

**HIGH COURT OF TRIPURA
AGARTALA**

RSA No.09 of 2021

- 1. Smt. Swarnabasi Debnath,**
Wife of Late Jamini Kumar Debnath, aged-96
- 2. Sri Chitta Ranjan Debnath,**
Son of Late Jamini Kanta Debnath, aged-69

On the death of Nanigopal Debnath

- 3.(a) Smt. Sira Rani Debnath,**
Age 52 years,
Wife of Late Nanigopal Debnath
- 3.(b) Sri Krishna Debnath,**
Age 38 years,
Son of Late Nanigopal Debnath
- 3.(c) Sri Kalyan Debnath,**
Age 34 years,
Son of Late Nani Gopal Debnath
- 3.(d) Smt. Nupur Debnath,**
Age 30 years,
Daughter of Late Nanigopal Debnath
- 4. Sri Phani Bhusan Debnath,**
Son of Late Jamini Kanta Debnath,
Age 67 years
- 5. Sri Manindra Chandra Debnath,**
Son of Late Jamini Kanta Debnath,
Age 64 years
- 6. Sri Arjun Debnath,**
Son of Late Jamini Kanta Debnath,
Age 63 years
-all are residents of Purba Aralia, Gurudas Para,
Near Bankumari Mandir within Sadar Agartala,
P.S. East Agartala, District: Tripura, West

-----Plaintiff-Appellants (s)
Versus

- 1. The State of Tripura,**
Represented by the Secretary,
Revenue Department, Government of Tripura,
Civil Secretariat, P.S. New Capital Complex,
Agartala, District: West Tripura
- 2. The Director,**
Land Records & Settlement,
Government of Tripura, Palace Compound,
P.S. East Agartala, District: West Tripura

3. The D.M. & Collector,
West Tripura, Agartala, P.S. East Agartala,
District: West Tripura

4. The Sub-Divisional Magistrate (SDM),
Sadar, Agartala, P.S. West Agartala,
District: West Tripura

----Defendant-Respondents (s)

For Appellant(s) : Mr. D. Debnath, Adv.

For Respondent(s) : None

Date of Hearing : 28.02.2024

Date of delivery of
Judgment and Order : 13.03.2024

Whether fit for
Reporting : NO

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

This appeal is preferred under Section 100 of CPC challenging the judgment of Learned District Judge, West Tripura, Agartala dated 11.02.2021 delivered in Title Appeal No.08 of 2018 whereby the Learned District Judge, West Tripura, Agartala upheld the judgment and decree passed by Learned Civil Judge, Senior Division, Court No.1, Agartala, West Tripura in Title Suit No.2/2016.

02. At the time of arguments Learned counsel for the appellants relied upon the written arguments submitted. But none appeared on behalf of the state-respondents. Now before coming to the conclusion of the appeal let us discuss the subject matter of the suit filed before the Learned Trial court. The appellant-plaintiffs filed the suit for declaration of

right, title and interest by way of adverse possession and for perpetual injunction against the defendants. The total suit land comprised land measuring 6 kanis 2 gandas. According to the appellant-plaintiffs they are the legal representatives of one Jamini Kanta Debnath (since dead). One Kunja Mohan Marak was the owner of the land measuring 6.05 acre + 2.22 acre i.e. in total 8.27 acres which includes the suit land. Said Kunja Mohan Marak sold out the land to one Sonatan Debnath and Manmohan Debnath and also partly to said Jamini Kanta Debnath. During first survey settlement operation the land of Kunja Mohan Marak was partly recorded in jote Khatian No.1267 and 1385 and some portions of his land were recorded in khas Khatian No.1248 in the name of State of Tripura. The said deceased Jamini Kanta Debnath also purchased further lands from one Sonatan Debnath and Manmohan Debnath which was also recorded in khas Khatian No.1248 and it's connected khatians against CS Plot No.7078 showing said Sonatan Debnath and Manmohan Debnath as forceful occupier since 1950. The said fact was not within the knowledge of said deceased Jamini Kanta Debnath and he continued possessing his purchased land since 1960 knowing the same to be his own jote land by making his homestead and also growing different plants therein. In the month of October, 1969, some revenue officials of Dukli Tehshil and the officer of SDM, Sadar visited the suit land

