possess are more than sufficient for the maintenance of their families and no more land may be allotted to them.

Issue notice on the occupants to give up possession of plot No. 3105, 3118, 3119, 3120, 3109 and 3117 in full and 1.42 acres out of plot Nos. 3096 in one side within 15 days from the date of receipt of such notice."

On a plain reading of the aforesaid order of the ASSO it is evident that the aforesaid order has been passed in a proceeding under Section 15 of the TLR & LR Act. It is not a proceeding under Chapter XIII part V of the TLR and LR Act for determination of excess land of jote of a rayot beyond ceiling limit prescribed in the aforesaid act. Since in the aforesaid proceeding exbt.A/8, ASSO did not determine the excess land beyond ceiling limit of the defendants, it cannot be said that the defendants were possessing more lands beyond the ceiling limit prescribed in the TLR and LR Act. For determination of excess land beyond ceiling limit a proceeding is required to be started under Chapter XIII part V of the TLR and LR Act and in the proceeding if it is found that a rayot is holding land in excess of the ceiling limit then the rayot will have to given an option to retain the lands within the ceiling limit of his choice. After retaining the lands within the

ceiling limit the rayot will furnish a return in the prescribed form showing which lands are to be vested in the Government. Further, in a proceeding under chapter XIII part V of the TLR and LR Act for determination of the excess land beyond ceiling limit the rayot is to be heard in person which part of the excess land beyond ceiling limit will be vested in the Government. Moreover, for vesting of the excess land beyond ceiling limit a rayot is entitled to get compensation from the Government as per provisions of Section 171 of the TLR and LR Act. Nothing has been done for determination of excess land beyond ceiling limit in respect of the land held by the defendants. It is an admitted fact that the suit land appertains to the land of patta and sale deed exbt.B/2 and B/3 of the defendants. It is submitted that the defendants were possessing more land than the area of the land described in the patta and sale deed exbt.B/2 and B/3. It is submitted by Mr. S. Deb, learned counsel for the appellant that even though the patta and sale deed described the particular area of land but in fact within the boundaries described in the patta and sale deed, some lands were found to be excess and this excess land is within the boundary described in the patta and sale deed of the defendants. Mr. Deb consequently submitted that if there is any increase in area within the boundaries specified in the patta and sale deed, the Government is entitled to enhance the revenue. But the ownership and title will remain with the pattadar or the owner of the land. Mr. Deb further submitted that in a proceeding under Chapter XIII part V of the TLR and LR Act it is found that the defendants are holding lands in excess of the ceiling limit prescribed in the aforesaid chapter, then the excess land beyond ceiling limit will vest in the Government. But in the present case neither any proceeding was drawn up for ascertaining ceiling limit of the defendants nor the defendants were asked by the competent authority to furnish any return. Mr. Deb submitted that the lands possessed by the defendants in pursuance of the patta and sale deed exbt.B/2 and B/3 are within the ceiling limit and the defendants are not possessing any land beyond ceiling limit as prescribed in the TLR and LR Act. There is sufficient force in the submission of learned counsel for the appellant."

It has been further observed in the said judgment dated 30.04.1997 that:

"It is clear that before making the lands of the defendants a Government khas land the Government did not ascertain whether the defendants are possessing any land beyond ceiling limit as specified in the TLR and LR Act. No opportunity was given to the defendants to furnish returns in respect of the lands held by them. It is true that the ASSO has passed an order declaring some land belonging to the defendants to be khas land of the Government because ASSO was of the view that the defendants were possessing enough land and they did not require more lands and therefore, he declared some lands belonging to the defendants as Government khas land. This decision do not appear to be legally sound because a rayot may hold enough land but this enough land may be within ceiling limit as specified in the TLR and LR Act. The possession of enough land may not mean that a rayot is holding land in excess of the ceiling limit. In the instant case no attempt has been made by the Government to see whether the

defendants are in fact possessing any land in excess of ceiling limit. Without determining the excess land beyond ceiling limit under Chapter XIII of the TLR and LR Act any order declaring the land of a rayot to be Government khas land is arbitrary and illegal. By such illegal order the land of a rayot cannot vest in the Government. Consequently by allotting such Government khas land to the plaintiffs, the plaintiffs cannot acquire any right over the suit land. The trial court as well as the first appellate court did not consider all the aforesaid aspects of the case and thereby they have come to a wrong conclusion that by the order of the ASSO in a proceeding under Section 15 of the TLR and LR Act, the ASSO has determined the ceiling limit of the defendants. The order passed by the ASSO in a proceeding under Section 15 of the TLR and LR Act cannot be a proceeding for determination of land beyond ceiling limit under Chapter XIII part V of the TLR and LR Act.

8. Consequently, I am of the view that both the learned courts below made an error in holding that the suit land is the Government khas land and the plaintiffs have acquired a title by getting allotment of the suit land from the Government."

