

**In The Court of Additional District & Sessions Judge,
Alipurduar.**

Present: **Smt PGB Hussain (WB00817)**

Title Appeal No. 11 of 2023
CNR-WBJP05-000615-2023

Appeal from the Judgement and order dated 01.04.2023 passed by Ld. Civil
(Judge, Junior Division), Alipurduar in Title Suit No. 436 of 2015.

1) Sri Kailash Ch. Roy,
2) Sri Sunil Das

.....
Appellants

-Versus-

Sri Ramendranath Singha

.....Respondent

Advocate for the parties

Sri P.K. NathAdvocate for the
Appellants

Shri Gopendra Sikder.....Advocate for

Respondent,

Date of Delivery of Judgment :- **5th day of June, 2026**

J U D G M E N T

1. PROLOGUE:

1.1 This Title Appeal has been directed against Judgment & order dated 01.04.2023 passed by Ld. Civil (Judge, Junior Division), Alipurduar in Title Suit No. 436 of 2015.

1.2 The genesis of the Appellant's case is grievance against decree passed by the Learned Civil Judge Junior Division without appreciating the documents of the Appellant- Defendant.

2. The Appellant' Case:

2.1 The Appellant's case is that the respondents filed a Title Suit with a false and fictitious claim. The said suit was decreed in favour of the Plaintiffs-respondents and thus this appeal.

2.2 The Plaintiff case:

2.2.1 The plaintiff-respondent filed Title Suit 436 of 2015 claiming himself to be the owner of the 'A' schedule property as described in the plaint. It is his case that he purchased the 'A'schedule property vide three registered deeds of Sale being registered deed no I -402 of 1967, deed no I -4816 dated 15/11/1978 and I- 1988 dated 18.07.1996.

2.2.2 It was alleged in the plaint by the plaintiff-respondent that on 20/03/2014 the defendant-appellant illegally and forcefully entered a portion of 'A' schedule property which is described in 'B' Schedule of the plaint measuring about .49dec.of land.

2.2.3 It is further the case of the plaint that despite several requests the appellants did not vacate the 'B' Schedule Property.

2.2.4 The Plaintiff thus filed TS 436 of 2015 for eviction and recovery of Khas possession of B schedule property by evicting the defendant-appellant.

2.3 Appellant -Defendant's case before Trial Court

2.3.1 The appellants - defendants entered appearance in the suit and filed Written Statement to contest the suit. It is the appellant's case that defendant no. 1 is a bargadar in respect of 16dec of land in plot no 394 and defendant no. 2 has valid ,title and interest in respect of 33 dec of land in the plot no.394 under mouja Kunjanagar.

2.3.2 In view of the said pleading the appellant-defendant prayed for dismissal of the suit in the Learned trial Court.

2.5 Issues framed by the Trial Court :

The Learned Trial Court framed the following issues for evaluating respective cases of the plaintiff and the defendant in the suit. The issues are

- 2.5.1 Whether the suit is maintainable in its present form and law?
- 2.5.2 Whether the plaintiff has any cause of action to file a suit?
- 2.5.3 Whether the suit is barred by limitation?
- 2.5.4 Whether the suit is hit by principles of waiver estoppel and acquiescence?
- 2.5.5 Whether the suit is barred by special enactment?
- 2.5.6 Whether the suit is properly valued?
- 2.5.7 Whether the plaintiff was in possession of A scheduled land?
- 2.5.8 Whether dependent dispossessed plaintiff from B Schadule land under A scheduled land?

2.5.9 Whether plaintiff is entitled to get the decree as prayed for?

2.5.10 To What other relief or reliefs if any is plaintiff entitled?

2.6 Evidence

2.6.1 Each plaintiff and defendant being the respondent and appellant adduced evidence of two witnesses. They also exhibited certain documents on their behalf.

2.6.2 The PW 1 is Sri Ramindranath Singh who is the plaintiff and deposed in favor of the plaint case.

2.6.3 The PW 2 is Sri Dilip Dutta who also deposed in favor of plaint case.

2.6.4 Sri Sunil Das deposed as DW 1. He is defendant no.1 in the suit . Sri Kailash Chandra Roy deposed as DW2. He is defendant no.2 in the suit. They are the Appellants herein.