and asked said Jamini Kanta Debnath (since dead) to vacate the same which said Jamini Kanta Debnath denied. Thereafter on 25.11.1969 some officials of Dukli Tehshil and officer of the S.D.M., Sadar asked him to vacate the same with the plea that same was khas land and also threatened him that if he fails to vacate the same then he would be evicted therefrom. After that he collected the information about the position of record of rights and came to know that the suit lands were recorded in khas khatians. But in spite of that he continued to possess the same against the government adversely denying the right, title and interest of the government. Thereafter, after a long gap on 15.09.2010 notice was issued from the office of the Director of Settlement and Land Records, Government of Tripura to late Jamini Kanta Debnath, his wife Swarnabasi Debnath and two sons Manindra Chandra Debnath and Arjun Debnath to take allotment of the suit land but they did not response, rather they continued to possess the same with hostile assertions. Even the plaintiffs grew rubber plantation in 3.5 kanis of land and in rest portion of the suit land they planted bamboos and in some portion they have planted vegetables. On 31.12.2013 some officials of Jogendranagar Tehshil along with the staff of SDM, Sadar tried to evict the plaintiffs from the suit land but due to resistance they failed. Hence, the appellant-plaintiffs filed the suit.

03. Respondents No.1, 3 and 4 as defendants appeared and submitted their joint written statement but the respondent No.2 did not file the same. It was the case of the respondent-defendants that since first survey settlement operation the suit land was a khas land. So there was no question of any transfer of suit land by Kunja Mohan Marak to Sonatan Debnath and Manmohon Debnath or even in plaintiffs' predecessors and if any such transfer had taken place the right, title and interest would not pass to the purchasers. They also denied the story of possession either permissible or hostile of the plaintiffs in the suit land and also denied issuance of notice by defendant No.2 in favour of the predecessor of the plaintiffs and some of the officials asking them to take allotment of the suit land. The contesting defendants also denied the allegation of causing any threat to him. Further according to defendants on that relevant point of time there was no post of SDM, Sadar at Agartala and there was no rubber plantation over the suit land rather the same was lying vacant having some bushes and trees therein and in the related khatians the names of the plaintiffs or their predecessor was never recorded in the relevant column as forceful possessor of the suit land. Upon the pleadings of the parties Learned Trial court framed the following issues:

(i) Is the suit maintainable in its present form and nature?

(ii) Have the plaintiffs cause of action to file the instant suit?

(iii) Are the plaintiffs in possession of the suit land for a continuous period of more than thirty years? If so, have the plaintiffs perfected their title over the suit by way of adverse possession?

(iv) Are the plaintiff entitled to a decree, as prayed for?

(v) What other relief(s) are the plaintiffs entitled to?

04. To substantiate the issues both the parties have adduced oral/documentary evidence on record which are as follows:

(A) Plaintiffs Witness:-

PW-1:- Chittaranjan Debnath

PW-2:- Lalmohan Sarkar

PW-3:- Sukhen Das

PW-4:- Dhananjoy Nama

(B) Plaintiffs Exhibits:-

(i) Certified copy of registered sale deed bearing No.1-9395, dated 27.03.1957 as Exbt.1.

(ii) Original copy of registered sale deed bearing No.1-13185, dated 05.12.1960 as Exbt.2.

(iii) Original copy of registered sale deed bearing No.1-13366 dated 13.12.1960 as Exbt.3.

(iv) Original copy of registered sale deed bearing No.1-6955, dated 25.07.1966 as Exbt.4.

(v) Original copy of registered sale deed bearing No.1-6956, dated 25.07.1966 as Exbt.5.

(vi) Original copy of registered sale deed bearing No.1-5077, dated 11.04.1967 as Exbt.6.

(vii) Original copy of registered sale deed bearing Nos.1389, 1267, 1385, 1377, 3064, 1248(jer), 1153 and 1368 as Exbt.7.

(viii) Certified copy of new khatian bearing Nos.1/310 and 1/309 as Exbt.8 (series).

(ix) Original copy notice dated 15.09.2010 in two sheets as Exbt.9 (series).

(x) Original copy of Tax receipts in three sheets as Exbt.10(series).

(xi) Original copy of notice dated 13.09.1966 in two sheets as Exbt.11 (series).

(xii) Certified copy of voter list in two list in two sheets as Exbt.12 (series).

(xiii) Certified copy of survey report dated 25.10.2013 as Exbt.13.

(xiv) Original copy of letter dated 01.09.2015 as Exbt.14.

(C) Defendants Witnesses:-

DW-1:- Jayanta Majumder.

(D) Plaintiffs Exhibits:-

(i) Certified copy of khatian bearing No.1248 as Exbt.A(i).

(ii) Certified copy of khatian bearing No.1/309 as Exbt. A(ii).

(iii) Certified copy of khatian bearing No.1/310 as Exbt. A(iii).

(iv) Certified copy of khatian bearing No.1267 as Exbt. A(iv).

(v) Certified copy of khatian bearing No.1285 as Exbt. A(v).