[Emphasis added]

4. Having observed thus, both the appeals were allowed and the suits were dismissed. Consequent thereupon, the legal heirs of Gakul Chandra Choudhury had restored their right over the suit land of those suits. But, later on, a dispute cropped up between the legal heirs of Gakul Chandra Choudhury and as a result a suit for partition, being Title Suit(P) No. 29/2007 was instituted by the appellants claiming partition of the suit land as described in the Schedule A and B, which are as under:

"SCHEDULE "A"

Within the State of Tripura, District - West Tripura, Sub-Division - Bishalgarh, Mouja - Madhupur, Tehsil - Suryamoninagar within this lands appertaining to Khatian No. 4074, Sabek Dag No. 3096/5552, Hal Dag No. 4250 measuring 0.71 acres and Sabek Dag No. 3105/5553(P), Hal Dag No. 4235 measuring 0.74 acres and Khatian No. 4075, Sabek Dag No. 3096, Hal Dag No. 4249 measuring 0.71 acres and Sabek Dag No. 3105 (Part), Hal Dag No. 4236, measuring 0.12 acres, in total 2.28 acres.

"SCHEDULE "B"

Within the State of Tripura, District - West Tripura, Sub-Division - Bishalgarh, Mouja - Madhupur, Tehsil - Suryamoninagar within above Schedule "A" lands 3 gandas of lands appertaining to Hal Dag Nos. 4249 and 4250."

It is to be noted that the Schedule-B land was part and parcel of the Schedule-A land

5. According to the appellants, hereinafter referred to as the "plaintiffs", the suit land was originally belonged to Gakul Chandra Choudhury, hereinafter referred to

as "Gakul" and after his death, the heirs of Gakul continued to possess the land by inheritance, but during the survey settlement operation the substantial part of the land was allotted to those Karunamoy Bhattacharjee and Amulyadhan Bhattacharjee. As stated, they could not get their possession and instituted two separate suits, but in the second appeals, the suits were dismissed, restoring the status of the legal heirs of Gakul. It has been asserted that during pendency of the suits, being T.S. No. 28/1969 and T.S. No. 29/1969, the heirs of Gakul i.e. the plaintiffs and the defendants No. 1 to 5 as well as the proforma defendants No. 1 to 5, partitioned among themselves the undisputed land and got their own shares amicably which they were enjoying by way of inheritance. Thereafter, on the death of predecessor-in-interest of the defendants No. 1 to 5, namely Abani Mohan Choudhury, the defendants No. 1 to 5 were in possession of their respective share of the property. Apart from the suit land described in Schedule-A of the plaint, the joint property was amicably partitioned amongst the heirs, but according to the plaintiffs, the defendant No. 1 got his name recorded in the suit land illegally. The plaintiffs or the predecessor-in-interest of the plaintiffs and the predecessor-in-interest of the defendants No. 1 to 5 and the proforma-defendants No. 7 to 10 unequivocally admitted in the written statement filed in the previous suits that the suit land in T.S. No. 28/1969 and T.S. No. 29/1969 were inherited land of all the heirs of Gakul and they were the coparceners of the land prorata of their respective rights of inheritance and in view of that the defendants and each of them cannot in any manner claim any right exclusively individually in exclusion of other co-heirs" rights over the suit land.

6. But, the plaintiffs have also asserted that except the suit land attracted by Title Suit No. 28/1969 and Title Suit No. 29/1969 the other land of Gakul was amicably partitioned. After the judgment as stated, delivered in S.A. No. 05/1989 and S.A. No. 06/1989, the said land had devolved in equal share or equitably by agreement upon the plaintiffs and the defendants No. 1 to 5. The proforma-defendants No. 7 to 10 and the defendants No. 1 to 5, are entitled to 1/4th share of the suit land as claimed by the plaintiffs, but the proforma-defendants No. 7 to 10 have relinquished their rights in favour of the plaintiff No. 1. Though the defendants No. 1 to 5 were entitled to inherit the property left behind by Abani Mohan Choudhury i.e. 1/4th share of the land of Gakul, but the defendant No. 1 himself claimed to be the absolute owner of the entire land which was the subject matter of Title Suit No. 28/1969 and Title Suit No. 29/1969. The defendant No. 1 has illegally got his name recorded in the khatian No. 4074 and khatian No. 4075 of mouja Madhupur under tehsil Suryamuninagar. Hal dag Nos. 4249, 4250, 4235 and 4236 constitute the suit land in the suit filed by the plaintiffs. The plaintiffs objected to the said recording of the land in the name of the defendant No. 1, but he continued to claim his right over the entire land of khatian Nos. 4074 and 4075 as described in the Schedules of the plaint. It has been further mentioned that the defendant No. 6 claimed to be the owner of 3 gandas of land over C.S. plot No. 4250 of mouja Madhupur, mentioned in the Schedule-B of the plaint, which is again part of Schedule-A of the plaint. The

defendant No. 6 has tried to put boundary marks, to which the plaintiffs objected, but the defendant No. 6 claimed that he had purchased the said 3 gandas of land from the defendant No. 1, but the said suit land is the joint property of the plaintiffs and the defendants No. 1 to 5 and none of the heirs of Gokul have any exclusive right over any part and parcel of land until the land in question are partitioned amongst the heirs. It has been also asserted that as the parties failed to get the land partitioned in accordance with the land and for an exclusive claim of right over the land as comprised in khatian No. 4074 and 4075 of mouja Madhupur by the defendant No. 1 or a part thereof by the defendant No. 6, the initiative for partition was frustrated and as a result they filed the suit.

