

**HIGH COURT OF TRIPURA
AGARTALA
RSA 20/2023**

Sri Dhananjoy Pal and ors.

----Appellant(s)

Versus

Sri Ranjit Pal

----Respondent(s)

For Appellant(s)	:	Mr. DK Daschoudhury, Advocate
For Respondent(s)	:	None

**HON'BLE MR. JUSTICE ARINDAM LODH
Order**

28/07/2023

Heard Mr. DK Daschoudhury, learned counsel appearing for the appellants.

The present second appeal originates from the judgment and decree dated 25.04.2023 passed by the learned District Judge, South Tripura, Belonia, in connection with Title Appeal 03 of 2020 whereby and whereunder the judgment and decree dated 01.06.2020 passed by the learned Civil Judge, Junior Division, Belonia, South Tripura, in Title Suit 37 of 2015 was upheld.

Briefly stated, the plaintiff-respondent had instituted a suit for declaration of confirmation of possession with permanent injunction as consequential relief.

The facts, as projected by the learned trial court, may be reproduced here-in-below:

"The plaintiff and defendants are brothers and sisters. The defendant no.1 is a government teacher and his wife is also a government teacher residing at Satmura, Belonia permanently and on frequent visit he used to go to Bariya for his personal affairs. The plaintiff was separated from the family of his father due to the activities of the defendants specially defendant no. 1 in the year 1988-89 and since then the plaintiff has been residing separately with separate mess having

separate ration card. After being separated from his father's family, the plaintiff started to clean jungle from below schedule properties approximately 3 and 1/2 kanis tilla land situated at Mouja-South Srirampur, T.KSiddhinagar appertain to Khas Khatian no.1/40, R/S Plot no. 1563 in the southern portion of the plot from the plot area land of 3.71 decimal tilla land and in the year 2004 and thereafter in the year 2005 , the plaintiff started plantation of rubber trees thereon at his own cost and labour. After planting the plaintiff managed to nurse the plants till its maturity facing most difficulties to give latex and since the year 2013, the rubber trees have been capable to give latex in full and producing latex which were being collected by the plaintiff and enjoying the usufructs peacefully. The defendant no.1 has two rubber gardens, one is situated in khas plot no.1504 measuring 5 (five) kanies and other is on the land of Kanu Chakraborty comprised in Khatian no. 319 , Plot no. 3238 and 3239 occupied forcibly measuring 5(five) kanies of land and defendant no.1 is getting latex and enjoying usufructs from both the gardens. The plaintiff has no other source of income except these rubber gardens. But the defendants on 21.06.2015, started to express that they will collect the latex from the rubber garden and the defendant no.1 along with other defendants on that day came with dao and threatened the plaintiff and his wife that they will collect latex but due to resistance by the plaintiff and his wife, they failed. Before 21.06.2015, the defendants have also threatened the plaintiff on 31.03.2015 that they shall evict the plaintiff by force from the suit land. The suit land is a Khas land and the plaintiff had peaceful possession over the rubber garden since 2004-05. Even the father of the plaintiff had no possession on it during his lifetime who expired on 2010 but due to this threaten by the defendants, the plaintiff apprehending that he might be dispossessed by the defendants at any time from the suit land."

Issues were framed. Thereafter, on the basis of the issues, evidences were recorded. Having heard arguments of learned counsel appearing for the parties, the learned trial court had passed the following order:

"11] In the result, the possession of the plaintiff over the suit land described in the schedule of the plaint is hereby declared. The plaintiff is entitled to possess the suit land otherwise than in due course of law.

12] Suit thus stands decreed on contest as against the defendants, with costs.

13] Prepare a decree accordingly within 14 days.

14] Enter the result in the relevant register."

Against the said judgment and decree, the defendants have preferred first appeal before the learned District Judge, South Tripura, Belonia, and the said appeal was registered as T.A. 03 of 2020. After perusal of the records and having heard learned counsel appearing for the parties to the *lis*, the

learned appellate court has confirmed the judgment and decree passed by the learned trial court vide judgment dated 25.04.2023. Hence, this second appeal before this court.

Mr. DK Daschoudhury, learned counsel for the defendant-appellants has urged this court to formulate substantial question of law on the point that whether the court can pass a decree in favour of any person over a land where government is the owner.

I have perused the records and the judgments passed by the learned courts below.

It is clear that the plaintiff-respondent has not sought for any relief against the government. Both the plaintiff and the defendants have been possessing government khas land. So, it can easily be said that none has title over the suit land.

It is the case of the plaintiff that the defendants being his brother and sisters had tried to evict him from the suit land. It is the further case of the plaintiff that he being one of the legal heirs of his father, the original possessor of the suit land, is also entitled to one share equal to respective shares of the defendants. The defendants have no right to evict the plaintiff from the suit land.

According to me, where relief has not been sought for against the government, and the learned courts below did not pass any decree declaring title of the plaintiff over the suit land, I do not find any merit in the

submissions of learned counsel appearing for the defendant-appellants to formulate substantial question of law on the point that the plaintiff's suit is barred by non-joinder of necessary party i.e. government, in the instant case.

Accordingly, the instant second appeal stands dismissed in limini in the admission stage itself.

Send down the LCRs.

JUDGE