2.6.5 Documents filed by the plaintiff:

Sl. No.	Description of document	Exhibit no.
1	Rent receipt	Exbt-1
2	Certified copy of LRROR khatian no.188	Exbt-2
3	Original Sale Deed no.I-4816 dated 15.11.1978	Exbt-3
4	Original Sale Deed no.I-1998 dated 18.07.1996	Exbt-4
5	Certified copy of Sale Deed no.I-402 of 1967	Exbt-5

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2.6.6 Documents filed by the defendant

Sl no.	Description of the document	Exhibit no
1	Deed of Sale bearing no.I2363 dated 04.06.1991	Exbt-A
2	Certified copy of LRROR Khatian no.943	Exbt-B
3	Khajna Dakhila dated 19.04.2012, 11.12.2008, 16.11.2026,12.06.2015	Exbt-C Series
4	Carbon copy of khajna Dakhila dated 25.05.2017	Exbt-D

2.7 The Judgment under Challenge

2.7.1 The Learned Trial thereafter proceeded to hear the argument. After a contested hearing the learned Court came to a finding that the suit is maintainable and it is not bought by any special enactment. The Learned Trial Court also came to a finding that plaintiff has cause of action to file the suit. In holding so, the learned trial Court categorically held the present:

‘Plaintiff has alleged that he has right title interest in respect of B scheduled property which is the part and parcel of A scheduled land. The defendant has entirely denied this and contended that defendant no.1 has barga right over

the suit property or whether the defendant no.2 has right over thirty three decimals of plan. This essential matter at issue has given rise to a cause of action.’

2.7.2 Considering the documents filed by the plaintiff the trial court came to a conclusion that the plaintiff has been able to prove the case and as such decreed the suit in favor of the plaintiff.

2.8 The said judgment and order is under challenge in this appeal..

1. GROUNDS OF APPEAL

Being aggrieved by an order dated 01.04.2023 passed by the Learned Civil Judge, Junior Division, Alipurduar in connection with T.S. 436 of 2015 the appellants preferred this Title Appeal on the grounds, inter alia,

- a)The Learned Trial Court has erred in law and fact both.
- b) The respondent has failed to prove his title over the suit property.
- c) Most of the issues framed by Learned Trial Court was left unresolved.
- d) The Learned Trial Court failed to scan the evidence properly that was adduced before him.
- e)The respondent is not entitled to get any decree of eviction and recovery of possession against the present appellants.
- f) The respondent failed to prove the allegation brought against the appellants by adducing cogent evidence.
- g)That the judgment and order passed by the Learned Court is erroneous.
- h) That findings of the court below are wholly based on surmise and contrary to the weight evidence on record.
- I) That the respondent failed to prove the cause of action in the suit.

j) That the appellant No. 1, has been in possession of a part of the suit land as a bargadar for more than 45 years and appellant No. 2, has his possession over the rest of the suit land by virtue of proper Deed of sale and Khatian.

k) That the appellants have better right over the suit property.

l) That the judgment and order passed by the Learned Lower Court was whimsical, arbitrary and the same has been passed without due observance of law.

m) That the Learned Trial Court has failed to decide the question whether the plaintiff has right of possession over the suit property.

n) That the Learned Trial Court also failed to decide whether the defendants disposed the plaintiff from the suit property.

o) The Learned Trial Court passed the judgment considering vague description of the suit property.

4. POINTS FOR DETERMINATION

The following points are to be discussed to decide the Appeal:

4.1 Does the Judgment and Order dated 01.04.2023 passed by the learned Civil Judge Junior Division, Alipurduar in TS 436 of 2015 liable to be set aside?

