

HIGH COURT OF TRIPURA
AGARTALA

RSA 15 OF 2023

Smt. Niyati Das Vrs. Sri Chitta Ranjan Saha

Present:

For the appellant(s) : Mr. D. R. Chowdhury, Sr. Advocate.
Mr. S. Sarkar, Advocate.

For the respondent(s) : None.

HON'BLE MR.JUSTICE ARINDAM LODH

22.06.2023

Order

Heard Mr. D.R. Chowdhury, learned senior counsel assisted by Mr. S. Sarkar, learned counsel appearing for the appellant.

This is a second appeal preferred by the original defendant against the judgment and decree dated 04.05.2023, passed by the learned first appellate court in case no. TA 27/2018 affirming the judgment and decree of recovery of possession of the suit land of the 2nd schedule of the plaint of the plaintiff in case no.T.S.13/2017 dated 06.09.2018, passed by the learned trial court.

At the time of admission, Mr. Chowdhury, learned senior counsel has tried to persuade this court to formulate substantial question of law on the issue of limitation. According to learned senior counsel, the issue of limitation framed by the trial court has not been properly dealt with or appreciated. This submission has led this court to go through the issue of limitation as framed under Issue No.II by the learned trial court. While dealing with the issue of limitation [Issue No.II], the learned trial court has held that the suit has been filed within limitation. Learned trial court had discussed the issue quite elaborately which should be reproduced here-in-below:

“[7] Both the issues are related to each other and connected with law points and hence we have decided to discuss both the issues conjointly.

These issues are relating to maintainability of law of limitation.

In this case plaintiff Chittaranjan Saha has filed the suit for declaration of title of u/s.34 of the S.R. Act, 1963 and for recovery of the possession of land described in the 2nd schedule of the plaint. This petition is filed u/s.5 of the S.R. Act.

As per Section 5 of the S.R Act we know that a person entitled to the possession of Specific immovable property may recover it in the manner provided by CPC. An owner of the property may recover possession by virtue of his title. A person having possessory title may also recover possession.

Possession does not only mean occupation of actual user. This section thus recognizes actions for recovery of possession passed on title either by ownership or possessory.

In this case the plaintiff has to prove his title to succeed under this section.

A person remaining in peaceful possession can retain such possession against anyone except the lawful owner. A prior possession raises a presumption of title and this possession is sufficient in an action in ejectment against wrongdoer.

In this case the plaintiff by virtue of registered sale deed 1-847 dated 27-02-1991, purchased the land from Thakurdhan Paul and after the mutation the khatian was prepared vide No.846 of land quantity 0.02 acre vide C/S plot No.837(P) corresponding to R.S plot No.2372/7143(P).

According to plaintiff, the defendant illegally trespassed into the suit land in the northern boundary in the first part of June, 2015. Plaintiff raised objections and raised protest for illegal construction on the 2nd schedule land.

According to plaintiff defendant has/had never any title or interest over the suit land. Plaintiff arranged for demarcation of the land by the Survey knowing person of SDM, Kanchanpur. The Teheshildar Kanchanpur demarcated the land on last 15-03-2016 and found the possession of the suit land by the defendant. Plaintiff again requested the defendant on last part of March, 2016 to handover the possession of the suit land but defendant turn deaf ear.

On the other hand defendant side disclosed that on last 30-03-1998 she purchased land measuring 0.04 acre from owner Thakurdhan Paul vide registered deed No.1-22 and another plot of 0.04 acre vide sale deed 1-23 dated 30-03-1998 in the Sub-Registry, Kanchanpur. Khatian was prepared vide No.824 of Mouja, Kanchanpur. In the khatian No.824 hal dag No. 2371/7199 and 2372/7120 which is not similar to the dag number of plaintiff vide hal dag No.2372/7143 in khatian No.846 of plaintiff.

According to defendant, the owner Thakurdhan Paul during his life time expressed willingness to sell 0.03 acre of land situated in the eastern portion of land. Defendant paid Rs.25.000/- to the vendor Thakurdhan Paul for his treatment intending to purchase some land. In his opinion the vendor handed over possession of the suit land to the defendant but sale could not be registered as because unfortunately vendor Thakurdhan died during treatment. So, the dispute still exists for 0.03 acre of land. The deed was not registered.

As per Article 65 of the Limitation Act, the limitation period is 12 years for the suit for possession of immovable property or any interest therein passed on title.