7. The defendants No. 1 to 6 by filing the written statement, have contested the suit stating that the suit land and part thereof (Schedule-B of the plaint), is of the defendant No. 6 as the defendant No. 1 transferred that land measuring 3 gandas in favour of the defendant No. 6. But, there is no dispute that the defendants No. 1 to 5 are the legal heirs of Upendra Chandra Choudhury, who had only one son, namely Abani Mohan Choudhury. The defendants are the son, wife and daughters of Abani Mohan Choudhury. Upendra Chandra Choudhury had purchased more or less 2 1/2 kanis of land by the registered deed dated 31.05.1952 from the jotedars, namely Rajani Kanta Sahaji and Jogesh Chandra Sahaji, since deceased, having definite boundary described in the registered deed. On such purchase the land got mutated in the name of Upendra Chandra Choudhury and the khatian bearing No. 1974 of mouja Madhupur against the plot No. 3096 was opened in his name. The defendants No. 2 to 5, had relinquished their right from the suit land by executing a registered gift deed in favour of the defendant No. 1 and accordingly, the entire land came under the possession of the defendant No. 1. In the plaint it has been asserted that the defendants, except the defendant No. 6, inherited the property of Gakul, but the defendants No. 1 to 5 have categorically asserted that the plaintiffs have no right over the properties of Upendra Chandra Choudhury. The defendant No. 1 got the mutation in his name of the suit land in two khatians bearing Nos. 4074 and 4075 for 2.28 acres of land. The amicable partition deed which was executed amongst the legal heirs of Gakul on 25.05.1966 has got no relation with the suit land. It was also contended that the defendant No. 6 was a bona fide purchaser of 3 gandas of land from the defendant No. 1 and he also got mutation in her name for 0.63 acres of land, bearing Khatian No. 4363. Hence, the plaintiffs have no cause of action for filing the partition suit and accordingly the same is liable to be dismissed.

8. The following issues were framed by the trial court, the court of the Civil Judge, Senior Division, Court No. 1, West Tripura, Agartala:

"(1) Whether the suit is maintainable?

(2) Are the plaintiffs have cause of action in filing the suit for partition?

(3) Is the suit property valued?

(4) Are the plaintiffs are successors of one Gokul Chowdhury?

(5) Are the plaintiffs entitled to the decree for partition? If so, the portion of their entitlement."

9. The plaintiffs admitted few documents, which are as under:

"(1) Certified copy of the plaint in T.S. 28 of 1969 marked as Exbt.1 series;

(2) Certified copy of the written statement of defendants No. 1 to 6 in T.S.28 of 1969 marked as Exbt.2 series;

(3) Certified copy of evidence of Upendra Choudhury in T.S.28 of 1969 marked as Exbt.3 series subject to objection by the defendants;

(4) Certified copy of the judgment of T.S.28 of 1969 and T.S.29 of 1969 marked as Exbt.4 series;

(5) Certified copy of the decree in connection with the aforesaid cases marked as Exbt.5 series;

(6) Certified copy of the judgment and decree in Second Appeal No. 05 of 1989 marked as Exbt.6 series."

10. The plaintiffs examined two witnesses, whereas the defendants also admitted in the evidence some documents, which are as under:

"(1) Certified copy of the judgment in S.A. 05 of 1989 and S.A. No. 06 of 1989 marked as Exbt.A series;

(2) Certified copy of partition deed No. 65, dated 04.04.1966 marked as Exbt.B series;

(3) Registered gift deed No. 1-5685 dated 21.06.2000 marked as Exbt.C series;

(4) Registered sale deed No. 43 dated 31.05.1952 marked as Exbt.D;

(5) Certified copy of khatian No. 1974 marked as Exbt.E;

(6) Certified copy of khatian No. 4074 marked as Exbt.F;

(7) Certified copy of khatian No. 4075 marked as Exbt.G."

The plaintiffs also adduced one witness.

11. The issues No. 1, 2 and 3 as extracted, were decided in favour of the plaintiffs. Even the issue No. 4 was decided in favour of the plaintiffs, holding that except the defendant No. 6, the plaintiffs and the defendants are all legal heirs of Gakul. But while determining the issue No. 5, the trial court has observed that:

"The plaintiffs in their plaint gave description of the suit land stating that the suit land is appertaining to khatian No. 4074, Sabek Dag No. 3096/5552, Hal Dag No. 4250, Sabek Dag No. 3105/5553(P), Hal Dag No. 4235 and of Khatian No. 4075

against Sabek Dag No. 3096, Hal Dag No. 4249, Sabek Dag No. 3105(P), Hal Dag No. 4236. Now, it is fact that in support of the suit land as mentioned by the plaintiffs they did not produce any khatian.

On my perusal of the partition deed which is exhibited as Exbt.B (series) I find that the present plaintiffs and defendants (except Defendant No. 6) partitioned the land amongst themselves keeping intact four(4) kanis, one and half gandas of land without partition. Said partition was done in the year 1966 while the total land shown as 6 drone, 3 kanis, 12 gandas out of which five drone, 15 kanis, 10 gandas, 2 karas were partitioned amongst the parties. The description of the land as given in the "Bantannama" is the land of Taluk No. 57, jote No. 24, 73 and 76. Apart from this the land is of Dar Talukar No. 1 and 2 of jote No. 1 which was created in terms of Section 136 of TLR and LR Act. In the said bantannama it is also mentioned that 4 kanis 1 1/2(one & half) gandas of land remained ejmali on account of their own interest.

