

**HIGH COURT OF TRIPURA
AGARTALA
RSA No.5 of 2022**

Sri Arun Kumar Chanda

S/o. Late Jagadish Ch. Chanda of
East Debendranagar, Village-Ram Bhakta Para,
P.O. Champaknagar, P.S. Jirania,
Dist. West Tripura.

...Appellant(s)

Versus

Sri Nitya Gopal Das

S/o. Late Jagneswa Das of
East Debendranagar, Village-Ram Bhakta Para,
P.O. Champaknagar, P.S. Jirania,
Dist. West Tripura.

...Respondent(s)

RSA No.10 of 2022

Sri Arun Kumar Chanda

S/o. Late Jagadish Ch. Chanda of
East Debendranagar, Village-Ram Bhakta Para,
P.O. Champaknagar, P.S. Jirania,
Dist. West Tripura.

... Appellant(s)

Versus

Sri Dhirendra Kumar Das

S/o. Late Bhagirath Das of
East Debendranagar, Village-Ram Bhakta Para,
P.O. Champaknagar, P.S. Jirania,
Dist. West Tripura.

... Respondent(s)

For the Appellant(s)	:	Mr. H. Deb, Advocate
For Respondent(s)	:	Mrs. S. Deb(Gupta), Advocate
Date of hearing and delivery of judgment & order	:	20/07/2023
Whether fit for reporting	:	Yes

HON'BLE MR. JUSTICE ARINDAM LODH
Judgment and Order (Oral)

Heard Mr. H. Deb, learned counsel appearing for the appellant.

Also heard Mrs. S. Deb(Gupta), learned counsel appearing for the respondents.

2. Both the second appeals have been taken up together since similar substantial questions of law have been formulated on the subject in issue.

3. Both the appeals are directed against the judgment dated 31.08.2021 and decree dated 14.09.2021 passed by the learned Additional District Judge, West Tripura, Agartala in Title Appeal No.09 of 2019 and Title Appeal No.04 of 2019 respectively, whereby and whereunder the judgment dated 27.11.2018 and decree dated 30.11.2018 passed by learned Civil Judge (Senior Division), West Tripura, Agartala in T.S. No.63 of 2016 and T.S. No.104 of 2016 respectively have been upheld.

4. These second appeals have been filed by the appellant, the original defendant of the suit who resisted the claim of the plaintiffs/respondents for declaration of their right, title and interest over the suit property described in the Schedule of the plaint. The brief facts of the case as projected by the learned trial Court may be reproduced here-in-below:

“2. Fact of the case, in brief, is that the defendant sold out the suit land mentioned in the schedule A of the plaint to the plaintiff on 11.11.1990 on execution of an unregistered deed of sale with the condition that registered deed of sale would be executed by the defendant after obtaining permission from the competent authority. The plaintiff since the execution of the unregistered sale deed took possession of the suit land. On 12.11.1992 the defendant went to the suit land and told the plaintiff that he would not obtain any permission for registration and asked the plaintiff to vacate the suit land. But the plaintiff drove the defendant out and started possessing the suit land by carrying business on it denying title of the defendant. On 22.05.2016 the defendant approached the plaintiff and told him to vacate the suit land, but the plaintiff told him that he has become

owner of the suit land by virtue of adverse possession and prevented him from taking possession. Hence, this suit is filed to protect the right of the plaintiff accrued on adverse possession.”

5. Issues were framed after perusal of the pleadings exchanged between the plaintiffs and the defendant. Both the parties adduced evidence.

6. Thereafter, having heard the arguments of the counsel appearing on behalf of the parties, the learned trial Judge allowed the suit in favour of the plaintiffs.

7. Challenging the findings of the learned Courts below, the above second appeals are preferred.

8. At the time of admission of these appeals, following substantial questions of law have been formulated:

“(i) Whether the plaintiff (Respondent) can acquire the title over the suit land against the Defendant (Appellant) by way of adverse possession entering into the suit land on the basis of an agreement to possess the suit land after payment of money alongwith the condition to purchase the suit land from Defendant (Appellant) after obtaining permission by the defendant (Appellant) to sell the suit land and subsequent to that date (i.e. on 11.11.1990), since from 1990 and from 12.11.1992, denying the title of the Defendant (Appellant)?

(ii) Whether the judgment passed by first appellate court is perverse due to mis-interpretation of the contents of the so called sale deed (Exhibited as Exbt.1(S.O) and the complaint petition addressing to O.C Champaknagar Out Post (Exhibited as Exbt.4 (S.C))?”

