

**HIGH COURT OF TRIPURA
AGARTALA**

RSA No.35 of 2022

Sri Pradip Bhowmik @ Lalit Bhowmik,
Son of late Nabadwip Bhowmik,
Resident of Laxmanpara, Amtali,
P.S. Amtali, District: West Tripura

-----Defendant-Appellant (s)

Versus

Sri Pijush Sarkar,
Son of Sri Umesh Chandra Sarkar,
Resident of Amtali Madhyapara,
P.S. Amtali, District: West Tripura

----- Plaintiff-Respondent (s)

For Appellant(s)	:	Mr. P. Chakraborty, Adv.
For Respondent(s)	:	Mr. A. Sengupta, Adv.
Date of Hearing	:	18.01.2024
Date of delivery of Judgment and Order	:	25.01.2024
Whether fit for Reporting	:	YES

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

The appellant Pradip Bhowmik @ Lalit Bhowmik has filed this second appeal under Section 100 of the CPC challenging the judgment dated 26.04.2022 and decree dated 30.04.2022 passed by the Learned District Judge, Agartala, West Tripura in Title Appeal No.7 of 2021 affirming the judgment dated 22.02.2021 and decree dated 25.02.2021 passed by Learned Civil Judge (Senior Division), Court No.2, Agartala, West Tripura in Title Suit No.70 of 2017. Before concluding the appeal on merit let us revisit the facts of the case before the Trial Court below.

02. The respondent as plaintiff filed a suit before the court of Learned Civil Judge (Senior Division), Court No.2, West Tripura, Agartala which was registered as TS.70 of 2017. It was the case of the respondent-plaintiff is that suit land measuring 4 gandas (0.080 acres) as the part and parcel of land measuring 0.60 acres purchased by the respondent-plaintiff vide registered sale-deed bearing No.1-4493 dated 02.07.2004 from one Krishna Ch. Sarkar, son of late Palai Ch. Sarkar of Madhyapara, P.S. Amtali, West Tripura. Said Krishna Chandra Sarka purchased the suit land from his vendor namely Dhananjay Chowdhury at a consideration price of Rs.1,00,000/- (one lakh). After purchase of the suit land the respondent-plaintiff applied for mutation over the land and as such the competent authority after necessary enquiry mutated his purchased land measuring 0.60 acres and ROR was prepared in his name Khatian No.1262 under Mouja Madhupur, CS Plot No.3066 (P) 3067, RS Plot No.3725,3726 bounded in the North by the legal heirs of one Amulya Sarkar, Pradip Bhowmik (possessor), in the South Nitai Sarkar and others, in the East Santosh Sarkar, Pijush Sarkar and others and in the West legal heirs of Atul Bhowmik and others. It was further asserted by the respondent-plaintiff that the appellant-defendant filed one case under Section 145 of Cr.P.C. before the court of S.D.M. Bishalgarh which was numbered as NGR 7 (EX) 03 against the vendor of the respondent-plaintiff

including the respondent. In the said proceeding final order was passed on 23.11.2009 whereby S.D.M. Bishalgarh purportedly decided that the appellant-defendant was the possessor of the suit land. Thereafter the respondent-plaintiff filed a suit for declaration of title, confirmation of possession and for perpetual injunction against the appellant-defendant over the suit land before the court of Civil Judge (Jr. Division), Bishalgarh which was numbered as TS 08 of 2011. In the said suit on receipt of notice the present appellant-defendant though appeared but did not submit any written statement inspite of granting several adjournments and finally Learned court of Civil Judge (Jr. Division) passed judgment and decree on 05.09.2013 declaring that the respondent-plaintiff has had title over the suit land confirmed the possession of the respondent-plaintiff over the suit land and also restrained the appellant-defendant from entering into the suit land. Thereafter on 07.05.2017, the appellant-defendant encroached the suit land. The respondent-plaintiff requested him to vacate the same but he did not pay any heed to his request and thereafter the respondent-plaintiff filed the suit as stated above before the Learned court of Civil Judge (Sr. Division), Court No.2, Agartala.

