

HIGH COURT OF TRIPURA
AGARTALA
RSA 29 of 2022

- (1) **Sri Kamala Kanta Singha @ Kamal Kanta Singha**,
son of late Lalmohan Singha, resident of Kalkalia, P.S. Bishalgarh,
District- Sepahijala, Tripura
- (2) **Sri Radha Kanta Singha**,
son of late Lalmohan Singha, resident of Kalkalia, P.S. Bishalgarh,
District- Sepahijala, Tripura
- (3) **Sri Nityananda Singha**,
son of late Lalmohan Singha, resident of Kalkalia, P.S. Bishalgarh,
District- Sepahijala, Tripura
- (4) **Sri Jagannath Singha**,
son of late Lalmohan Singha, resident of Kalkalia, P.S. Bishalgarh,
District- Sepahijala, Tripura

.... APPELLANTS

VERSUS

Sri Shyam Kishore Singha,
son of late Bhuvan Singha, resident of Kalkalia, P.S. Bishalgarh,
District- Sepahijala, Tripura

... RESPONDENT

RSA 27 of 2022

- (1) **Sri Kamala Kanta Singha @ Kamal Kanta Singha**,
son of late Lalmohan Singha, resident of Kalkalia, P.S. Bishalgarh,
District- Sepahijala, Tripura
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son of late Lalmohan Singha, resident of Kalkalia, P.S. Bishalgarh,
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District- Sepahijala, Tripura

... RESPONDENT

For Appellant (s)	:	Mr. S. Bhattacharjee, Advocate Mr. SB Debnath, Advocate
For Respondent (s)	:	Mr. D. Bhattacharjee, Sr. Adv. Mr. Samar Das, Advocate
Date of hearing and delivery of judgment & order	:	11.09.2023
Whether fit for reporting	:	Yes

HON'BLE MR. JUSTICE ARINDAM LODH
JUDGMENT & ORDER (ORAL)

Both the appeals have been taken up and heard together for final disposal by this common judgment since both involve common questions of law and facts.

2. The original plaintiffs, the appellants herein, filed a title suit before the learned Civil Judge, Senior Division, Sepahijala, Sonamura seeking declaration of their right, title and interest over the suit land alongwith consequential relief of recovery of khas possession of the suit land, which was registered as T.S. 2 of 2015. After institution of the suit, learned trial court issued summon upon the defendant, the respondent herein, who appeared and contested the suit by filing written statement, and also filed a counter claim before the learned trial court which was numbered as T.S. (C.C.) 2 of 2018, wherein the defendant sought for declaration of right, title, interest alongwith perpetual injunction against the plaintiffs over the same suit land. The plaintiffs of T.S. 2 of 2015 contested the counter claim by filing written statement. Both the suits i.e. T.S. 2 of 2015 and T.S. (C.C.) 2 of 2018 are two cross suits relating to same subject matter and in between same parties, and since the counter claim also arose from the original suit (T.S. 2 of 2015), the learned trial court heard both the matters together. Issues were framed and thereafter, the learned trial court after hearing arguments of both sides decreed the suit in favour of the plaintiffs in T.S. 2 of 2015 against which, the defendant filed title appeals before the learned District Judge, Sepahijala District, Sonamura. which were registered as T.A. 4 of 2020 and T.A. 3 of 2020. Learned first appellate court after hearing argument of both sides and on perusal of the records, set aside the judgment and decree passed by the learned trial court and decreed the appeals in favour of the defendant, the respondent

herein. Challenging the judgments and decrees passed by the learned first appellant court, the original plaintiffs being appellants approached this court by filing the instant second appeals.

3. These second appeals are preferred by the plaintiff-appellants challenging the judgment dated 17.03.2022 and decree dated 19.04.2022 passed by the learned District Judge, Sepahijala, Sonamura, in T.A. No. 4 of 2020 and T.A. 3 of 2020, respectively, whereby and whereunder learned first appellate court set-aside the judgment dated 14.01.2020 and preliminary decree dated 24.01.2020 passed by the learned Civil Judge, Senior Division, Sepahijala, Sonamura, in T.S. (CC) 2 of 2018 and T.S. 2 of 2015 respectively.

4. To put shortly, the essential facts of the case, are as under-

The appellants, who were the original plaintiffs, had instituted a suit for declaration of right, title, interest and recovery of khas possession of land of schedule 'A' described in details in Schedule 'A' of the plaint. It is the case of the plaintiff-appellants that the suit land was gifted to them by the then Maharaja of Tripura and mutated the land during the 1st settlement. It is the further case of the plaintiff-appellants that the father of the defendant, was the permissive possessor of the suit land, and after death of his father, the plaintiff-appellants allowed the defendant to continue the possession of the suit land. On 07.10.2014, the plaintiffs requested the defendant/respondent to handover the vacant possession of the suit land in their favour, but, he refused to vacate the land in question. The plaintiffs lastly requested the defendant on 04.12.2014 to vacate the suit land, but, the defendant was adamant and did not pay any heed to plaintiffs' request giving rise the cause of action to institute the suit.

