

**HIGH COURT OF TRIPURA
AGARTALA**

RSA No.10 of 2023

Smt. Chinu Rani Singha,
Wife of Late Indrajit Singha,
Resident of Kushamara, Kakraban,
PS-Kakraban, Udaipur, Gomati, Tripura.(Age-57 years)

....Appellant(s)

Versus

Sri Ratan Singha,
Son of Late Jitendra Chandra Singha,
Resident of Kushamara, Kakraban,
PS-Kakraban, Udaipur, Gomati, Tripura, Pin-799105.

....Respondent(s)

For the Appellant(s) : Ms. N. Ghosh, Advocate

For Respondent(s) : None

Date of hearing
and delivery of
judgment & order : **29.05.2023**

Whether fit for
reporting : **Yes**

HON'BLE MR. JUSTICE ARINDAM LODH

Judgment & Order (Oral)

This is a second appeal preferred by the original defendant, the appellant herein against the judgment dated 19.01.2023 and decree dated 31.01.2023 passed by the learned District Judge, Gomati District, Udaipur, in Title Appeal No.11 of 2021 whereby the judgment and decree passed by learned trial Court in T.S. 11 of 2018 was upheld.

2. The facts of the case as projected by learned first appellate Court may be reproduced hereunder:

“3. The plaintiffs’ case as urged before the Ld Trial Court is that originally Smti Mira Rani Roy, D/O Lt. Amar Chand Roy was the sole owner in possession of the schedule “A” land mentioned in the plaint purchased by registered sale deed No.8239 dated 16.12.1968 and vide deed No.3967 dated 08.06.1970 executed by Jatindra ch Chowdhuree, S/O Lt Nabin Chandra Chowdhuree, Balai Chandra Sarkar, S/O Lt Prafulla Chandra Sarkar and Smti Snahalata Sarkar, D/O Lt. Profulla chandra Sarkar. After the death of Mira Rani Roy, her legal heirs namely Babul Ch Roy son and daughter Uma Rani Roy (Datta) became joint owner in possession with equal shares in the inherited land left by their mother Mira Rani Roy(now deceased), since 1980. After the death of their mother one mutual settlement was made between the legal heirs of Mira Rani Roy and in that settlement it was decided that inherited land will be divided into two equal shares. On the basis of the said settlement one registered Gift deed No.1-2225 dated 20.05.1980 was made by Babul Ch Roy son & legal heir of Mira Rani Roy in favour of Uma Rani Roy (Datta) daughter. Based on this registered Gift deed Uma Rani Roy (Datta) acquired title over 0.36 acres of land out of 0.72 acres of land mentioned in schedule “A” land of the plaint. In 1983 being in urgent need of money, Uma Rani Roy (Datta) sold out 0.16 acres in CS khatian NO.53. In Sabek dag No.1716, 0.12 acres of land and in sabek dag No.1566/5253 0.04 acres i.e. in total 0.16 acres of land was sold to one Ratan ch Singha @ Ratan Singha (plaintiff-respondent herein) by a registered sale deed No.1-2791 dated 15.11.1983. After purchase of the schedule “B” land i.e. suit land mentioned in the plaint, the plaintiff-respondent entered into his purchased land and the executor of the sale deed namely Uma Rani Roy (Datta) handed over possession of the land to plaintiff-respondent Ratan Ch Singha @ Ratan Singh & since then the plaintiff was peacefully possessing the suit land announcing his right, title, interest. It is averred that during the life time of deceased Mira Rani Roy she never applied for mutation of her purchased land mentioned in schedule “A” of the plaint and neither did her legal heirs. The plaintiff many times tried to apply for mutation of schedule “B” land but due to restraint by the defendants, the system of mutation could not be processed. One day in the middle part of 2017 AD, the defendants and her agents wrongfully entered into the suit land and tried to dispossess the plaintiff from the suit land and also disputed the ownership of the plaintiff over the suit land but due to

strong resistance on the part of plaintiff and his neighbors from the locality, the attempt of defendant failed. Since, January 2018 plaintiff had started to reside nearby the suit land in the house of his in laws due to family affairs. On 20.07.18 in absence of plaintiff the defendant and her men & agents forcefully entered into the suit land and threw out the utensils and other articles from his dwelling hut. The plaintiff informed the matter to OC KKB PS who advised the plaintiff that this being a civil dispute, plaintiff may take shelter before the civil court and accordingly plaintiff took shelter before ADR center and requested the authority to mitigate the dispute. They tried their level best but failed and hence TS 11 of 2018 was instituted for recovery of possession and declaration of right, title and interest over the suit land along with cost of the suit.”

