

**HIGH COURT OF TRIPURA
AGARTALA**

RSA. 21 of 2023

1. Sri Nitai Shil,
56 years

2. Sri. Gouranga Shil,
54 years

both are sons of Lt. Nibaran Shil,
resident of Sankar Palli, near MI Office,
Amarpur Town, P.S. Birganj,
District-Gomati.

.....Plaintiff appellant(s)

Vs.

1.The State of Tripura,
represented by the DM & Collector,
Gomati District, Udaipur.

2.The Sub-Divisional Magistrate,
Amarpur, Gomati District.

3.The Tehsilder,
Birganj, Tehsil-Kachari,
Amarpur, P.O & P.S. Birganj,
Gomati District.

.... Defendant Respondent(s)

For Appellant(s)	:	Mr. DR Choudhury, Sr. Adv. Mr. S Sarkar, Adv.
For Respondent(s)	:	Mr. K De, Addl. GA.
Date of hearing	:	12.03.2024
Date of delivery of judgment	:	31.05.2024
Fit for reporting	:	NO

HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA

JUDGMENT & ORDER

This appeal arises out of a judgment dated 26.04.2023
passed by learned Additional District Judge, Gomati, Udaipur in

Title Appeal No.04/2019 whereby the appeal was dismissed affirming the judgment and decree passed by learned Civil Judge, Senior Division in Title Suit No.02/2016 by which learned Trial court dismissed the suit of the plaintiff appellants for declaring their right, title and interest over the suit land by way of adverse possession.

[2] The suit land comprises 0.507 acre of CS Plot No.1151, corresponding to RS Plot No.2332 of class 'Tilla' as reflected in RS Khatian of Mouja Amarpur. During first settlement operation, the classification of land was shown as 'Bastu'.

[3] The claim of the appellants was that their father Lt. Nibaran Shil came in the locality of that area in the year 1950 from East Pakistan and started residing in contiguous CS Plot Nos. 1151/1180 and 1401/1881 by constructing homestead dwelling and subsequently, got allotment of said land in the year 1964.

[4] While residing in those plots said Nibaran Shil also started possessing the suit land by constructing huts therein and by planting vegetables and other seasonal crops. However, from 01.01.1965 said Nibaran Shil, started forcefully possessing the suit land openly in public and adversely claiming his right, title and interest therein. The suit land as was during the first survey and settlement operation was recorded in the name of the government in the Khas Khatian, showing him as an illegal possessor in the relevant column of the related Khatian.

[5] According to the appellants, said adverse possession became perfected after a lapse of 30 years i.e. on 31.12.1994, since when their predecessor became the owner thereof. The said Nibaran Shil died in 2004 and his wife also expired in 2011 and thereafter, the appellants became absolute owners in possession of the suit land. But during Revisional survey and in settlement operation, the name of predecessor of the appellants was deleted from the relevant column of the Khatian. It was also stated by appellants that in the year 2015 the defendants sanctioned a minimum of Rs.25,000/- in the name of the appellant No.1 for construction of his house in the suit land.

[6] It was also additionally stated that in the year 2012, the appellants filed Title Suit No.23/2012 for declaration of their right, title and interest with further prayer for an injunction against some of the present respondents in the court of learned Civil Judge, Senior Division, Gomati, of the then South Tripura District, in respect of their allotted land which was also decreed on 22.05.2013. But suddenly, on 23.12.2015, the respondent No.3 with his staff came to the suit land and cautioned the appellants to vacate the suit land within seven days followed by serving a notice dated 26.12.2015, asking the appellants to appear before him with relevant papers in support of his occupation of the suit land. Again, a similar second notice was served on 02.01.2016 and the appellants submitted all necessary documents to respondent No.2 but despite the same, on 14.01.2016, the respondent No.3 with

his men tried to dispossess the appellants from the suit land illegally and, therefore, the present suit was filed.

[7] According to the respondents, considering the possession of the father of the appellants, 0.451 acre of land was allotted to them from CS Plot No.1151 but his name was not deleted from the Khatian. However, the same was later on deleted during Revisional survey and settlement operation.

[8] According to them, the father of the appellants never possessed the present suit land. They further stated that from the said allotted 0.451 acre of land the allottees sold out 0.30 acre of land to some other persons and now started claiming the suit land as of their own.