4.1. The defendant on receipt of summon appeared and contested the suit by way of filing written statement as well as counter claim wherein the defendant has totally denied the title of the plaintiffs and claimed that his father

purchased the suit land in the year 1969 from the original owner of the suit land by paying consideration money of Rs. 60/-. By dint of that purchase, the father acquired right, title and interest over the suit land. The vendor also handed the possession of the said land and since then his father and after his death the defendant/respondent has been possessing the suit land peacefully without any disturbance from any corner. The defendant also denied the fact of cause of action.

4.2. After exchange of pleadings, the said suit has been transferred to the court of learned Civil Judge, Senior Division, Sonamura, Sepahijala District due to bifurcation of West Tripura District.

4.3. Learned trial Judge had framed the issues on the basis of which the evidences were recorded as adduced by both the plaintiffs and the defendant. Some documents were introduced which were duly exhibited by the learned court. On completion of recording of evidences, argument was heard and having considered all aspects, learned Civil Judge, Senior Division, Sonamura, Sepahijala District, declared right, title and interest of the plaintiffs over the suit land and decreed the suit for recovery of possession vide judgment and decree dated 14.01.2020 and 24.01.2020 respectively.

4.4. Aggrieved by the said judgment and decree, the defendant/respondent had preferred First Appeal before the court of learned District Judge, Sepahijala District, Sonamura. The learned District Judge on hearing argument of both the sides came to a finding that the plaintiffs have miserably failed to establish their title over the suit land, and thus, set-aside the judgment and decree passed by the learned Civil Judge, Senior Division, Sonamura, Sepahijala District.

4.5. Feeling aggrieved, the plaintiffs/appellants have preferred the instant appeal before this court under Section 100 of the Code of Civil Procedure, 1908.

5. At the time of admission of this appeal, the following substantial question of law was formulated:

“Whether the findings of the learned appellate court are perverse?”

6. I have heard Mr. S. Bhattacharjee, learned counsel and Mr. SB Debnath, learned counsel appearing for the appellants. Also heard Mr. D. Bhattacharjee, learned senior counsel assisted by Mr. Samar Das, learned counsel appearing for the respondents.

7. Keeping in view the substantial question of law, this court at the very outset has made a query to Mr. Bhattacharjee, learned counsel for the plaintiff-appellants as to what portion of the judgment, according to him, is perverse.

8. Mr. Bhattacharjee, learned counsel, has drawn my attention to the findings of the learned first appellate court wherein he has held that the defendant has been possessing the suit land adversely and by that way the first appellate court has made a third case which calls for interference of this court. On further query, Mr. Bhattacharjee, learned counsel has admitted that the plaintiffs have not been able to produce the title deed relating to the suit land during the course of proceeding before the courts below.

9. On the other hand, Mr. D. Bhattacharjee, learned senior counsel has submitted that the father of the defendant had purchased the suit land from the original owner of the land in question by executing a Sale Deed dated 15.12.1969 at a consideration of Rs.60/- (Rupees Sixty) and since then his father and after the death of his father, the defendant has been possessing the land.

10. There is no quarrel at the bar that the plaintiff has to prove his own case. He cannot take the advantage of the weakness of defendant's case. The learned counsel appearing for the plaintiff-appellants has given much emphasis on the fact that Record of Right has been created in favour of the plaintiffs. It is settled proposition of law that Khatian or Record of Right does not confer any title. However, it is also settled that presumption relating to genuineness of the entries in the Record of Right may be rebutted by way of appropriate evidence. In other words, entries in Khatian i.e. record of right is not the conclusive proof of a fact in question.

11. In the instant case, the defendant has produced his title deed conferring title upon him by way of inheritance. On the other hand, khatian produced by the plaintiff/appellants symbolizes only possession of a party in a land. Admittedly, in the instant case, the plaintiffs/appellants had/have no possession over the suit land. So, entries in the khatian as regards the possession of the plaintiffs over the suit land is concocted and contrary to actual state of fact that the defendant/respondent has been in possession of the suit land. To claim ownership, the plaintiffs must prove a better title than that of the defendant.

12. It is settled that possession is good title against the entire world except the true owner. To claim recovery of possession, the burden is upon the plaintiff to prove his title first by producing his title deed, which, in the instant case, the plaintiffs have failed to discharge. To reiterate, the defendant has been able to produce his title deed, and in addition, admittedly he is in possession of the suit land which is evident from the nature of the suit itself.

