

**HIGH COURT OF TRIPURA
AGARTALA**

RSA No. 33 of 2023

For Appellant(s) : Mr. DK Das Choudhury, Adv.

For Respondent(s) : Mr. D Sharma, Addl. GA.

HON'BLE MR. JUSTICE S. D. PURKAYASTHA

Order

24.11.2023

Heard Ld. Counsel, Mr. D.K Das Choudhury, Ld. Counsel of the appellant and Mr. D Sharma, learned Addl. G.A. appearing for the respondents.

The judgment passed by Addl. District Judge, South Tripura, Sabroom dated 10.08.2023 and consequent decree thereof in TA 09 of 2022, are under challenge in this appeal.

Originally the predecessor of present respondents Nos. 1 to 6, namely Birbal Singh as plaintiff filed Title Suit No. 09 of 2016 in the Court of Civil Judge, Senior Division, South Tripura, Belonia against present appellant and 07 others for declaration of his right, title and interest in respect of the suit land comprising of an area of 4.11 acres consisting total 05 nos. of RS plots along with further prayers for recovery of possession of the same, for *mesne profits* and also for injunction restraining above said defendants-respondents from entering into the suit land. Allegation of the plaintiffs was that in the month of May, 2008 the father of the present appellant along with the present appellant and defendant No. 8 (present respondent No.15) dispossessed him from a part of the suit land and on 16.04.2013 the defendants dispossessed him from the entire suit

land. The source of title of the original plaintiff over the suit land, as averred, was allotment of the said land by the Govt. in his favour in the year 1973 and accordingly ROR was created in his name. But in the comment column of the ROR, as Mr. Das Choudhury, Ld. Counsel submitted by placing copy of ROR in the Court, in one plot, name of father of the present appellant was shown as permissive possessor and as against 03 plots, name of his father was reflected as 'possessor by transfer in violation of section 14(1) of TLR & LR Act, 1960'. Said provision of section 14(1) of the Act deals with the matter of granting of allotment of Govt. land by the Collector for agricultural purposes as per the Rules as may be made in this regard under TLR & LR Act, 1960 (for short- *the Act*).

Trial Court as well as the first Appellate Court granted decree in favour of the plaintiff or his successors mainly treating the respondents as permissive possessor of the suit land.

During hearing on admission, Ld. Counsel, Mr. Das Choudhury referred to his suggested substantial questions of law which are as follows-

"I. Whether the entries made in the remark column of Khatian against suit plots written in Bengali as "১৪ (১) ধারার বিরুদ্ধে হস্তান্তরিত দং অনিল চন্দ্র দাস পিং হর কুমার দাস সাং নিজ ১৯৭০ ইং সন হইতে", English version of which is : 'Possession of Anil Chandra Das son of Har Kumar Das transferred in contrary to the provisions of section 14(1) (Here section 14(1) meant of the Tripura Land Revenue and Land Reforms Act, 1960) during two successive settlement operations of Cadastral Survey and Revisional Survey shall be construed as permissive possession or adverse possession?

II. Whether failure of the allottees to take step to alter the entries of adverse possession in the Khatian within the statutory period of limitation a prescribed in section 45 of the TLR & LR Act, 1960 extinguishes their right to recover possession of the suit land from the appellant?

III. Whether the findings of the learned Courts below suffer from any perversity for misreading and ignorance of evidence on record?

IV. Any other substantial question of law as to be formulated at the time of hearing."

He further submitted that for proper adjudication of the disputes, interpretation of the comment "*Possessor Anil Ch. Das by transfer against section 14(1) of TLR & LR Act, 1960*" as commented in ROR, is very much necessary to decide whether said comment denotes such possession as '*permissive possession*' or as '*adverse possession*' and therefore, one substantial question of law is required to be formulated particularly on that point, for, both the Courts below wrongly interpreted the above said comment as permissive possession. Ld. Counsel further submitted that the description of the suit land was given en-block in the schedule of the plaint in respect of all the defendants and no specific portion of land possessed by which defendant was shown in the plaint. Referring to the cross-examination portion of PW.2, Ld. Counsel submitted that said witness had also admitted the possession of the defendants in the suit land since 1991 [but as per the pleading of the appellant, his father had been possessing the suit land since prior to the allotment of the land in favour of the plaintiff i.e. since before 1973]. Ld. Counsel further stressed upon the provisions of section 44 (2) and section 188 of TLR & LR Act, 1960 submitting that the Civil Court has no authority to ignore such comments made in the ROR and cannot decide any dispute regarding correctness of entries made in the ROR. Lastly, Ld. Counsel, Mr. Das Choudhury relied on another decision of Single Bench of this High Court rendered in ***Sri Pradip Debnath & ors. Vs. Sri Kamal Ghosh & ors.***, dated **13.09.2022** in **RSA no.11** of

2020, and earnestly prayed for admitting this appeal in the light of his submissions.

Ld. Addl. G.A. submitted that there was no substantial question of law involved in this appeal and moreover, without any reason, suddenly the State of Tripura and Sub-divisional Magistrate, Sabroom were arrayed as respondents in the first appeal though they had no relation with the matter in dispute and more so, they were not party in the original suit.

Perused the record and considered the submissions.

As it appears, in the written statement submitted by the appellant, he did not claim any adverse possession over the suit land and also did not challenge the description of suit land to be incorrect or vague one. Therefore, no interpretation of the above said comment in the ROR is necessary in the present appeal. Even if such comment is interpreted to be in the nature of 'adverse possession', still it will be of no help to the appellant for want of pleading. More so, such comment of ROR is very much clear and specific that the predecessor of the appellant was in possession by dint of any transfer in violation of the provision of section 14(1) of the Act, which requires no further interpretation. Though Mr. Das Choudhury, Ld. Counsel argued that for any defect in the pleading, the parties should not suffer but it is no longer *res-integra* that no relief can be granted to any party without having it's foundation in the pleading. Two of the major purposes of the pleadings are that both sides become aware of the cases of each other so that it can be encountered by them and also to prevent the parties from any deviation therefrom or expansion thereof during the process of adjudication. In **Bachhaj Nahar v.**

Nilima Mandal, (2008) 17 SCC 491, it was observed by Hon'ble Apex Court that the object and purpose of pleadings and issues is to ensure that the litigants come to trial with all issues clearly defined and to prevent cases being expanded or grounds being shifted during trial. Its object is also to ensure that each side is fully alive to the questions that are likely to be raised or considered so that they may have an opportunity of placing the relevant evidence appropriate to the issues before the court for its consideration.

So far the question of applicability of section 44(2) & section 188 of the Act are concerned, as it appears, the Courts below have also not decided anything in the suit or in the appeal in contrary to those provisions. The decision of Pradip Debnath (supra), as was referred by Ld. counsel, Mr. Das Choudhury was completely on different aspect. Thus, it is held that there is no substantial question of law involved in this appeal requiring admission of the same for final hearing.

Therefore, the second appeal is not admitted.

Copy of this order be sent to both the Courts below.

Interlocutory application(s), if any, also stands disposed of.

JUDGE

SATABDI DUTTA Digitally signed by SATABDI DUTTA
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