03. The present appellant-defendant contested the suit by filing written statement before the Learned court below. It was asserted by the appellant-defendant that the

suit was not maintainable and there was no cause of action for the suit, suit was barred by limitation and it was also bad for non-joinder of necessary parties. It was further asserted that the respondent-plaintiff after obtaining fraud and foul play obtained decree in connection with case No.TS 08 of 2011. It was the further case of the appellant-defendant that the suit land appertaining to RS Plot No.3726 under Mouja Madhupur originally belonged to Maharani Kanchan Prava Devi under Kayemi Taluk No.169 and the present appellant-defendant has got his other land adjacent North-West corner to the suit land and as such the appellant-defendant finding the suit land vacant on 20.09.1971 entered therein and since then he has been possessing the same denying the right, title and interest of the true owner in hostile assertion beyond the statutory period of limitation. The appellant-defendant further submitted that the predecessor vendor of the respondent-plaintiff namely Krishna Chandra Sarkar and his persons on 21.02.1971 resisted the appellant-defendant and his labourers in cultivating the suit land as well as in growing vegetables and also threatened the appellant-defendant to vacate the suit land. But the appellant-defendant did not vacate the same rather constructed huts and residing therein along with family members in hostile manner denying the right, title and interest of the vendor respondent-plaintiff. Subsequently the respondent-plaintiff

created the sale-deed in respect of the suit land in his favour which attempted to take forceful possession of the suit land and for that the appellant filed one case before the court of S.D.M. Bishalgarh bearing No.NGR 7(Ex)/2003 and subsequently after field verification S.D.M. Bishalgarh by an order declared possession of the appellant-defendant over the suit land. It was further submitted that the respondent-plaintiff after playing fraud to the Learned court below obtained the decree.

04. Upon the pleadings of the parties following issues were framed by the Learned court below:

(i) Whether the suit is maintainable in it's present form and nature?

(ii) Whether the plaintiff has cause of action for filing the suit?

(iii) Whether the suit is barred by limitation?

(iv) Whether the plaintiff is entitled to get recovery of possession of the suit land by evicting the defendant therefrom after removing all obstruction created by the defendant?

(v) Whether the plaintiff is entitled for perpetual injunction not to disturb the possession over the suit land caused by the defendant?

(vi) Whether the defendant got right over the suit land by adverse possession denying the right, title and interest and possession in the suit land of the plaintiff and his vendor?

(vii) Whether the plaintiff is entitled to get the decree as prayed for?

(viii) To what other relief/reliefs parties are entitled?

05. In support of his case before the Learned Trial court the respondent-plaintiff adduced two witnesses and relied upon some documentary evidences which are marked as exhibits as under:

(A) Respondent-plaintiff's Exhibits:-

1. Exbt.1(a) to 1(c) – Sale Deed vide no.1-7493;
2. Exbt.2 – Certified Copy of Khatian No.1262;
- 3.Exbt.3 – Certified Copy of Old Khatian No.1262;
- 4.Exbt.4 – Certified Copy of Old Khatian No.1966;
5. Exbt.5 – (a) to 5(f) – Certified Copy of Judgment dated 05.09.2013 passed by the Court of Ld. Civil Judge (Jr. Div.), Bishalgarh in connection with TS 08 of 2011;
6. Exbt. 6 (a) to 6 (c) – Original Corrected Deed Vide No. 1-8669 dated 27.09.2001

(B) Respondent-plaintiff's Witnesses:-

1. P.W.1 :- Sri Pijush Sarkar;
2. P.W.2 :- Sri Litan Sarkar

06. Before the Learned Trial Court the appellant-defendant also adduced three witnesses and relied upon some documents which were marked as exhibits as mentioned below:

A. Appellant-defendant's Exhibits:-

1. Exbt.A (a) to A(g) :- Certified to be True Copy of Judgment dated 23.11.2009 passed by SDM, Bishalgarh in Case No.NGR 07 (EX) 03 exhibited subject to objection by counsel for the plaintiff;
2. Exbt.-B:- Certified to be True Copy of Order dated 12.10.2006 passed by the Court of the Executive Magistrate, Bishalgarh in Case No.NGR 7 (EX) 03;
3. Exbt.- C (a) to C (b):- Certified to be True Copy of Field Inquiry Report dated 02.12.2006 in connection with Case No.NGR 7 (EX)/ 03;
4. Exbt.D (a) to D(d):- Certified to be True Copy of Registered Sale Deed Vide No.1-442 dated 12.02.2001.

(B) Respondent-plaintiff's Witnesses:-

1. Sri Anup Bhowmik @ Lalit Bhowmik;
2. Sri Shaymal Chandra Sarkar;
3. Smt. Gita Rani Bhowmik

07. Finally after considering the evidence on record and hearing the parties Learned Trial Court by a judgment and order dated 22.02.2021 decreed the suit in favour of the respondent-plaintiff. The operative portion of order of the Learned Trial Court reads as follows:-

"In the result, the suit of the plaintiff is decreed on contest against the defendant.

It is declared that the plaintiff is entitled to get recovery of possession of the suit land by evicting the defendant and by removing all obstructions therefrom.

The defendant is hereby directed to hand over khas possession of the suit land to the plaintiff within 2(two) months from the date of decree.

Permanent injunction is also granted restraining the defendant from making any interference to the peaceful possession of the said land by the Plaintiff, after the said land is duly recovered by the plaintiff, and to abstain from doing any act or omission prejudicial to the interest of the plaintiff regarding the said land.

The suit is disposed of accordingly on contest.

Prepare a decree accordingly and place before me for my signature within 15 days from today.

The record shall be consigned to the Record Room after due compliance."

08. Challenging that judgment the present appellant-defendant preferred an appeal before the court of the Learned District Judge, West Tripura, Agartala which was numbered as Title Appeal No.07 of 2021 and the Learned First Appellate Court by judgment and order dated 26.04.2022 dismissed the appeal of the present appellant and confirmed the judgment and decree of the Learned Trial Court below. The operative portion of the judgment and order dated 26.04.2022 is extracted here under:

"In the result, this appeal filed by the defendant-appellant is devoid of merit and the same is dismissed.

The judgment and decree passed by the Ld. Trial Court in T.S. 70 of 2017 dated 22.02.2021 & 25.02.2021, respectively, is upheld and affirmed.

This Title Appeal stands disposed of on contest with cost. Prepare the decree accordingly."

09. Challenging that judgment the present appellant-defendant has preferred this second appeal as stated above. Before the High Court at the time of admitting the appeal following two substantial questions of law were framed by the order dated 01.08.2022 which are as follows:

"i) Whether the judgment and decree of both the Courts below in regard to non-consideration of a document relating to possession of the defendant appellant are perverse?

ii) Whether it is the duty of the 1st Appellate Court to decide the appeal keeping in view the scope and power conferred to it under Section 96 read with Order 41, Rule 31 of the Code of Civil Procedure and due to non-compliance with the requirement of Order 41, Rule 31 the Judgment and decree is unsustainable in law and is perverse?"

10. At the time of hearing Learned counsel for the appellant submitted that both the courts below have committed serious error in passing the judgment as there is/was no cause of action by the respondent-plaintiff to file the suit before the Learned court below. The present appellant was/is possessing the suit land since the year 1971 denying the right, title and interest of the respondent-plaintiff and the Learned SDM, Bishalgarh in a proceeding under Section 45 of Cr.P.C. declared possession in favour of the appellant-defendant and thereafter the respondent-plaintiff manufactured a date showing his cause of action on 07.05.2015 filed a false suit because the respondent-plaintiff never possessed the suit land at any point of time. So question of his dispossession from the suit land did never arise and his possession has already been declared and confirmed by Learned SDM Bishalgarh in a proceeding under Section 145 of Cr.P.C. But the Learned First Appellate Court did not consider said aspect and passed an erroneous judgment affirming the judgment of Learned Court below. Although the respondent-plaintiff filed a suit before the court of Learned Civil Judge, Junior Division, Bishalgarh, but practically he did not get any relief for want of possession and since the respondent-plaintiff never possessed the suit