3. After exchange of pleadings, learned trial Court had framed issues. On the basis of issues, evidences were adduced by the parties. The plaintiff-respondent has produced a original copy of the registered sale deed which is marked as Exbt.- 2 through which he purchased the suit land from one Smt. Uma Rani Roy without any objection from the side of the defendant. Smt. Uma Rani Roy is the daughter of Mira Rani Roy who was originally the real owner of the suit land. The fact that Mira Rani Roy was the real owner of the suit land cannot be disputed for the reason that the defendant herself has stated in her written statement as well as in her evidence that she has been possessing the suit land since the lifetime of the real owner of the suit land i.e. Mira Rani Roy.

4. It is the case of the defendant that Mira Rani Roy during her lifetime had tried to evict the defendant from the suit land but she failed. So, the ownership of Mira Rani Roy, the mother of Smt. Uma Rani Roy over the suit land is an admitted position. Mira Rani Roy was the owner of

a total land measuring 0.72 acres. After her death, there was an amicable settlement between the son and daughter of Mira Rani Roy. According to this mutual arrangement, Uma Rani Roy has received her share for a land measuring 0.36 acres. Out of this 0.36 acres, Smt. Uma Rani Roy had sold 0.16 acres of land to the plaintiff i.e. Sri Ratan Singha in the year 1983 by executing a registered sale deed(Exbt.-2) and handed over the vacant possession of the said land in favour of the plaintiff. According to the plaintiff, the cause of action for institution of the present suit lastly arose on 20.07.2018 when the defendant forcefully occupied the suit land i.e. the land of Schedule B mentioned in the plaint. On the basis of those aforesaid facts and on consideration of the evidences let in by the parties to the *lis*, both the Courts below held that the plaintiff Ratan Singha has been able to prove his title and possession over the suit land after his purchase, and since then he had been possessing the suit land till his forceful dispossession from the suit land mentioned in the Schedule B w.e.f. 20.07.2018.

5. Feeling aggrieved with the findings of both the Courts below decreeing the suit in favour of the plaintiff, the defendant has preferred the instant second appeal before this Court.

6. I have heard Ms. N. Ghosh, learned counsel appearing for the appellant-defendant.

7. Ms. Ghosh, learned counsel for the appellant in her quest to convince the Court for admitting the present second appeal has submitted that Uma Rani Roy was a permissive possessor as has been recorded in Khatian no.1109. Ms. Ghosh, learned counsel has further submitted that the plaintiff has failed to substantiate that Sri Babul Ch. Roy, the son of Mira Rani Roy had gifted the suit land in favour of his sister, Smt. Uma Rani Roy.

In support of this submission, Ms. Ghosh, learned counsel for the appellant quite empathetically has contended that from the gift deed itself it becomes apparent that there is no endorsement that Uma Rani Roy being the donee had accepted the gift deed(Exbt.-3). For this reason, it can be said that she has not acquired title over the gifted land. Learned counsel for the appellant has further submitted that the certified copy of the sale deed and gift deed had not been proved in accordance with law. It is further argued that the defendant is still in possession of the suit land.

8. I have considered the above submissions advanced by learned counsel appearing for the appellant and perused the records annexed to the memo. of this appeal.

9. The fact of title is a question of fact and both the Courts below held that the plaintiff has been able to prove his title and possession over the suit land. This Court in exercise of its jurisdiction under Section 100 of the CPC will not interfere with the findings of the Courts below as

regards the title of the plaintiff over the suit land unless such findings appear to be perverse by this Court.

10. Now, to deal with the evidentiary value of certified copies of registered sale deed or gift deed, needless to say, certified copies of such deeds are secondary evidence and as such, these are admissible in evidence. Since it is admissible in evidence, its admissibility cannot be questioned. However, a party to a suit can question the mode of proof of such certified copies. But, challenge has to be made at the time when such certified copies were tendered during the course of recording evidence. Again, once a document is admitted, the contents of the documents are also admitted in evidence, though, those contents may not be a conclusive evidence. However, burden lies upon the opposite party to rebut or counter such admitted evidence tendered by other party. *It is well-settled that, once a document has been properly admitted, the contents of the documents would stand admitted in evidence, and if no objection has been raised with regard to its mode of proof at the stage of tendering in evidence, no such objection will be allowed to be raised at a later stage of the case in appeal or revision. This principle of law is re-iterated in a recent decision by a full-bench of the Hon'ble Supreme court in Neeraj Dutta vs State(NCT of Delhi), (2023) 4 SCC 731[SCC pp767, 768, para 62].*