The submission of learned counsel for the defendants is that, if in the year 1966 this partition was done keeping intact 4 kanis 1 1/2 (one and half) gandas of land without partition, then definitely after introduction of the TLR and LR Act there was a return by the plaintiffs and the defendants about their retention of lands for the accountability of ceiling surplus land. In this regard there is no document produced either from the side of the plaintiffs. According to the provision of TLR and LR Act even the under riyat if likes to retain any specific land he is duty bound to submit a return in terms of prescribed format as given in the TLR and LR Rules."

Thereafter, having referred to the observations of the Gauhati High Court in Second Appeal No. 5/1989 and Second Appeal No. 6/1989, the trial court has observed that:

"A certified copy of Decree submitted by the plaintiffs side along with this judgment but the schedule of the property is not found in the decree. The schedule of the property given in the certified copy of decree of the trial court mentioned as follows:

- a) Khatian No. 3129-Plot Nos. 1-3096/5552-North-Bounded by Amulyadhan-Area-.71 acres i.e., one kani, fifteen gandas, three karas and eleven dhurs.
- b) 5553-North boundary-Amulyadhan, area-2.02 acres equal to 5(five) kaanis, 1(one) gandas, 3 (three) karas, 1(one) kranta and 2(two) dhurs only- total land 2.73 acres.

Now the Schedule given by the plaintiffs in the plaint of this suit indicates sabek Dag No. 305/5553(P) measuring land of 0.74 acres in khatian No. 4075."

12. While referring to the arguments placed by the defendants that Exbt.E is the khatian issued in the name of Upendra Chandra Choudhury and Exbt.F is the khatian No. 4074, where it is clearly stated that against the dag No. 3105/5553(P), the land measuring.74 acres, has been shown in the name of the

defendant No. 1, the trial court has observed that:

"As I find from the schedule of the plaint the plaintiffs are claiming total land to be 2.28 acres, but the decree prepared in connection with Title Suit No. 28 and 29 of 1969 indicates the suit land to be 2.73 acres. Now if we again go through the evidence of the plaintiffs then I find PW.1 admitted in his cross-examination that during the life time of Upendra Choudhury 2.5 kanis of land were purchased by Upendra and there is also admission about partition deed in between the plaintiffs and the present defendants in the year 1966 regarding the land of Bakul Chowdhury.

On perusal of the cross-examination of DW.1 I find that there was an admission by the defendant that the decree in the second appeal bearing No. 5 and 6 of 1989 went in their favour. Also there is an admission that the land was purchased in the year 1962 and was recorded in the name of grandfather and father.

The sole question in this suit is if any ejmali land was not partitioned whether that land is the suit land of this suit or not. It is clear from the partition deed that land measuring 4 kanis, 1/1/2 gandas were remained un-partitioned. If it is so then definitely the suit land shown by the plaintiff as 2.28 acres is in excess of the so called ejmali land."

Thereafter, on observing that no document has been produced by the plaintiffs showing that the land given in the schedule of the plaint were the ejmali land of both the plaintiffs and the defendants except the defendant No. 6, and holding that the plaintiffs have to establish the joint property of the plaintiffs and the defendants, the question of partition by the suit land cannot be determined. Hence, the suit has been dismissed. Against the said judgment, this appeal under Section 96 of the CPC has been filed.

13. Having due regard to the grounds of objection as raised in this appeal, the pertinent questions emerged for determination in this appeal are as under:

"(i) Whether the suit land is part of the inherited property originally belonged to Gakul Chandra Choudhury? or

(ii) Whether the suit land is the purchased land of Upendra Choudhury, which purchase was carried out by the registered sale deed dated 31.05.1952?"

14. Mr. S. Deb, learned senior counsel appearing for the plaintiff-appellants has submitted at the outset that the claim of the plaintiffs is entirely based on the right of inheritance. For this purpose the lineage of Gakul Chandra Choudhury would be relevant, which is as under:

15. It would be apparent from the said family tree that, Gakul had four sons, namely Upendra Choudhury, Surendra Choudhury, Debendra Choudhury and Jogendra Choudhury. Upendra had only one son, namely Abani Choudhury. After death of Abani, his wife Smt. Maya Rani Choudhury, his son, namely Tapash