land at any point of time so the story of possession and dispossession was misconceived and as such the respondent-plaintiff was/is not entitled to get any benefit relief and referred para-33 of the judgment of the Learned Trial Court below wherein Learned Court below also admitted the possession of the appellant over the suit land. Similarly the First Appellate court also in para-21 of the judgment admitted that the present appellant-defendant was in possession of the suit land but finally dismissed the appeal without taking into consideration the right of the adverse possession of the appellant-defendant over the suit land since long back and ultimately dismissed the appeal upholding the judgment of the Learned court below which according to Learned counsel for the appellant was totally illegal, inoperative and not binding upon the present appellant-defendant as because the appellant all along was/is peaceful possession of the suit land and urged for setting aside the judgment of the Learned court below.

11. On the contrary, Learned counsel for the respondent-plaintiff has vehemently opposed the submission made by the Learned counsel for the appellant and submitted that there is no merit in the appeal as because the appellant could not make any case to be decided in his favour resulting which both the Learned court below and the First Appellate Court rightly and reasonably delivered the judgment in favour of the respondent-plaintiff

of this case and there is no scope to interfere the judgment passed by the Learned First Appellate court.

12. Learned counsel for the respondent has further submitted that the respondent-plaintiff purchased the suit land from one Krishna Ch. Sarkar by registered sale-deed who also got possession of the same and said Krishna Ch. Sarkar also purchased the same from one Dhananjay Chowdhury in lieu of consideration price and his purchased land was initially recorded in the name of Dhananjay Chowdhury. Thereafter the total purchased land measuring 0.60 acres of land mutated in the name of said Krishna Chandra Sarkar and after that the total purchased land was recorded in the name of the respondent-plaintiff and in the relevant column there was no such entry regarding possession of the appellant-defendant over the suit land at any point of time. So the story of his possession over the suit land was a dire falsehood and furthermore before the court of SDM Bishalgarh, it was asserted by the present appellant-defendant that the suit land was his purchased land. But later on, before the Civil court the present appellant-defendant took the plea of adverse possession which are contradictory to each other. Learned counsel also drawn the attention of this court to draw presumption under Section 43(4) of TLR and LR Act regarding record of rights and finally submitted that both the courts below after elaborate hearing and considering the evidence on record

delivered the judgment in favour of the respondent-plaintiff and the present appellant-defendant before the Civil court at Bishalgarh in respect of receiving notice although appeared but did not contest the suit with a belief that there is no chance of his success in that suit and ultimately that suit proceeded ex-parte against the appellant-defendant and challenging that suit the present appellant did not file any appeal before the competent court. So according to Learned counsel since the case of the respondent-plaintiff was based on title and which was duly proved before the Learned court below. So Learned counsel urged before the court to uphold the judgment of the Learned First Appellate court.

13. This court has heard detailed argument of Learned counsel of both the side. It is on record both the courts below gave concurrent finding declaring the suit in favour of the respondent-plaintiff of this case.