9. It would be apposite to mention the findings of the learned first appellate Court that a person cannot simultaneously claim ownership/right of possession on the basis of title under an agreement of sale or in part-performance and also by adverse possession. But, after relinquishing his

right of claim under agreement to sale/part-performance he can claim ownership by adverse possession, as in this case.

10. This Court has made a query to learned counsel appearing for the appellant, the original defendant to show the portion of the judgment, which according to him, is perverse. Mr. Deb, learned counsel appearing for the appellant, that is, the original defendant has not been able to satisfy this Court that the above findings of the learned first appellate court is perverse since the defendant has failed to establish his plea that the plaintiffs, though entered into the suit land in pursuance of the unregistered sale deed, but, continued their possession for more than 12 years in part-performance of the unregistered deed.

11. In the present case, it is clearly established that the plaintiffs had relinquished, renounced and disowned their claim of ownership/possession over the suit land under the purported unregistered sale deed, and started to possess the suit land adversely since 12.11.1992 and claimed title by adverse possession since 12.11.1992.

12. The plaintiffs/respondents have been able to establish their specific plea that they entered into the suit land on the basis of the execution of an unregistered sale deed containing a condition that the registered sale deed would be executed after obtaining necessary permission from the competent authority, which was not materialized at all, and on 12.11.1992 the vendor of the unregistered sale deed, that is, the defendant told the plaintiffs to vacate the suit land since he would not obtain sale permission. On that date itself, the plaintiffs denied to vacate the suit land, but continued possession and succeeded defendant's all attempts to dispossess them from the suit land and such resistance was being continued for more than

12(twelve) years entailing them to claim acquisition of title by way of adverse possession.

13. There cannot be any dispute to the proposition that a party entering into a property, if continued possession for more than 12(twelve) years in part-performance of a contract or agreement would not perfect title by way of raising a plea of adverse possession. Hon'ble Supreme Court in *Mool Chand Bakhru & Anr. V. Rohan & Ors.*, (2002)2 SCC 612, had held that:

“9. The High Court relying upon a Judgment of this Court in Mohan Lal v. Mirza Abdul Gaffar came to the conclusion that since the respondents were claiming to be in possession of the property in part-performance of the agreement to sell, the plea of acquisition of title by adverse possession was not available to them. Learned counsel appearing for the respondents did not assail this finding of the High Court. The view expressed in Mohan Lal case has been reiterated by this Court in Roop Singh vs. Ram Singh. It has been held in the latter judgment that this pleas of adverse possession and retaining the possession by operation of section 53-A of the Act are inconsistent with each other. Such a plea is not available to a proposed vendee.”

14. The instant case is not the case where the plaintiffs claimed to be in possession of the land in question in part-performance of the unregistered sale deed so as to preclude them from raising the plea of adverse possession.

15. In the instant case, the plea of the defendant/appellant in respect of the fact that the plaintiffs had started to possess the suit land on the basis of the unregistered sale deed and continued such possession in that capacity, are devoid of merit, being not supported by any materials. Both the Courts on consideration of the materials and evidence on record came to a finding

that the plaintiffs have been able to fulfil the essentialities for perfecting title by way of adverse possession.

16. There cannot be any quarrel that if a person has been able to establish that he has perfected title by virtue of adverse possession, the Civil Court can declare title on the basis of adverse possession, and since the defendant is admittedly trying to evict the plaintiff from the suit land, it was held necessary to perpetually injunct him. It is settled proposition of law that plea of adverse possession has to be raised from the wrongful possession and not under a title deed, which the plaintiffs/respondents have been able to establish in the instant case. It is noticed that learned trial Court also came to a similar finding.

17. On perusal of the pleadings and the evidence on record, I reiterate that both the Courts below held that the plaintiffs clearly relinquished, renounced and disowned their possession over the suit land on the basis of the purported unregistered sale deed and continued, in other words, started their possession over the suit land adversely denying the title/ownership of the defendant since 12.11.1992. After perusal of the judgments of the Courts below, I am of the clear opinion that the plaintiffs have been able to establish the conditionalities required to acquire title by way of adverse possession.

18. In view of this, I do not find any reasonable ground to form a different opinion to interfere with the findings recorded by the Courts below decreeing the suit in favour of the plaintiffs.

19. In the result, both the above second appeals stand dismissed.
Pending application(s), if any, also stands dismissed.

JUDGE