Choudhury and daughters, namely Rakhi Choudhury, Shilpi Choudhury and Gouri Choudhury, the defendants No. 1 to 5 became the legal heirs/representatives to inherit the properties of Upendra Choudhury. Mr. Deb, learned senior counsel has fairly submitted that from the records so produced in the trial, it would be apparent that Upendra might have two categories of properties viz. (i) the property inherited from Gakul as his son and (ii) the property acquired by him. So far the property acquired by Upendra is concerned there cannot be any claim for partition by the legal heirs or the successors of Gakul. Mr. Deb, learned senior counsel has submitted that for the misreading of the written statement filed by the defendants in Title Suit No. 28/1969 and Title Suit No. 29/1969, the trial court had confusion that the suit land as described might be the properties left by Gakul. He has categorically stated that the written statements of those suits were signed by Upendra and others and in those written statements there is an unequivocal admission by the defendants including Upendra about the source and inheritance of the suit property. Mr. Deb, learned senior counsel has further submitted that the suit property as recorded in the khash khatian and allotted to the plaintiffs of the Title Suit No. 28/1969 and Title Suit No. 29/1969 were held by the Gauhati High Court in Second Appeal No. 05/1989 and Second Appeal No. 06/1989 as the rayati land of Gakul. Even the trial court has failed to appreciate the deed of partition No. 65 dated 04.04.1966 (Exbt.B series), where it has been categorically provided that 4 kani 1 ganda 2 kara of the said property was the ejmali property of the parties and was set apart as the ejmali property.

16. Regarding the claim of the defendants No. 1 to 5 as to their right by inheritance over the property acquired by Upendra Choudhury by the deed of sale No. 43 dated 31.05.1952 (Exbt.D), Mr. Deb, learned senior counsel has submitted that such claim had never been raised at any point of time nor in the earlier proceeding or in any other testaments. He has finally raised another question that by not describing the properties by boundaries, the trial court ought not have held that the description of the properties are so inadequate that it is very difficult to identify the properties. Such finding has been returned despite the khatian number, dag number (both old and present) and measurement thereof, were provided in the schedule of the suit land. The source of title of the properties held by Gakul was the patta pertaining to the jote No. 1. In para 3 of the joint written statement filed in Title Suit No. 28/1969 by the legal heirs of Gakul, it has been clearly stated that the defendants were in possession of the suit land for more than 50 years asserting hostile jote right and title against all on the basis of patta dated 26th Bhadra, 1319 TE. In para 11 of the said written statement, the defendants have categorically asserted as under:

"That on the prayer of Gakul Chandra Kapali Choudhury, son of late Krishna Mohan Choudhury Kapali of Madhupur who is the predecessor of the answering defendants, a jote No. 1 was created by a patta executed by Dinanath Choudhury Kapali in favour of said Gakul Choudhury in respect of 14 plots of land comprising an area of approximately two drones 2 kanis 10 gandas land bearing an annual rental of rupees thirty and annas three with cess of annas fourteen on

26th Bhadra, 1319 T.E. The said Patta was registered on the 29th Bhadra, 1319 T.E. That the said land was divided into 14 plots with specific boundary given in the deed of four sides mentioning the nature of land as well as the area of the land."

17. It has been further asserted that on the basis of their said right, the land was surveyed and settled during the princely regime and the chittas were prepared in the name of Gakul Choudhury Kapali, jotedar under Dinanath Choudhury, dar talukdar, appertaining to kayemi taluk No. 57 of Srimati Bashmayee Devya recording Gakul Choudhury's jote land in Dag Nos. 1842, 1843, 1845, 1846, 1847, 1848, 1849, 1850, 1851, 1852, 1853, 1880, 1898, 1901, 1903, 1915, 1916 in that chittas. The defendants have also asserted that after the death of Gakul Chandra Choudhury Kapali, his sons, namely Upendra Choudhury Kapali, Surendra Choudhury Kapali, Devendra Choudhury Kapali and Jogendra Choudhury Kapali inherited the property and personally cultivated the entire land by personal labour or labourers of their family, grew crops and enjoyed usufructs for more than statutory period to the knowledge of all concerned and the plaintiffs asserted their right, title and interest of the suit land accordingly. Therefore, the land owned by Gakul has been clearly mentioned in the written statement.

18. Mr. Deb, learned senior counsel has submitted that by the common judgment dated 30.04.1997 delivered in Second Appeal No. 5/1989 and Second Appeal No. 6/1989, this aspect of the matter was considered by the Gauhati High Court and thereafter it has been recorded in para 5 of the said common judgment as under:

"The only question raised before this court is whether the suit land is the khas land of the Government being excess land beyond ceiling limit which has vested in the Government and whether the plaintiff has acquired any right by allotment of such khas land. Mr. S. Deb, learned counsel for the appellant submitted that the suit land is a part of the land of jote No. 1 and 81 and the suit land covered by the documents exbts. B/2 and B/3 of the defendants. After the decision of the trial court the appeals were filed before the District Judge, West Tripura, Agartala who remanded the suit directing the trial court to appoint a Survey Commissioner to ascertain whether the suit land appertains to the jote land of the defendants or it is the khas land of the Government. The Survey Commissioner after making a local investigation submitted his report and the report of the Survey Commissioner has been accepted by both the parties. According to the report of the Survey Commissioner, the suit land falls within the land of the defendants and attracts the land of exbt.B/2 and B/3 belonging to the defendants. Mr. Deb further submitted that the learned District Judge held that the suit land appertains to the land of patta and the sale deeds of the defendants exbt.B/2 and B/3. Consequently, the learned counsel for the appellant submitted that the learned District Judge should have held that the plaintiff cannot acquire any title over the land belonging to the defendants. but the learned District Judge has committed an error in holding that the suit land is the excess land of