13. In this regard, Hon'ble Apex Court in *Sopanrao and another vs. Syed Mahmood and others*, reported in (2019) 7 SCC 76 held that: [SCC.pp.79-80, para 9]

“9. In a suit filed for possession based on title the plaintiff is bound to prove his title and pray for a declaration that he is the owner of the suit land because his suit on the basis of title cannot succeed unless he is held to have some title over the land.....”

14. In *Rame Gowda (dead) by Lrs. vs. M. Varadappa Naidu (dead) by Lrs. and another*, reported in (2004) 1 SCC 769, a three-Judge Bench of the Supreme Court *inter alia* held that *in the absence of proof of better title prior possession or prior peaceful settled possession is itself evidence of title. Law presumes the possession to go with title unless rebutted.*

15. In *Poona Ram vs. Moti Ram (dead) through legal representatives and others*, reported in (2019) 11 SCC 309, it is held that *settled possession or effective possession of a person without title entitles him to protect his possession as if he is the true owner.*

16. On Section 100 of the Code of Civil Procedure, the Hon’ble Apex Court in *Narayan Sitaramji Badwaik (dead) through legal representatives vs. Bisaram and others*, reported in AIR 2021 SC 2438, has held thus:-

“10. It is a settled position of law that a second appeal, under Section 100 of the Code of Civil Procedure, lies only on a substantial question of law [refer *Santosh Hazari v. Purushottam Tiwari (deceased) by LRs*, (2001) 3 SCC 179]. However, this does not mean that the High Court cannot, in any circumstance, decide findings of fact or interfere with those arrived at by the Courts below in a second appeal. In fact, Section 103 of the Code of Civil Procedure explicitly provides for circumstances under which the High Court may do so. Section 103 of the Code of Civil Procedure is as follows:

“Section 103. Power of High Court to determine issues of fact.- In any second appeal, the High Court may, if the evidence on the record is sufficient, determine any issue necessary for the disposal of the appeal,-

(a) which has not been determined by the lower Appellate Court or both by the Court of first instance and the lower Appellate Court, or

(b) which has been wrongly determined by such Court or Courts by reason of a decision on such question of law as is referred to in section 100.”

17. In *Deity Pattabhiramaswamy vs. S. Hanymayya and others*, reported in AIR 1959 SC 57, the Hon’ble Supreme Court held that a second appeal would not be entertained on the ground of erroneous finding of fact. [AIR.SC.p.59, para 13]

“13. ... As early as 1891, the Judicial Committee in *Durga Chowdhurani vs. Jawahir Singh*. 17 Ind. App. 122 (PC) stated thus:-

“There is no jurisdiction to entertain a second appeal on the ground of erroneous finding of fact, however gross the error may seem to be.....”

18. From the above principles, I can safely hold that scope of exercise of jurisdiction in second appeal is very limited. Even the High Court would not interfere with the judgment on the ground of erroneous finding of fact, however gross the error is.

19. In the case at hand, as I said earlier, the defendant/respondent has been able to prove his title over the suit land through the Sale Deed dated 15.12.1969 which is a valid sale transaction because market price of the suit land at that relevant point of time was determined at Rs.60/- for execution of which registration is not compulsory. Section 17(1)(b) of the Registration Act, 1908, stipulates that a sale deed being a non-testamentary instrument/document creating, declaring or assigning any right, title and interest in immovable property having a value of more than Rs.100/- (Rupees One Hundred) only in favour of a person must compulsorily be registered. Here, the sale consideration is Rs.60/- only. As such, registration of the Sale Deed dated 15.12.1969 was not required to be registered as contemplated under Section 17(1)(b) of the Registration Act. Further, it comes to fore from the evidence of the defendant that his predecessor took over possession over the suit land after execution of the said sale deed. Such handing over and taking over of the possession of the suit land in terms of the Sale Deed dated 15.12.1969 made the sale transaction *vis a vis* transfer of the suit land in favour of the predecessor of the defendant complete.

20. In my ultimate analysis, since the plaintiffs/appellants have failed to prove their title over the suit land in their suit for possession based on title, and further, the presumption of the entries in the record-of-right/khatian being successfully stood rebutted, I do not find any foundational ground to stamp the findings of the first appellate court dismissing the suit of the plaintiffs/appellants as perverse.

21. Accordingly, both the second appeals stand dismissed. The judgment dated 17.03.2022 and decree dated 19.04.2022 passed by the learned first appellate court in both the title appeals being T.A. No. 4 of 2020 and T.A. No. 3 of 2020, stand affirmed and upheld.

Send down the LCRs forthwith.

JUDGE



Saikat