The time or each period begins to run is that when the possession of the defendant cause adverse to the plaintiff. So, in this case plaintiff has raised the point that defendant dispossessed him in the year March, 2016 and case was filed on last 05-05-2017 and if we calculate that date and time of March, 2016 about the dispossession, the suit is within the period of limitation as per Article 65 of the Limitation Act 1963.

According to defendant she was possessing the land since 1999 and so there is some bundle of facts whether the parties are at variance.

The suit was filed to remove cloud in the title and possession of the plaintiff as because there is allegation of dispossession by the defendant and construction of boundary wall over the land of plaintiff. Section 34 of the S.R Act deals with the matter of title and to protect it from adverse attacks. The civil court has discretion to make declaration of status or rise u/s.34 of the S.R Act as because any person entitled to any legal character may institute a suit against any person denying such right.

[13] We know that section 5 of the S. R. Act is connected with recovery of possession where a person is entitled to get the possession of the specific immovable property by Code of Civil Procedure. The owner of a property may recover the possession by virtue of his title. A person having possessory title may also recover possession. Even a person may also recover possession by virtue of his previous possession irrespective of absence of title or an inferior interest. A suit for possessory title can be filed under section 5 of the S. R. Act.

[14] As per Sec.34 of the Specific Relief act, if there is a cloud cast upon the title and legal character of the plaintiff, the plaintiff may seek relief under this Section to dispel the cloud. Plaintiff can be entitled to a legal character or to any right as to any property, and it warrants this kind of relief only under certain special circumstances.

We know that “cause of action” is a set of fact sufficient to justify a right to sue to obtain money, property, or the enforcement of a right against another party. To pursue a cause of action, a plaintiff pleads or alleges facts in a plaint, the pleading that initiates a law suit. A cause of action generally encompasses both the legal theory (the legal wrongs the plaintiff claims to have suffered) and the remedy (the relief a court is asked to grant).

Section 34 of the SR Act deals with declaration of status or right of a person. The object of this section is to strengthen testimony regarding title and protect it from adverse attack. If a cloud is cast upon the title and legal character the plaintiff may seek remedy under this section to dispel the cloud. The section 34 of the SR Act does not warrant every kind of declaration but only a declaration that the plaintiff is entitled to a legal character or to any right as to any property, and it warrants this kind of relief only under certain special circumstances. The plaintiff must have valid and subsisting interest in order to get a declaration.

Thus from the above discussion, it is clear that the suit was filed within limitation and there is every cause of action for instituting the suit.

Thus issue Nos.(i) & (ii) are decided in positive i.e. in favour of plaintiff.”

I have carefully perused the above findings and considered the same.

The suit was instituted for declaration of recovery of possession. According to plaintiff, the cause of action arose in the year 2016 when the defendant constructed a boundary wall over the suit land which compelled the plaintiff to institute the present suit. According to plaintiff, the defendant illegally trespassed into the suit land in the northern boundary in the first part of June, 2015 when the plaintiff raised objections and raised protest for illegal construction on the 2nd schedule land. The plaintiff arranged for demarcation of land by the survey knowing person of SDM, Kanchanpur. The Tehsilder of Kanchanpur Tehsil demarcated the land on 15.03.2016 and found the suit land was being possessed by the defendant. The plaintiff again requested the defendant on the last part of March, 2016 to hand over the possession of the suit land, but, the defendant turned deaf ear.

The finding of the learned trial Court as regards the point of limitation has been affirmed by the first appellate court when the first appeal being preferred by the defendant. Article 65 of the Limitation Act prescribes that a suit for possession can be filed within 12 years of dispossession and the claim of adverse possession can be claimed by the opposite party. In the instant case, there is no counter claim filed by the defendant claiming adverse possessory title. This is well-settled principle of law that possession follows title. In the instant case, the plaintiff has been able to prove his title since he purchased the suit land in the year 1991 and the defendant purchased the adjacent land in the year 1998 from the same vendor. The issue of limitation is a mixed question of law and fact. The point of limitation may be a substantial question of law if it goes into the very root of the case and affects the fundamentals of a case, which is absent in this case. In the present case, the plea of limitation raised by the appellant is a pure question of fact which has been concurrently affirmed in favour of the plaintiff by the Courts below.

I have carefully perused the findings and appreciation on the point of limitation as discussed and held by the learned courts below. I find no perversity in the findings. Accordingly, I do not find any merit to formulate substantial question of law on the issue of limitation and to admit this appeal.

In view of this, the appeal stands dismissed at this stage. Pending application, if any, shall also stand disposed.

JUDGE