4.2 Did the Trial Court evaluate the respective claims of the Respondent-plaintiff and the Appellant-defendant?

4.3 Is the Judgment and order as referred above, liable to be set aside?

5. DECISION WITH REASONS:

5.1 All the points that arose in this appeal are taken up for discussion together as they are interdependent.

5.2 The case of the respondent-plaintiff is that he is the owner of the 'A' schedule property. It is his further case that 'B' schedule property forms a part of the 'A' schedule property. It is their further allegation that the 'B'

Schedule property has been illegally taken possession of, by the Appellant on 20.03.2014 despite protest and resistance of the plaintiff respondent. It is also the plaint case that thereafter the plaintiff respondent has been asking and requesting the defendants to quit and vacate the B Schedule property but they did not pay any heed and rather threatened the Plaintiff- respondent with dire consequences. The final allegation in the plaint is that lastly on 20.03.2015 the plaintiff-respondent made such request to the defendant-appellants and they flatly refused to vacate the suit property.

5.3 Stating these facts the Plaintiff- respondent has claimed that the cause of action arose 20.03.2014 and 20.03.2015. In the course of evidence the plaintiff did not bring forward any complaint made to any authority to show that they brought this illegal and forceful occupation of their land before the police or any authority to redress their grievance. Forceful taking of possession is an offence and the plaintiff-respondent has to show that he was vigilant to drive out the intruders from his property. The usual conduct of the respondent -plaintiff was at least to lodge a general diary. However the plaintiff did not state in the plaint that any such step was taken by him. According to the plaint case and the evidence of both the PW 1 and the PW2, the plaintiff was waiting for one year before taking any steps for such illegal occupation as alleged by him. In the meantime plaintiff was requesting the defendants to vacate the 'B' schedule property.

5.4 The PW2 who has deposed in favour of the plaintiff's case, has not stated about his authority or source of knowledge in respect of the plaintiff's case. In his examination in chief he has stated that he knows the plaintiff of the above suit and the plaintiff has filed the instant suit against the defendants for eviction and recovery of khas position by evicting the defendants. He also stated that the plaintiff is the owner and possessor of the 'A' schedule land by virtue of registered deeds of the said land and it has been recorded in the name of the plaintiff and he is also paying the rents to the government usually. He also stated that since purchase the plaintiff has been possessing and enjoying the land

peacefully in in different ways and manners. He also stated that the plaintiff is an aged person and is also simple and law abiding person and the defendants are very dangerous desperate and land grabbers person in the locality and defendant suddenly on 20.03.2014 illegally entered into the 'B' schedule land under 'A' schedule land measuring 49 decimals of land despite protest of the plaintiff. As a result he sustained an irreparable loss and injury. That on several occasions the plaintiff repeatedly requested the defendant to quit and vacate the 'B' schedule land under 'A' schedule and but the defendant did not pay his heed to his request. He also stated that on 20.03.2015, the plaintiff also requested the defendants to quit and vacate the 'B' schedule land but the defendant flatly denied to hand over the said land in favour of the plaintiff and the plaintiff is entitled to the decree as prayed for. At the end of his examination in Chief he has also described the 'A' Schedule and the 'B' schedule property. In his description is the boundaries of the 'A' Schedule property, to the north of which is land of Kailash Roy to the south is the land of Juthhan Oraon, to the east is the land of the plaintiff and to the West is the legal heir of Akhil Das. So he has not shown that anywhere near the surroundings of the suit property is his residence. He has also not stated that he is the neighbour of the plaintiff. In fact he has stated that to the north of the suit property is the property of Kailash Roy.

5.5 During his cross examination he has stated that he has landed properties in Mouja Kunjunagar but he cannot say the plot number and Khatian number of his landed properties. He cannot say anything about the title deeds through which plaintiff acquired the Suit land. He has specifically stated that he could not say whether the defendant no.2 purchased 33 decimals of land from Jogindranath Singh or that he is possessing the same land since his purchase or not. He has stated that Jogindranath Singh was the younger brother of the plaintiff who died a few years ago.