[emphasis supplied]

11. In the instant case, it is noticed that the plaintiff has tendered original copy of the sale deed(Exbt.-2) by which he purchased the land of Schedule 'B' of the plaint from Smt. Uma Rani Roy, the daughter of the original owner, i.e. her mother Mira Rani Roy. The plaintiff has also produced during the course of evidence the certified copies of the registered title deeds (Exbt.-4 and 5) in the name of Mira Rani Roy. When those certified copies of the title deeds, in proof of the ownership of Mira Rani Roy over the suit land, tendered in evidence, the defendant did not raise any objection and permitted the plaintiff to tender those certified copies to be admitted in evidence, and the Court had accepted those certified copies in evidence since such certified copies are admissible in evidence and accordingly, marked as exhibits. Similarly, the plaintiff has also tendered certified copy of the gift deed(Exbt.-3) without any objection from the defendant.

12. To deal with the question, learned counsel for the appellant has raised, that the plaintiff has not acquired title over the land under the gift deed since she has not accepted the said gift in express terms in the deed. In this regard, *I have no hesitation to say that whether a person accepts a gift or not, can be established by way of his/her subsequent acts and conduct. In the instant case, Smt. Uma Rani Roy, the donee after the execution and registration of the gift deed by her brother had taken over the possession of the gifted land of Schedule 'A' and after few days she*

sold a portion of the land of said Schedule "A" described in Schedule "B" of the plaint to the plaintiff and there is no material on record that the donor of the gift deed had raised the issue of non-acceptance of the gift relating to the land of Schedule 'A' which he donated to Smti. Uma Rani Roy, his sister. Added to it, her subsequent sale of 'B' Schedule land to the plaintiff is a glaring proof of her acceptance to the gift deed. She also tried for mutation of the land in her favour, which has been objected by the defendant as apparent on the face of the written statement and evidence. PW-2, in her evidence has categorically stated that after the purchase of schedule land from Uma Rani Roy, the plaintiff started to possess it by way of construction of huts, etc. He also tried to mutate the land in his favour. Such conduct of the plaintiff is the manifestation of the fact that his vendor, that is, Smt. Uma Rani Roy had accepted the gift deed(Exbt.2). So, the submission of learned counsel for the appellant in this regard is repelled.

13. Considering the submission of Ms. Ghosh, learned counsel appearing for the appellant that a permissive possessor cannot institute a suit for recovery of possession and declaration of title, as reflected in the Record of Right (Khatian), in the opinion of this Court, Khatian is not the conclusive proof of one's title or possession. It can be rebutted by way of appropriate evidence. There is no dispute in the present case that Uma Rani Roy is the daughter of Mira Rani Roy, the original owner of the suit land. This fact of ownership has been further confirmed by the defendant when

she has asserted in her written statement and evidence that Mira Rani Roy being the owner of the suit land had tried to evict the appellant in the year 1983 itself. So, this is a clear admission on behalf of the appellant that it was Mira Rani Roy, but none else, was the original owner of the suit land. As such, Uma Rani Roy cannot be a permissive possessor, but, an owner and a possessor of the suit land being one of the inheritors of the original owner of the suit land and also by dint of the Gift deed(Exbt.-3), executed by her full-blooded brother.

14. Another aspect required to be noticed is that there is no mention of the appellant, Chinu Rani Singha in any of the columns of the said Khatian no.1109, to say the least, as regards her nature and character of possession. Contrary thereto, Uma Rani Roy has successfully established that she inherited her share being the daughter of Late Mira Rani Roy, the original owner of the entire land of Schedule-“A” measuring 0.36 acres, which she received by way of gift out of an amicable settlement between her and Babul Ch. Roy. In view of this, creation of Records of Right i.e. Khatian has been wrongly made showing the name Smt. Uma Rani Roy as permissive possessor, which is necessary to be corrected by the concerned authority.

15. Furthermore, I am in agreement with the findings of the Courts below that the defendant has failed to prove his plea of adverse possession.

16. Based upon the aforesaid conclusions, I do not find any merit in the present second appeal to interfere with the findings of the

Courts below declaring the right, title and interest of the plaintiff of the said land and directing the defendant to hand over the vacant possession of the suit land.

Accordingly, the instant appeal stands dismissed at this stage.

Pending application(s), if any, also stands disposed.

JUDGE

Snigdha