05. After conclusion of trial and also after hearing of arguments Learned court below by the judgment dated 23.02.2018 dismissed the suit of the appellant-plaintiffs with the following observation:

"In the result the suit stands dismissed on contest without cost.

The plaintiffs have failed to perfect their title over the suit land by way of adverse possession and they are also not entitled for a decree as prayed for.

This suit stands disposed of accordingly on contest.

Prepare decree accordingly.

Enter the result."

06. Challenging that judgment the appellant-plaintiffs preferred an appeal before the court of the Learned District Judge, West Tripura, Agartala which was numbered as Title Appeal No.08 of 2018 and after hearing of both the sides Learned First Appellate Court also dismissed the appeal upholding the judgment and decree of the Learned Trial Court by judgment dated 11.02.2021. The operative portion of the judgment of the First Appellate Court runs as follows:

"As a result, the appeal is dismissed being devoid of merit.

The appeal is disposed of on contest with cost to the defendant-respondents.

Prepare decree accordingly and place it for signing within stipulated period.

Reconsign the L.C. record with copy of the judgment and decree.

Enter the result both in relevant register and in CIS."

07. Challenging that judgment the present appellants have preferred this appeal before the High Court. At the time of admission of appeal before this High court by order

dated 28.06.2021 following substantial questions of law was framed:

"Whether the judgment of the first appellate court suffers from perversity as the documents and the oral evidence were read inappropriately?"

08. As already stated the appellants in this case only filed written arguments without placing any oral submission and on the other hand from the side of the respondent-defendants none appeared to argue the case. So here in this appeal we are to see whether the judgment of the Learned First Appellate Court was perverse or not. From the side of appellant-plaintiffs four numbers of witnesses were adduced including the plaintiff No.2 Chitta Ranjan Debnath. In his examination-in-chief in affidavit he reiterated his version made in the plaint and relied upon some documentary evidences which were marked as Exbt-1-6 and Exbt.7 series, Exbt.8 series, Exbt.9 series, Exbt.10 series, Exbt.11 series, Exbt.12 series, Exbt.13 series and Exbt.14 series. During cross-examination by the contesting defendants said witness submitted that the sale-deed Exbt.1-6 do not bear any Khatian number as well as any plot number. The revenue receipts vide Exbt-10 series do not bear any khatian no. or plot no. Exbt.10 series had no relation with the suit land. Further stated that the suit land is a khas land and the khatian bearing No.1267 and 1385 Exbt.7 do not bear any Plot No.7078. Further stated that the land under plot No.7078 is a part and parcel of lands recorded in khas

Khatian no.1248 (Exbt.7 series). He could not say whether Kunja Mohan Marak filed any application or not under Section 11(3) of TLR & LR Act. Notice under Section 80 of CPC was not served before filing of the suit and further stated that the land under plot No.7078 was never recorded in the name of Sotatan Debnath and Manmohon Debnath under Khatian No.1267. He did not produce any papers showing purchase of rubber seedlings.

09. PW-2 Lal Mohan Sarkar also supported the version of PW-1 in his examination in chief in affidavit. During cross-examination by the contesting defendants he stated that he failed to recollect the khatian number as well as plot number of the suit land and also could not say the khatian number as well as plot number of the jote land of Kunjamohon Marak.

10. PW-3, Sukhen Das also tried to support the version of PW-1 in his examination in chief in affidavit. During cross-examination he stated that he is unable to say the khatian number and plot number of the suit land and also unable to say the khatian number and plot number of the jote land of Kunja Mohon Marak. Nothing more came out relevant.

11. PW-4 Dhananjoy Nama in his examination in chief in affidavit also reiterated the same version as made by PW-1 in his examination-in-chief in affidavit. During

cross-examination he also deposed in the same manner like PWs 2 and 3.

12. On the other hand from the side of the contesting defendants one Jayanta Majumder submitted his examination in chief in affidavit and he also submitted few documents like certified copies of khatians bearing No.1248, 1/309, 1/310, 1267 and 1285 which were admitted in to evidence and was marked as Exbt. A(i), A(ii), A(iii), A(iv) and A(v) respectively. During cross-examination he stated that the suit land is comprised in old Khatian No.1248 appertaining to old CS Plot No.7078 and as per record the same plot was under forceful possession of Sonatan Debnath. Further stated that the khatian showing Sonatan Debnath and others as forceful possessor was prepared in 1956. He further stated that no steps were taken for eviction of forceful possessor Sonatan Debnath.

These are the synopsis of the evidence on record of the parties.