5.6 The Exhibit A which is the deed filed by defendant no.2 shows that Sunil Das (the appellant and defendant no.2) had purchased 33 sataks of land in Dag number 394 in Mouja Kunjanagar, from one Jogindranath

Singh, son of Nagendra Nath Singh. From the deposition of PW2 It appears that Jogindranath Singh is the brother of the Ramendra Nath Singh. This is also evident from the plaint itself and the evidence in Chief of the PW 1 where he has stated that he, Ramendranath Singh is the son of Nagendranath Singh.

5.7 During the entire course of judgment the Trial Judge did not mention or evaluate the title deed filed by the defendant-appellant marked as Exhibit-A. Contrary to the plaintiff's claim the defendant no.2 had filed his own title deed in respect of the 'B' schedule property. There was no investigation by commissioner to ascertain the extent of any encroachment. It has not been ascertained by the Trial Court that whether 'B' schedule property is a part of the 'A' schedule property.

5.8 Moreover the deed in respect of the 'B' Schedule property filed by the plaintiff- respondent is a certified copy without mentioning any whereabouts of original deed. It is mentioned there in the evidence that the original deed was lost. However it is not stated when such deed was lost or what were the steps were taken for such loss, that is whether a general diary was lodged for recording the loss of the original deed with the local police station or not.

5.9 The Trial Court has specifically observed while deciding issue number 2 that "the plaintiff has alleged that he has right title and interest in respect of 'B' schedule land which is a part and parcel of 'A' schedule land. The defendant has entirely denied this and contended that defendant number 1 has Barga right over the suit property and defendant number 2 has right over 33 decimals of land. This is essential matter at issue and this has given a rise to the cause of action." However throughout the judgment the trial court has not considered whether the defendant- appellant who was admittedly in possession of the suit property and in possession of a title deed in respect of the same has a better title than the respondent -plaintiff, who is out of possession, or not. It is hereby noticed that in the judgment the trial Court referred to Exhibit 5 as original copy of deed though on perusal of the same and also on

perusal of the evidence it appears to be a certified copy. At page four of the Judgment the trial Court has categorized Exhibit 5 as Original Sale deed, which is erroneous observation and decision based on such erroneous appreciation of fact, is not tenable in law.

5.10 In this regard the learned Counsel for the respondent has referred to some citations. In re Land Acquisition Officer and Mandal VS Narasaiya reported in AIR 2001 SC 1117 the Hon'ble Supreme Court held that it would not be correct to hold that in spite of section 51 A of the Land Acquisition Act, 1984 certified copies of the sale deed cannot be considered without examining persons connected with the transaction mentioned therein. In this case the question involved was whether the High Court should have or should not have taken into account the sale price in the above two sale deeds without examining the Vendee or the vendor or anybody else connected with the sale. As such the facts of this case is entirely different from the cited case. In the present case it is the transaction which is in question and not just the sale price or any particular aspect of the transaction. Accordingly this citation does not apply to this case.

5.11 The Learned Counsel for the respondent has also referred to the case of Sri Gurudev Ganba Sinai Gaintode VS Special Land Acquisition Officer (N), Mapusa Goa and another [2011 (1) ALLMR 59.] In this case the Hon'ble High Court of Judicature at Bombay Panaji bench held that in case of enhancement of compensation and sale of comparable land, certified copies of sale deed can be accepted without examining the purchaser or the vendor. This case also has different facts then the facts of this case.

5.12 In re Appaiya vs Andimuth@ Thangapandi & others (2023 INSC 835) as referred by the Learned Counsel for the respondent. It is seen that it was a case of declaration and permanent Injunction and not a case of recovery of khas possession. In the present case, the party to the document was examined but no reason was ascertained as to why the certified copy was marked as an exhibit without any GD entry about its

loss. There is no doubt that according to section 65 of Evidence Act, certified copy of a sale deed is admissible in evidence. The fact is that the certified copy should be treated as a certified copy and not the original deed as mentioned in the judgment which is under challenge in this Court.

5.13 In comparison to the certified copy of the deed, the defendant-Appellant filed original title Deed which is marked as Exhibit A but unfortunately the trial has not made any observation in respect of the said deed. From the evidence of PW2, it has come up that the vendor mentioned in Exbt A was the brother of the plaintiff. The said brother of the plaintiff is dead now as stated by the PW 2 himself.

