

**IN THE HIGH COURT OF TRIPURA
AGARTALA**

RSA No.07 of 2023

Smt. Chabi Rani Das (Aged 60 years)
wife of late Santosh Das, resident of
village -Subhash Colony, P.S.
Santirbazar, District- South Tripura

..... **Appellant**

- Versus -

Sri Manoranjan Das
son of late Dinabandhu Das, resident
of village- Baroj Colony
(Manurmukh), P.O. Sarashima, P.S.
Belonia, District- South Tripura

..... **Respondent**

For the Appellant(s)	:	Mr. H. Laskar, Adv. Mr. R.G. Chakraborty, Adv.				
For the Respondent(s)	:	Mr. S.S. Debnath, Adv.				
Date of hearing	:	04.04.2024				
Date of delivery of Judgment & order	:	20.05.2024				
Whether fit for reporting	:	<table border="1"><thead><tr><th>YES</th><th>NO</th></tr></thead><tbody><tr><td></td><td>√</td></tr></tbody></table>	YES	NO		√
YES	NO					
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HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA

JUDGMENT & ORDER

The appeal arises out of the judgment dated 16.12.2022 passed by the learned District Judge, South Tripura, Belonia in Title Appeal No.06 of 2019, whereby the learned District Judge has affirmed the judgment of learned Civil Judge (Jr. Division), Belonia, South Tripura dated 13.03.2019 passed in Title Suit No.31 of 2015 and related decree thereof, by way of dismissing the appeal.

[2] The factual narratives in brief, as projected in the plaint, by the present respondent and his mother Renu Bala Das (now deceased) (*hereinafter referred to as the "plaintiffs"*) is that the suit land measuring 1.71 acres was owned and possessed by the predecessor of the plaintiffs, namely Late Dinabandhu Das as *Rayat* thereof and he also planted valuable trees therein. Said Dinabandhu Das expired on 10.04.1994 leaving the plaintiffs as legal representatives behind him who accordingly inherited the suit property. After death of said Dinabandhu Das, both the plaintiffs shifted to Belonia on certain personal grounds requesting the present appellant (defendant No.1) and another Kumod Debnath (defendant No.2), their neighbours to look after the suit land and to graze their cattle therein. Accordingly, during the survey and settlement operation, the names of the present defendants and one Sridam Das i.e. father of the present appellant, were recorded in the Khatian as permissive possessors in the suit land. However, a few months prior to the filing of the suit, the present respondent i.e. plaintiff No.2 withdrew his permission from the defendants to further use the suit land and accordingly communicated the same to the defendants. On 18.06.2015, when the plaintiff No.2 was taking care of his rubber plantation in the suit land, the defendants dispossessed him therefrom claiming to be the owner of the suit land.

[3] With such allegations, the suit was filed praying for the following reliefs:

[i] A decree declaring right, title, interest of the plaintiffs over the suit land.

[ii] **A decree directing the defendants to deliver possession of the suit land to the plaintiff.**

[iii] Permanent injunction directing the defendants not to disturb the peaceful enjoyment of the suit land by the plaintiffs and not to enter into the suit land.

[iv] Any other relief or relieves the plaintiff is entitled under law and equity.

[4] Before the trial Court, the plaintiffs adduced both oral and documentary evidence and defendant No.1 adduced only oral evidences. The claim of defendant No.1 in the suit land was of adverse possession. According to her, prior to the death of the predecessor of the plaintiffs in 1984, she had been possessing the suit land adversely to the interest of the plaintiffs and their predecessor. The defendant No.2 did not contest the suit.

[5] Learned trial Court decreed the suit holding that the defendant No.1 or her witnesses did not disclose since when she had started possessing the suit land, adversely and ultimately, held that defendant No.1 could not prove her claim of adverse possession in the suit land.

[6] The first appellate court also maintained the findings of the trial court, as stated above and in this second appeal, the following substantial questions of law were formulated for hearing:

1. Whether the findings of the courts below that the defendant/appellant has failed to prove their plea of adverse possession is perverse or not?

Any other substantial question of law will be formulated at the time of hearing.

[7] Mr. H. Laskar, learned counsel appearing for the appellant-defendant No.1 argues that the defendant No.1 has been possessing the suit land adversely for more than 40 years and valuable rubber plantations were made by her within the suit land. Learned counsel further contends that total 5[five] witnesses were examined on behalf of defendant No.1 to establish the claim of adverse possession and they also corroborated with each other on material points but the learned trial court misappreciated their evidence. Mr. Laskar, learned counsel further argues that some valuable documents were required to be proved on behalf of the appellant and therefore, the suit may be remanded to the learned trial court giving the defendant No.1 a scope to adduce those documentary evidence.

[8] Mr. S.S. Debnath, learned counsel representing the respondent, mainly concentrates his argument on the point that practically, there is no substantial question of law to be argued in this appeal and therefore, the appeal may be dismissed. In support of such contention, he relied on a decision of Hon'ble Supreme Court in **Appaiya vs. Andimuthu @ Thangapandi & Ors., 2023 Legal Eagle (SC) 937**, [equivalent citation- **2023 AIR (SC) 4810**] wherein reference was made to another judgment of the Apex Court rendered in the case of **Lankeshwar Malakar vs. R. Deka, (2006) 13 SCC 570** and in that case it was held that in order to be substantial question of law, the test is whether it is of general public importance or whether it directly or substantially affects the right of

the parties or whether the question is still open i.e., it is not finally settled by the Supreme Court, Federal Court or Privy Council.