[9] During trial from the side of the appellants, four witnesses were examined and some documents were also proved into record. Out of said four witnesses, PW-4, Narayan Chandra Tripura was the Assistant Survey Officer of the office of Director of Land Records & Settlement, Govt. of Tripura. Affidavit of one witness from the side of respondents was submitted, but ultimately, the said witness did not appear to face cross-examination and evidence of respondent side was closed.

[10] The appeal was admitted on the following substantial questions of law:-

- i. Whether the plaintiff-appellants have been able to prove their adverse possession to the state?

- ii. Whether the findings of both the courts below are perverse in respect of possession of the suit land by the plaintiff-appellants?

[11] Learned Sr. counsel, Mr. DR Choudhury for the appellants, argued that from 01.01.1965 the appellants or their predecessors have been possessing the suit land adversely and despite notices issued by the respondents, the appellants could not be evicted from the suit land and they have their uninterrupted hostile possession over the suit land with the knowledge of everyone.

[12] Learned Sr. counsel gave emphasis to the fact that the government itself, through the publication of Khatian of first survey and settlement operation, admitted that the predecessor of the appellants was in forceful possession of the suit land but learned trial court as well as learned first appellate court missed to consider that aspect.

[13] According to learned Sr. counsel, the appellants successfully proved their adverse possession in the suit but learned trial court as well as learned first appellate court mis-appreciated the evidences led by the plaintiffs leading to a perverse decision.

[14] Learned Sr. counsel also relied on a decision of the Hon'ble Supreme Court in ***Eureka Builders & Ors. vs. Gulabchand*** reported in **(2018) 8 SCC 67**. In that case, while considering the materials available in the record, Hon'ble Supreme Court held that the plaintiff was in lawful possession of the suit

land since 1942/1943 and the original holders of the land were aware of such ownership rights of the predecessors of the plaintiffs and such aforesaid undisputed facts confirmed the possessory right, title and interest of the plaintiff on the suit land against everyone, including the original holders, by operation of law.

[15] Learned Sr. counsel also made reference to a decision of this court in case of **Ratna Chakraborty & Ors. Vs Pranab Kanti Basu & Ors.** reported in **(2015) 1 TLR 96** wherein at para 23, this court observed that Section 27 of the Limitation Act provides that if within a period prescribed by the law of limitation any person fails to institute suit for recovery of possession of any property, his right to such property shall be extinguished and such possession, known as adverse possession, is not a mere fact, it creates a definite right in favour of the squatter on extinguishment of right of true owner.

[16] Learned Sr. counsel, Mr. Choudhury, further relied on another decision of this court rendered in **Hiranbala Deb & Ors. vs. The State of Tripura & Ors. (2015) 1 TLR 104** wherein basing on the factual narrations of the parties the court observed that as the plaintiff had proved that since 15.05.1963 they had *animus possidendi*, open and uninterrupted, and as on the day of possession by respondent No.2 of that case in exercise of powers under Section 16 of Land Acquisition Act, the title by prescription in favour of the plaintiffs had existed. It was also observed that there is a distinction between 'the forcible occupier' and 'unauthorized occupier' and the nature of possession had to be

gathered and identified from the evidence led by the person claiming such title on the basis of *animus possidendi*.

[17] Another reference, as made by the learned Sr. counsel Mr. Choudhury, is one decision of this court in case of **Chinu Das & Ors. vs. Nimai Debdas (2020) 1 TLR 534**. In that case, it was held at para 17 that a plaintiff can well maintain a suit claiming title by virtue of adverse possession under Article 65 of the Limitation Act and that apart, the plaintiff can also further seek relief of permanent injunction.

[18] Learned Addl. GA, Mr. K De referred to para 7 of the judgment of learned trial court and submitted that mere possession over a property for a long period of time does not grant the right of adverse possession on its own in absence of *animus possidendi*. According to learned Addl. GA, the court is required to act with more cautiousness when plea of adverse possession is raised in respect of a government land.

[19] According to Mr. De, learned Addl. GA in the instant case, the appellants relied on a comment made in the Khatian of first survey and settlement operation reflecting the name of their predecessor as an illegal occupier, which was omitted during the revisional survey and settlement operation and against the said order of settlement authority, the appellants did not make any challenge in the appropriate forum and therefore, they are estopped from raising any challenge regarding entries of Khatian

prepared during revisional survey and settlement operation in respect of the suit land.