14. Learned counsel for the appellant-defendant in course of hearing confined his argument only on the point that there was no cause of action to file the suit and the possession of the appellant was confirmed by an order of Learned SDM, Bishalgarh. But to substantiate his claim over the suit land he could not adduce any convincing documentary evidence on record. From the record of the Learned court below it appears that the respondent-plaintiff purchased the suit land from one Krishna Chandra Sarkar

who purchased the same from one Dhananjoy Chowdhury. To substantiate title and possession over the suit land the respondent-plaintiff proved and relied upon some documentary evidences which were marked as exhibits before the court below. I have gone through those exhibited documents also. It appears that the suit land was originally recorded in the name of Dhananjoy Chowdhury and during the stage of attestation in the year 1986 suit land was recorded in the name of Dhananjoy Chowdhury in Khatian No.1166. In the said khatian in the respective column there was no entry in the column No.24 regarding possession of any person including the present appellant-defendant. Similarly, the suit land was recorded in the name of Krishna Chandra Sarkar in Khatian No.1262 vide M.R No.40/2001 and in the said khatian also in the respective column No.24 there is no entry regarding possession of any person including the present appellant-defendant. After that the suit land was recorded in the name of the respondent-plaintiff and ROR was prepared in his name and in his khatian also in the respective column there is no entry regarding possession of any person including the present appellant-defendant. If we believe the story of possession of the suit land by the appellant-defendant from the year 1971, in that case his name definitely could reflect in the column of possession of the respective khatians. There is also no cogent evidence on record from the side of the

appellant-defendant that challenging those khatians he sought any relief to any Revenue Forum for correction of record and also for incorporation of his name in the respective column of the khatian. So the story of possession as asserted by the appellant-defendant appears to be dire falsehood. More interestingly the present appellant-defendant before the court of the SDM took the plea that the suit land was originally belongs to one Pyari Mohan Sarkar and from said Pyari Mohan Sarkar one Subal Bhowmik purchased the same and after his death the present appellant-defendant started possessing the same. But surprisingly before the Civil court he took a different plea of adverse possession.

15. Learned counsel for the appellant at the time of hearing could not explain anything in this regard because from the judgment dated 23.11.2009 delivered by Learned SDM, Bishalgarh which is marked as Exbt.A(a) to A(g) it appears that before the SDM the present appellant raised that plea. But surprisingly before the Civil court he took the plea of adverse possession. Similarly as already stated, the present respondent-plaintiff filed a suit before the court of Learned Civil Judge(Junior Division) claiming declaration of title and confirmation of possession and perpetual injunction and in that suit also the present appellant although appeared but did not contest the same by filing written statement nor adduced any oral/documentary evidence on

record and the suit was decreed on 05.09.2013 in favour of the respondent-plaintiff of this appeal. The present appellant did not prefer any appeal challenging the said judgment. Learned Trial Court in delivering the judgment regarding admissibility of the final order of Executive Magistrate relied upon one judgment of the Hon'ble Supreme Court of India in **Bhinka and Others vs. Charan Singh** reported in **AIR 1959 SC 960** wherein in para No.16 Hon'ble the Apex Court observed as under:

"This leads us to the consideration of the legal effect of the order made by the Magistrate under s. 145 of the Code of Criminal Procedure. Under s. 145(6) of the Code, a Magistrate is authorized to issue an order declaring a party to be entitled to possession of a land until evicted therefrom in due course of law. The Magistrate does not purport to decide a party's title or right to possession of the land but expressly reserves that question to be decided in due course of law. The foundation of his jurisdiction is on apprehension of the breach of the peace, and, with that object, he makes a temporary order irrespective of the rights of the parties, which will have to be agitated and disposed of in the manner provided by law. The life of the said order is conterminous with the passing of a decree by a Civil Court and the moment a Civil Court makes an order of eviction, it displaces the order of the Criminal Court. The Privy Council in Dinomoni Chowdhrani v. Brojo Mohini Chowdhrani (1901) 29 Ind App 24, 33, tersely states the effect of orders under s. 145 of the Code of Criminal Procedure thus:

"These orders are merely police orders made to prevent breaches of the peace. They decide no question of title....."

We, therefore, hold that a provisional order of a Magistrate in regard to possession irrespective of the rights of the parties cannot enable a person to resist the suit under s. 180 of the Act."