5.14 The case of the plaintiff is that he is the owner of the 'A' schedule property purchased by three registered Deeds. On perusal of the registered Deeds it appears that they are dated 15.11.1978, 18.07.1996 and a deed of 1967. PW 1 has deposed on 5. 5. 2017 and has stated that his age at the time of deposition is 69 years. If his age was 69 years in 2017 then in the year 1967 his age was 19 years. On the other hand the Appellant no.2 had filed his original title deed which is marked as Exhibit A. He has also filed the RORs in the name of his vendor as well as his own RORs which are marked as Exhibits B, C and D.

5.15 It is not comprehensible as to why these documents have not been dealt with at all specially when admittedly the case is for recovery of khas possession and the possession was with the defendants.

5.16 The Trial Court has referred to the judgment of the Hon'ble Supreme Court in Somnath Burman vs Dr. SP Raju and others (**AIR 1970 SUPREME COURT 846**). It was observed therein: "Possessory title is a good title as against everybody other than the lawful owner. In Ismail' Ariff v. Mohamed Ghouse(I), the Judicial Committee came to the conclusion that a person having possessory title can get a declaration that he was the owner of the land in suit and an injunction restraining the defendant from interfering with his possession. Therein it was observed

that the, possession of the plaintiff was a sufficient evidence of title as owner against the defendant”

5.17 In the present case the defendants did not claim just possessory title. Defendants had filed title Deed which was marked as Exhibit A but the same was not discussed at any point in the judgment of the trial Court. The trial Court did not mention why exhibit A the original deed was superseded by Exhibit 5 which is a certified copy of the Deed.

5.18 When a person in possession is dispossessed by a Court’s order, there has To be proper finding that the title of the person in favour of whom the order for disposing the possessor is passed, has better title than the party in possession. This criteria was not fulfilled in the present case.

5.19 It appears that the learned trial Court did not consider the documents of the defendant appellants at all. Under such circumstances Judgment passed in favour of the respondent is not legally sound.

5.20 The respondent has taken the plea that the Appellant has challenged the judgment and order but not the decree and as such this appeal is not strictly in terms of section 96 CPC. It is a fact that the judgment and decree both have to be challenged. The appellant is required to file the certified copy of the judgment along with the decree while instituting an Appeal. In the present case the appellant has mentioned in his memorandum of appeal that the appeal is preferred against the judgment and order dated 01.04.2023 but he has filed along with the appeal, the certified copy of judgment and decree both. Thus mentioning of ‘Judgement and order’ in place of ‘Judgment and Decree’ is merely an error which does not strike the root of the Appeal. The filing of the decree shows that the appellant has intended to challenge the decree as well as the judgment.

5.21 Since the documents of the Appellants have not been considered at all by the trial court, the Suit be remanded back to the Learned Trial Court with the direction to consider the documents filed by the Appellant alongside that of the respondent, and also to evaluate the respective

documents of both the sides. It is also incumbent on the trial court to frame a specific issue as to whether the plaintiff respondent is lawful owner of 'B' schedule property and also whether the 'B' scheduled property is a part of the 'A' schedule property or not.

5.22 With such direction this appeal is allowed and the suit is remanded back to the learned trial court for fresh decision upon framing issues as above stated.

6. ORDER

6.1 Accordingly,

It is,

ORDERED

That the Appeal is allowed on contest. The Judgment and decree dated 01.04.2023 passed in TS 436 of 2015 by Learned Civil Judge, Jr Division, Alipurduar is hereby set aside.

6.2 The Suit is remanded back to the Learned Trial Court for fresh decision in the suit, limited to framing fresh issue as to whether the 'B' schedule property is a part of the 'A' schedule property or not and whether plaintiff has any interest superior to the admitted possessor defendant in the 'B' schedule property or not.

6.3 Let a copy of this Judgment be sent to the Learned Trial Court along with the TCR for fresh decision upon framing two separate issues as directed.

Dictated & corrected by me

ADJ

Addl. District Judge,
Alipurduar.