[20] Finally, learned counsel relied on a decision of Hon'ble Supreme Court in **Government of Kerala and Anr. vs. Joseph and Ors. (Civil Appeal No. 3142 of 2010)** decided on 09.08.2023 wherein it was observed that when a claim is raised by any private party of adverse possession in relation to a land belonging to the government, the court is required to consider this question more seriously. Reference of another decision of Hon'ble Supreme Court in **State of Rajasthan Vs. Harphool Singh, (2000) 5 SCC 652** was also made in said decision. In the said case of **Harphool Singh** (*supra*) it was observed by the Apex Court that so far the question of perfection of title by adverse possession and that too in respect of public property is concerned, the question requires to be considered more seriously and effectively for the reason that it ultimately involves destruction of right/title of the state to immovable property and confirming upon a third party encroacher where he had none.

[21] On considering the rival contentions of the parties and on perusing the materials available on record, it is found that during the first survey and settlement operation, Khatian No.1 was opened in respect of disputed CS Plot No.1151 comprising an area of 0.507 acre standing in the name of government of Tripura and in said Khatian, the name of predecessor of the appellants was mentioned in column No.23 as an illegal possessor in respect of said plot.

[22] During revisional survey and settlement operation, said comment was deleted from the Khatian but the area of said plot was maintained to be 0.507 acre and one RS plot corresponding to said CS plot was created in respect of said area viz. RS plot No.2332. Simultaneously, during first survey and settlement operation, an area of total 0.451 acre of land was allotted in the name of predecessor of the appellants wherein one CS plot bearing No. 1151/1880 of area 0.170 acre was endorsed in the name of predecessor of appellant.

[23] The contention of the appellants that since their predecessor they were possessing the suit land adversely and as such, said comment was inserted in the said Khatian No.1, does not find much support from the said old Khatian inasmuch as mere insertion of a comment "illegal possessor" in the comment column itself does not constitute adverse possession, unless all the ingredients of adverse possession are distinctly proved by the persons seeking such relief based on adverse possession.

[24] It is also a fact that when the name of predecessor of the appellants was not maintained in the Khatian prepared during revisional survey and settlement operation, they or their predecessor did not challenge the same before any higher revenue authority.

[25] At the instance of the appellants themselves, one officer from settlement department namely, Sri Narayan Chandra Tripura, was summoned to appear as witness on behalf of the appellants

and in his evidence, he stated that generally a person who is found in possession of the property during field inquiry, Khatian is created in his name until and unless any objection is received and found proper in this respect.

[26] He also stated that as per their revenue records there was nothing that any person had raised any objection when the name of predecessor of the appellant was not reflected with reference to RS Plot No.2332 and generally, Khatian is finally published after the completion of all the stages of preparation of such ROR.

[27] He also stated that in their relevant register there was no mention on which date said predecessor of the appellant occupied CS Plot No.1151. Finally, one suggestion was given from the side of the appellants to him that intentionally, the name of their predecessor was deleted from the Khatian of revisional survey and settlement operation to provide the land to the PWD. The said witness did not support the case of the appellants but the appellants did not declare the said witness hostile.

[28] As per the claim of the appellants, their father, after coming from East Pakistan, started occupying the suit land and its contiguous plots and those contiguous plots were allotted to him. But the suit land was not allotted to him by the government and in spite of repeated inquiries to the appropriate authorities, their father could not know the reasons for not allowing the suit land to him, in his name. The appellant No.2 stated the aforesaid facts in

his evidence and stated further that thereafter, getting the reason for not allotting said suit land to him, his father, from 01.01.1965 started possessing the suit land forcibly and illegally, to the knowledge of everyone in the locality. From such evidence, it appears that since his migration to India from the then East Pakistan, the father of the appellants started occupying the suit land and at that time, as per the claim of the appellants themselves, he did not start possessing the suit land adversely and there is also no explanation from the side the appellants as to how suddenly his possession became adverse from 01.01.1965.

[29] Mere possession, whether lawful or illegal, how so long ever be, does not automatically constitute adverse possession, unless it is proved satisfactorily that from a certain period it became hostile to the real owner and such possession was continuous and open.

[30] In the case in hand for the reasons discussed above, it appears that learned trial court as well as learned first appellate court committed no error in negating the claim of adverse possession of the appellants. The substantial questions of law formulated in the appeal are answered accordingly.

[31] As a result, it is held that the appeal is devoid of merit and accordingly, the same is dismissed with costs in favour of the respondents.

The registry is directed to prepare the decree accordingly and to send down the LCRs with a copy of the judgment and decree.

Interim application, if any, also stands dismissed of.

JUDGE



**SATABDI
DUTTA**

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