[9] Mr. Debnath, learned counsel also referred another decision of the Apex Court in a case of **Suresh Lataruji Ramteke vs. Sau. Sumanbai Pandurang Petkar & Ors, 2023 Legal Eagle (SC) 950** [equivalent citation-**2023 AIR (SC) 4794**], wherein reference was made to another decision of the Apex Court in **Kondiba Dagadu Kadam vs. Savitribai Sopan Gujar, (1999) 3 SCC 722** wherein it was held that if the question of law termed as a substantial question of stands already decided by a larger Bench of the High Court concerned or by the Privy Council or by the Federal Court or by the Supreme Court, its merely wrong application on the facts of the case would not be termed to be a substantial question of law. Similarly, in **Kalpana Sarkar & Ors. vs. Akhil Datta, 2022 Legal Eagle (TRI) 373**, as further referred by Mr. Debnath, learned counsel, it was held by this court that the question of law raised will not be considered as a substantial question of law, if it stands already decided by a larger Bench of the High Court concerned or by the Privy Council or by the Federal Court or by the Supreme Court. Where the facts required for a point of law have not been pleaded, a litigant should not be allowed to raise that question as a substantial question of law in second appeal.

[10] While decreeing the suit in favour of the plaintiffs, learned trial court heavily relied on the Khatian of the suit land standing in the name of the predecessor of the plaintiffs having some entries in the

24th column showing the defendants as permissive possessor therein. To support such observation, learned counsel Mr. Debnath also relies on a decision of this court rendered in **Amiyashu Sharma and others vs. Matilal Dey and others**, [judgment and order dated 14.02.2022 in RSA No.26 of 2019]. In the said case, it was observed by this court that by way of creation of Khatian a person is declared as *Rayat* which means the person who owns the land and though said Khatian is not a document of title but it has its presumptive value of correctness until contrary is proved.

[11] Before entering into the matter of substantial question of law vis-à-vis the merit of the appeal in relation to such formulated question, another noticeable defect in the judgments of both the learned trial court and the first appellate court requires attention first.

[12] The issue No.III as was framed by the trial Court was with reference to the relief of recovery of possession as sought for by the plaintiffs which is the primary relief as required by the plaintiffs to gain the fruit of the lis. Issue No.III is as follows:

iii. Whether the plaintiffs are entitled to a decree directing the defendants to deliver possession of the suit land?

[13] Neither said relief has been granted or the same has been rejected by the trial court and no discussion on the said issue was also made by the said court. The reliefs as granted by the trial court by its judgment dated 13.03.2019 are as follows which were carried over in the decree framed thereupon:

ORDER

[13] In the result, the instant suit preferred by the plaintiffs is decreed with cost in their favour and it is declared that the plaintiffs have right, title and interest of land measuring 1.71 acres as stated in Hal plot No.528,529,530,531,532, and 533 as comprised in Khatian No.150 more specifically described in the schedule to the plaint.

[14] It is also declared that the defendants and their men and agents are permanently restrained from disturbing the peaceful possession of the plaintiffs and enjoyment of the property of 1.71 acres as stated in Hal plot No.528,529,530,531,532, and 533 as comprised in Khatian No.150 more specifically described in the schedule to the plaint

[15] Thus the suit stands disposed of on contested.

[14] Admittedly, the plaintiff(s) were/are not in a possession of the suit land and as per the plaint version, they were dispossessed of the suit land on 18.06.2015 and the cause of action for the suit, according to the plaintiffs, arose on that day. No cause of action has been asserted in the plaint by the plaintiffs in support of their prayer for a permanent injunction. In the absence of any cause of action in this regard and in view of the fact that the plaintiffs are already dispossessed from the suit land, granting of such permanent injunction itself was beyond the jurisdiction of the trial court.

[15] Learned first appellate court at one place at Para No.10 of the judgment observed that as the plaintiffs had right, title and interest in the suit land they were entitled to the vacant possession of the same and surprisingly, on the next paragraph, the court observed that the defendants were trying to invade the plaintiffs' right to enjoy the suit land. Therefore, the plaintiffs were entitled to the relief of permanent injunction. Both findings are self contradictory. Therefore,

both learned trial Court and the first appellate Court committed serious error by granting relief of permanent injunction to the plaintiffs which goes to the root of the matter. No cross appeal was/has been filed by the plaintiff(s) either before the first appellate court or before this Court though the said relief granted became illegal, infructuous and unenforceable. In such a situation, even if this Court finds merit in the case of the respondent-plaintiffs, still cannot rectify such error.

[16] In view of above, the judgment dated 13.03.2019 and the related decree thereof passed by the trial Court in Title Suit No.31 of 2015 as well the judgment dated 16.12.2022 and the related decree thereof passed by the first appellate Court in Title Appeal No.06 of 2019 are set aside.

The suit is remanded to the trial Court again with the following directions and without making any observation on the merit of the suit:

[i] After receipt of the record, the trial Court shall notify all the parties and hear the final argument in accordance with law and shall thereafter pronounce the judgment on all issues.

[ii] The trial Court shall take all endeavours to dispose of the suit at the earliest, preferably within next 3[three] months.

The submission of Ld. Counsel of the appellant for adducing documentary evidence is not accepted, for, no document was submitted by the appellant in the trial Court or before the first appellate Court and no petition for adducing any additional evidence was also submitted in any Court.

The appeal, is accordingly, disposed of with the above said directions.

No order as to costs.

Send down the LCRs forthwith.

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

JUDGE

**SUJAY
GHOSH**

Sujay

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