13. Before the Learned Trial court and the Learned First Appellate court both the sides have adduced some citations which are not required to be discussed again in this appeal. I have also perused the written arguments submitted on behalf of the appellant-plaintiffs. Now let us examine the rival contentions of the parties. The appellant-plaintiffs adduced six numbers of deeds before the Trial court which were admitted into evidence. Exbt.1 is the

certified copy of sale-deed bearing No.1-9395 dated 27.03.1957 executed by Kunjamohon Marak in favour of Sonatan Debnath, Manmohon Debnath and Chandramohon Debnath for land measuring 1 drone 8 kani 17 ganda 1 kara. Said certified copy was not proved in accordance with law. Even the officials who issued the certified copies were not tendered for examination by the appellant-plaintiffs to prove its genuineness. Moreso, those documents were executed before introduction of TLR & LR Act, 1960. So, on the basis of those documents nothing can be inferred as to how much quantum of land was allowed by the Government to retain as jote land and it is also not clear how much land was made khas under ceiling surplus. The appellant-plaintiffs proved another documents Exbt.2 i.e the original sale-deed bearing No.1-13185 dated 05.12.1960 executed by one Chandramohon Das in favour of Jamini Kanta Debnath for land measuring 10 gandsa wherein also no plot number was mentioned and regarding these documents nothing was mentioned in the pleading by the appellant-plaintiffs. Now if we see Exbt.3 i.e. the sale-deed bearing No.1-13366 dated 13.12.1960 executed by Sanatan Debnath, Manmohon Debnath and Chandra Mohan Debnath in favour of Jamini Kanta Debnath for an area of 7 gandas 1 kara which also does not bear any plot number. Similarly Exbt.4 is another sale-deed bearing No.1-6955 dated 25.07.1966 executed by Manmohan Debnath and his

brother Rajmohan Debnath in favour of Jamini Kanta Debnath for an area of 1 kani which also does not comprise of any plot number. Thus it appears that transfer of land under Exbt-2, 3 and 4 made prior to survey operation for which no plot numbers were mentioned in those deeds. Similarly Exbt.5 relates to sale-deed No.1-6956 dated 25.07.1966 executed by one Chandra Mohan Debnath to Jamini Kanta Debnath for an area of land measuring 1 kani without mentioning any CS plot number. Exbt.6 relates to sale-deed bearing No.1-5077 dated 11.04.1967 executed by one Rabindra Chandra Debnath in favour of Jamini Kanta Debnath for an area of 10 gands of land without mentioning of any CS plot number and it appears that the reference of those deeds were not mentioned in the pleading of the appellant-plaintiff because according to the appellant-plaintiffs their predecessor purchased some lands from Sonatan Debnath, Manmohan Debnath and Kunjamohan Marak and not from Chandramohon Debnath and Rabindra Chandra Debnath. Similarly from Khatian No.1377 (part of Exbt.7 series) it appears that one plot was created from CS Plot No.7078 showing number as 7078/7957 for an area of 0.22 acre wherein one Bipin Chandra Das was shown as illegal possessor. Similarly from old Khatian No.3364 (one item of Exbt.7 series) it appears that two further plots were created from 7078 i.e 7078/7955 and 7078/7957 in favour of one Smt. Bhagabati Dasi and another Smt. Mamata Das

in equal share, but these are not the suit land. From the CS Khatian Nos.1248 jer 1253, 1268, 1274, 1275, 1277 and 1278 and also from 1279 it appears that an area of 2.85 acres of land was recorded against CS Plot No.7078. After creation of aforesaid plots Sonatan Debnath and Manmohon Debnath and Chandra Mohan Debnath were shown as forceful possessor. The witness of the contesting defendants Jayanta Majumder as DW-1 admitted that said khatian was prepared in the year 1966. Now if we agree with the submission of the plaintiffs that by dint of aforesaid purchase under Exbt.1-4 the predecessor of the appellant-plaintiffs entered into the suit land and started possessing the same, in that case his name could definitely reflect in the CS Khatian in place of his vendor. Moreso, Exbt.1, 2 and 3 were executed prior to 1966 and Exbt.4 was executed in the year 1966 and suit land was recorded in Khatian No.1-310 and 1-309 (Exbt.8 series) during re-survey and settlement operation. But nowhere in those khatians the names of the appellant-plaintiffs or their predecessors either as permissive or forceful possessor were shown. On perusal of Exbt.13 certified copy of one statement prepared by the Revenue Authority in the year 2013 showing the names of the appellant-plaintiffs Arjun Debnath, Manindra Debnath and their father Jamini Kanta Debnath as forceful occupier of suit plots where it is mentioned that some fruit bearing trees are there in the suit land. But from those documents it