the defendants beyond ceiling limit and as such the excess land vested in the government and Government became the owner of the excess land. Mr. Deb also argued that no proceeding was drawn up by the competent authority to ascertain whether the suit land is the excess land belonging to the defendants beyond the ceiling limit prescribed in the TLR and LR Act. It is also argued that the Settlement Authority has most illegally recorded the suit land as khas land of the Government holding that the defendants have enough land and therefore they do not require more land for their livelihood. It is argued by Mr. Deb that holding the large area of land by a rayot may not mean that he is holding land in excess of ceiling limit. Since no proceeding has been drawn up for ascertaining the ceiling limit of the defendants, the Settlement authority has no right to declare any area of land belonging to the defendants as khas land of the Government. It is further argued that the Settlement authority has most illegally recorded the suit land as belonging to the defendants as khas land of the Government. Consequently, Mr. S. Deb submitted that by such illegal recording of the jote land of the defendants, their land cannot be made khas land of the Government and the plaintiffs by allotment cannot acquire any right over the land of the defendants."

19. Therefore, the suit land of the Title Suit No. 28/1969 and Title Suit No. 29/1969 were part of jote Nos. 1 and 81 and as such Mr. Deb, learned senior counsel, has submitted that the suit land in Title Suit No. 29/1969 are the joint property of the plaintiffs and the defendants and those are well described in the schedule. Hence, the impugned judgment and decree warrants interference from this court.

20. Mr. S.M. Chakraborty, learned senior counsel appearing for the respondents No. 1 to 5, has clearly submitted that in no way the finding of the Gauhati High Court in the judgment dated 30.04.1997 can behove the plaintiffs to establish their right over the suit property. It is admitted that Gakul's title is confined to the jote No. 1, which is a part of kayemi taluk No. 57 and spread over numerous plots as recorded in the written statement. The finding as returned by the Gauhati High Court are generally to the extent that the land attracted by the patta (Exbt.B/2) and the purchase deed (Exbt.B/3) belonged to the defendants in those suits. It did not particularise the ownership against the Ext. B/2 and Exbt.B/3 inasmuch as the controversy in those suits were, whether recording the jote land of the defendants of those suits as khas land was justified or legal. The Gauhati High Court, by that judgment dated 30.04.1997 has held that the suit land was attracted by the Exbt.B/2 (the patta for jote No. 1) and Exbt.B/3 (the purchase deed). Mr. Chakraborty, learned senior counsel has drawn attention of this court to the registered sale deed bearing No. 43 dated 31.05.1952 (Exbt.D), which was Exbt.B/2 in the earlier suits, which clearly shows that Rajani Kanta Sahaji and Jogesh Chandra Sahaji sold out 2 1/2 kanis of land from their jote land giving the specific boundaries. According to Mr. Chakraborty, learned senior counsel, the said land as described in Exbt.D comprised in the dag numbers 4249 (corresponding to old dag No. 3096) and 4236 (corresponding to old dag No. 3105(p)). Their northern boundary is constituted of the dag Nos. 4255 and 4237

as would be evident from the Form No. 7 (Exbt.G) and all those plots are recorded in the khatian No. 4075. No objection had ever been raised by the plaintiffs when the khatian was opened in the name of Upendra Chandra Choudhury exclusively in respect of those dag numbers and thereafter mutated in the name of Tapash Choudhury as the successor and also by way of transfer from the other co-sharers on death of their mother.

21. It is apparent on joint reading of the documents that the land as purchased from Rajani Kanta Sahaji and Jogesh Chandra Sahaji by the sale deed (Exbt.D) is part of jote No. 81, over which Gakul had no title and the purchased land as described in the schedule of the sale deed dated 31.05.1952 (Exbt.D) is the self acquired property of Upendra Choudhury and hence it cannot come within the property left by Gakul. Thus, the said property is not liable to be partitioned between the plaintiffs and the defendants or between the persons having interest over the parties like the defendant No. 6. Since the defendant No. 6 has got land measuring 3 gandas from the self acquired property of Upendra Chandra Choudhury of the land by the said partition through his successor, the said land also cannot be taken in the joint stock.

22. Having observed thus, points those are formulated for disposal of this appeal are answered. The land belonging to the jote No. 1 is the land left by Gakul which was/is liable to be partitioned between his legal heirs, but the land pertaining to jote No. 81, part of which is covered by the sale deed (Exbt.D) executed in favour of Upendra Choudhury, cannot come within the joint stock of the legal heirs of Gakul inasmuch as it is the self acquired property of Upendra Choudhury and Upendra's legal heirs are only entitled to inherit the right over that property.

23. Now, this court shall make an inquiry whether the self acquired property of Upendra has been brought within the suit land and if that property is brought within the suit land that will be obviously not to be treated as the part of the joint property.