cannot be ascertained from which period the appellant-plaintiffs or their predecessor were in possession of the suit land. The appellant-plaintiffs also proved three numbers of notices under Exbt.9 series from which it appears that in the year 2010 the then settlement authority issued notices to Jamini Kanta Debnath, Manindra Chandra Debnath and plaintiff Arjun Debnath asking them to appear at Dukli Hala Camp with certain documents if they were interested to get allotment of the same and to submit necessary application for allotment. But they did not do so. But for issuing such notices it cannot be said that the appellant-plaintiffs were possessing the suit land adversely since 1960 or prior to that. So the plea of forceful possession of the appellant-plaintiffs over the suit land could not be established by the documentary evidence. From the evidence on record it appears that the appellant-plaintiffs could not adduce any convincing oral/documentary evidence on record in support of their claim or possession and their valid title and interest over the suit land. Even the appellant-plaintiffs failed to prove by adducing evidence on record that they were adversely possessing the suit land denying the right, title and interest of the true owner. Furthermore, from the evidence of the appellant-plaintiffs or their witnesses it appears that they could not give any proper account of the plea of adverse possession taken by the appellant-plaintiffs and also the date time and the name of the staff who

according to the appellant-plaintiffs threatened to evict them from the suit land.

14. In this regard I would like to refer one citation in **Vasantha (Dead) Tr. Vs. Rajalakshmi @ Rajam (Dead) Thr.** reported in **2024 SCC OnLine SC 132**. In the above citation Hon'ble the Supreme Court in para Nos.43 and 44 observed as under:

"43. In **Saroop Singh v. Banto** (2-Judge Bench):2005 8 SCC 330, this Court observed that Article 65 states that the starting point of limitation does not commence from the date when the right of ownership arises to the plaintiff but commences from the date the defendant's possession becomes adverse. Further relying on **Karnataka Board of Wakf v. Govt. of India** (2-Judge Bench): (2004) 10 SCC 779, it observed that the physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases related to adverse possession. Plea of adverse possession is not a pure question of law but a blend of fact and law. Therefore, a person who claims adverse possession should show: (a) on what date he came into possession; (b) what was the nature of his possession; (c) whether the factum of possession was known to the other party; (d) how long his possession has continued; and (e) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all facts necessary to prove his adverse possession.

44. This Court in **Hemaji Waghaji Jat v. Bhikhabhai Khengarbhai Harijan** (2-Judge Bench): (2009) 16 SCC 517, reiterating the observations made in **P.T. Munichikkanna Reddy v. Revamma** (2-Judge Bench): (2007) 6 SCC 59 in respect of the concept of adverse possession observed that efficacy of adverse possession law in most jurisdictions depends on strong limitation statutes by operation of which, right to access the court expires through efflux of time. As against the rights of the paper-owner, in the context of adverse possession, there evolves a set of competing rights in favour of the adverse possessor who has, for a long period of time, cared for the land, developed it, as against the owner of the property who has ignored the property. Modern statutes of limitation operate, as a rule, not only to cut off one's right to bring an action for the recovery of property that has been in the adverse possession of another for a specified time but also to vest the possessor with title. The intention of such statutes is not to punish one who neglects to assert rights but to protect those who have maintained the possession of property for the time specified by the statute under a claim of right or colour of title."

15. From the above principles of law laid down by the Hon'ble Supreme Court it appears that the present appellant-plaintiffs before the Learned Trial Court could not adduce any oral or documentary evidence on record that they or their predecessor were adversely possessing the suit land denying the right, title and interest of the true owner because to prove adverse possession certain criteria have been laid down by the Hon'ble Apex court in the aforesaid judgment but from the pleadings of the appellant-plaintiffs as well as from the evidence on record nowhere I find that the present appellants have/had acquired right of adverse possession over the suit land at any time. Thus, it appears that the appellant-plaintiffs before the Learned Trial court have failed to prove their assertions of the right of adverse possession against the true owner i.e. the State of Tripura. Thus it appears to me that both the Learned courts below after elaborate discussions of evidence on record delivered the judgment and dismissed the suit. The substantial question of law is accordingly answered. The appellant-plaintiffs are not entitled to get any relief as prayed for.

16. In the result, the appeal filed by the appellant-plaintiffs stands dismissed on contest with costs being devoid of merit. The judgment and decree dated 11.01.2021 of the Learned First Appellate Court is hereby affirmed and accordingly it is upheld. The appellant-plaintiffs

are not entitled to get any relief as prayed for. Prepare decree accordingly and send down the LCRs.

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

JUDGE



**SABYASACHI
BHATTACHAR
JEE**

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