24. From a bare reading of the description of the Schedule-A property, it appears that the properties appertaining to khatian No. 4074, sabek dag No. 3096/5552, hal dag No. 4250, measuring 0.71 acres and sabek dag No. 3105/5553(P), hal dag No. 4235, measuring 0.74 acres and khatian No. 4075, sabek dag No. 3096, hal dag No. 4294, measuring 0.71 acres and sabek dag No. 3105(P), hal dag No. 4236, measuring 0.12 acres, in total 2.28 acres, are the land described in Form No. 7 relating to khatian No. 4074 and Form No. 7 relating to khatian No. 4075, mutated in the name of Tapash Choudhury as the legal heir of Abani Mohan Choudhury, son of Upendra Chandra Choudhury as the other co-sharers have gifted the property of their share in favour of Tapash Choudhury by the deed of gift dated 21.06.2000 (Exbt.C series). It is apparent that in the partition deed (Exbt.B series) Upendra Chandra Choudhury was shown as the first party. The property of jote No. 1 of kayami taluk No. 57 was recorded in the khatian No. 1965 in the name of Gakul Choudhury, but the partition that had taken place was

for an area of land measuring 5 drones 15 kanies 10 gandas and 2 karas and the remaining land measuring 4 kanies 1 1/2 gandas was ezmali property as described in sl.no.5 of the said partition deed. Out of that property, Upendra Chandra Choudhury got clear 1 drone 9 kanies 4 gandas 1 kara, which has been described in the first schedule, which is as under:

"Situated within the District Tripura under the police station and Sub-registry office Sadar, Pgs Sadar, T.K. Ishanchandranagar at Mouja Madhupur, and recorded in the kayami Taluk No. 57, Dar Taluk No. 1, jote No. 1 recorded in the khatian No. 1965 in the name of Gakul Chowdhury, the land measuring 1(one) drone 15 kanies 10 gandas

(1)(k) On the north is bounded by - Rebati Mohan Chowdhury and others,

On the south is bounded by - Cow shed,

On the east is bounded by - Jagabandhu Chowdhury and till land,

On the west is bounded by - Canel

Within this schedule nal land measuring 2 kanies 12 gandas. (kha) on the north is bounded by : Bani Kanta, on the south is bounded by : Tilla, on the east is bounded by : Jyotirmoy, on the west is bounded by Jagabandhu Chowdhury, within this schedule the land measuring 17(seventeen) gandas, (ga) on the north is bounded by - Tilla, on the south is bounded by - cow shed, on the east and west are bounded by Rebati and others. Within this the land measuring 2 1/2 (two and half) kanies. (gha) on the north, south and west are bounded by - Jogendra Chowdhury, on the east is bounded by - Bishalgarh raod, within this schedule the land measuring 10(ten) ganda. (Uma) on the north is bounded by..... on the south is bounded by - Jagabandhu chowdhury, on the est is bounded by - Sona Charan Chowdhury, within this schedule charra classes of land measuring 4(four) gandas 1(one) kara of land (cha) on the north is bounded by - Jogendra and Bani Kanta, on the south is bounded by - Upendra Chowdhury, on the west is bounded by - Jyotirmoy Chowdhury, within this schedule this schedule the land measuring 7 1/2 (seven and half) gandas of land; (chha) on the north and south are bounded by - Upendra Chowdhury, on the east is bounded by Jyotirmoy chowdhury, on the west is bounded by - Sri Dam and Rajani Sarkar within this schedule the land measuring quarter to 3(three) kanies of land.

(2) within that mouja, recorded in the kayemi taluk No. 57 with an annual rental a/w road cess amounting to Rs. Eight(8), 12(twelve) annas and 9(nine) paise, in the name of Shri Upendra Ch. Chowdhury and others, recorded in the jote No. 24 appertains to the khatian No. 1949 (Ka) on the north is bounded by chhara, on the south is bounded by - Mara Daudi, on the east is bounded by - Rabita Mohan and others, on the west is bounded by - Raimani Sarkar, within this schedule charra classes of land measuring 5(five) kanies 16(sixteen) gandas (kha) on the north and west are bounded by - cow shed, on the south is bounded by- Upendra

Chowdhury, on the east is bounded by charra, within this schedule there is a land measuring 5(five) gandas of tilla class of land, (ga) on the north is bounded by - Rabati and others, on the south and east are bounded by - charra, on the west is bounded by - Road, within this schedule the land measuring 6(six) gandas 1(one) kara of land.

(Gha) On the north is bounded by - Upendra Chowdhury, on the south is bounded by - the dwelling land belonging to Bani Kanta, on the east is bounded by - Charra, on the west is bounded by - Cow shed, within this schedule there is a land measuring 1(one) kani land. (3) within that mouja recorded in the Taluk No. 57, Dar Taluk No. 2, recorded in the name of Shri Upendra Ch. Chowdhury with an annual rental of Rupees 12(twelve) and 3(three) annas for the land revenue and land reforms (Sec.136) of the Act, 1960 A.D. appertains to the khatian No. 1952(ka) on the north is bounded by - Pond, on the south is bounded by - Brindaban, On the east is bounded by - cow shed, on the west is bounded by - Ramani Sarkar, within this schedule (pond side as well as Bagan (one the west end) measuring 3 (gandas), (kha) on the north is bounded by - charra land, on the south is bounded by - cow shed, on the east is bounded by - the nal land, on the west is bounded by - Jyotirmoy Chowdhury, within this schedule till a classes of land measuring around 10(ten) gandas, (Ga) on the north is bounded by - Nani Gopal as well as passage, on the south is bounded by - Nal land, on the east is bounded by - Jogendra Chowdhury, the west is bounded by Jogendra Chowdhury and Upendra Chowdhury, within this schedule tilla classes of land measuring 9(nine) kanies 7(seven) gandas only, (kha) on the north is bounded by - Jyotirmoy Chowdhury, on the south is bounded by - charra, on the east is bounded by - Rabati Mohan, and others, on the west is bounded by - Jogendra within this schedule the lunga land around measuring 1(one) kani 17 1/2 (seventeen and half) gandas of land only. (Uma) on the north is bounded by - tilla as well as on the east - tilla, on the south is bounded by - Jogendra Chowdhury, on the west is bounded by - Charra and bamboo bushes, within this lunga measuring 9 1/2 gandas of land only. (cha) on the north is bounded by - Jyotirmoy, on the south is bounded by - Jogendra, on the east is bounded by - way, within this schedule the dwelling land measuring 1(one) kani 7(seven) gandas, thus totalling 1(one) drone 9(nine) kanis 4(four) gandas 1(one) kara, valued at Rs. 1000/- (Rupees one thousand)."

25. By the said partition deed dated 04.04.1966 the land left by Gakul recorded in the kayami taluk No. 57 and dar taluk No. 1 and jote No. 1 in khatian No. 1965 of mouja Madhupur, was partitioned. After purchase of the land as covered by Exbt.D, Upendra Chandra Choudhury got mutated his name and a khatian bearing No. 1974 of mouja Madhupur was created in his name and the class of land was shown as tilla against the plot No. 3096. The defendants No. 1 to 6, in their written statement have stated that the revenue authority on the basis of mutation proceeding and physical verification of the land, created two khatians bearing Nos. 4074 and 4075 in the name of the defendant No. 1 for 2.28 acres.

26. The deposition of Upendra Chandra Choudhury @ Upendra has been marked as Exbt.3 series at the instance of the plaintiffs. As recorded, in those earlier two suits by the said deposition, Upendra Chandra Choudhury has clearly stated that the suit land was lying within the jote No. 1 and nal land was lying within the jote No. 1 as well as the tilla land was lying within the jote No. 81. He has categorically stated that:

"The land recorded in the jote No. 1 was settled from our uncle named Dinanath Chowdhury on the strength of "patta" in the year 1319 T.E. (we) have filed prayer for the certified copy of the aforesaid "patta". The court has given reply to this. The certified copy to this has been marked as Exbt.B-2. Since then till date we have been possessing the instant suit land recorded in the jote No. 1(one). The tilla land recorded in the jote No. 81 was purchased on 31.5.52 A.D. last from one named Rajani and others on the strength of a "sale deed". Nurul Haque was the scribe of the said deed."

He has further stated in the cross-examination that, the land in suit was situated within the jote No. 1 and jote No. 81. As such, all through Upendra has asserted his exclusive right over the land, part and parcel of jote No. 81. The jote No. 81 is not part of the partition deed (Exbt.B series) in any manner.

27. It appears that the said land is part of khatian No. 4075 (Exbt.G). The defendants No. 1 to 5, the direct descendants of Abani Mohan Choudhury, who was the sole heir of Upendra Chandra Choudhury, did not file any other records to show that Upendra Chandra Choudhury acquired any other land beyond the partition deed dated 04.04.1966 (Exbt.D series) by way of gift or by any other mode. The only deed that they have introduced is the gift deed by which three female descendants of Abani Mohan Choudhury had gifted their share in favour of the defendant No. 1, Sri Tapash Choudhury. By the Exbt.D the title as to the land described therein has been asserted. Exbt.D is the sale deed No. 43 dated 31.05.1952.

28. Now, it clearly appears from the Schedule-A that the land pertaining to khatian No. 4074 and khatian No. 4075 has been brought within the description of the unpartitioned land. From reading the entire plaint, the source of the title of the property described in the schedule is not clear. But, it is apparent that the land purchased by Upendra Chandra Choudhury by the sale deed dated 31.05.1952 (Exbt.D) has been grossed up in the Schedule A, but the said land is the self-acquired property of Upendra Chandra Choudhury and probably has been recorded against the khatian No. 4075. But, there was no endeavour from the parties to show whether the khatian No. 4074 is also part of the land as described in the sale deed or this is the part of the unpartitioned property kept beyond partition by the partition deed dated 04.04.1966 (Exbt.B series) or whether that was the inherited property of the defendants No. 1 to 5. The land as described in the Schedule-A cannot be identified to their source in any manner for inadequacy of the documents admitted in the evidence. But, it is clearly declared hereby that the land measuring 2 1/2 kanis of mouja Madhupur,

attracted by the sale deed dated 31.05.1952 cannot be made part of the joint stock for whatever reason.

29. Since this court has observed that in the Schedule-A land that self-acquired has been included as such the suit cannot be decreed because such preliminary decree would not serve any purpose for division of the share by way of partition if any part of the Schedule-A land is found to be unpartitioned being the part of the land left by Gakul.

30. Having observed thus, this appeal stands dismissed. However, the parties are not barred in bringing fresh suit after clearly delineating the source of title and the description of the unpartitioned land, if any, in future. This leave has been given having regard to the ambiguity left in the description of the property as pointed out.

Send down the LCRs forthwith.