I also agree with the citation of the Hon'ble Apex court of India and it is true that once the Civil court passes any judgment and decree in respect of any suit land the order of the Executive Magistrate in a proceeding under Section 145 would automatically go and the judgment of

Civil court would prevail over the order of the Magistrate and this is also the settled position of law. In this regard Learned counsel for the appellant could not submit anything before the court at the time of hearing.

16. Learned court below also regarding adverse possession relied upon few judgments of the Hon'ble Supreme Court. In **Karnataka Board of Wakf vs. Govt. of India & Others** reported in **(2004) 10 SCC 779** Hon'ble the Apex court in para-11 observed as under:

"11. In the eye of law, an owner would be deemed to be in possession of a property so long as there is no intrusion. Non-use of the property by the owner even for a long time won't affect his title. But the position will be altered when another person takes possession of the property and asserts a right over it. Adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of true owner. It is a well-settled principle that a party claiming adverse possession must prove that his possession is 'nec vi, nec clam, nec precario', that is, peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period. (See : S M Karim v. Bibi Sakinal AIR 1964 SC 1254, Parsinni v. Sukhi (1993) 4 SCC 375 and D N Venkatarayappa v. State of Karnataka (1997) 7 SCC 567). 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 of this nature. Plea of adverse possession is not a pure question of law but a blended one 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 true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession. (Dr. Mahesh Chand Sharma v. Raj Kumari Sharma (1996) 8 SCC 128)."

17. In **Civil Appeal No.7764 of 2014** dated 07.08.2019 Hon'ble the Supreme Court in **Ravinder Kaur**

Grewal & Ors. vs. Manjit Kaur & Ors. reported in **(2019)**

8 SCC 729 further observed that:

"16. In *Padminibai v. Tangavva & Ors.*, AIR 1979 SC 1142, a suit was filed by the plaintiff for recovery of possession on the basis that her husband was in exclusive and open possession of the suit lands adversely to the defendant for a period exceeding 12 years and his possession was never interrupted or disturbed. It was held that he acquired ownership by prescription. The suit filed within 12 years of his death was within limitation. Thus, the plaintiff was given the right to recover possession based on adverse possession as Tatya has acquired ownership by adverse possession. This Court has observed thus:

"1. Tatya died on February 2, 1955. The respondents, Tangava and Sundra Bai are the co widows of Tatya. They were coplaintiffs in the original suit.

11. We have, therefore, no hesitation in holding in agreement with the courts below that Tatya had acquired title by remaining in exclusive and open possession of the suit lands adversely to Padmini Bai for a period far exceeding 12 years, and this possession was never interrupted or disturbed. He had thus acquired ownership by prescriptions. (emphasis supplied)."

18. In **Chatti Konati Rao and Others vs. Palle**

Venkata Subba Rao reported in **AIR 2011 SC 1480**,

Hon'ble the Apex Court in para-12 further observed as under:

"12. We have bestowed our thoughtful consideration to the submission advanced and we do not find any substance in the submission of Mr. Bhattacharya. What is adverse possession, on whom the burden of proof lie, the approach of the court towards such plea etc. have been the subject matter of decision in a large number of cases. In *T. Anjanappa v. Somalingappa* (2006) 7 SCC 570, it has been held that mere possession however long does not necessarily mean that it is adverse to the true owner and the classical requirement of acquisition of title by adverse possession is that such possessions are in denial of the true owner's title. Relevant passage of the aforesaid judgment reads as follows:

"20. It is well-recognised proposition in law that mere possession however long does not necessarily mean that it is adverse to the true owner. Adverse possession really means the hostile possession which is expressly or impliedly in denial of title of the true owner and in order to constitute adverse possession the possession proved must be adequate in continuity, in publicity and in extent so as to show that it is adverse to the true owner. The classical requirements of acquisition of title by

adverse possession are that such possession in denial of the true owner's title must be peaceful, open and continuous. The possession must be open and hostile enough to be capable of being known by the parties interested in the property, though it is not necessary that there should be evidence of the adverse possessor actually informing the real owner of the former's hostile action."

19. From the aforesaid citation it appears that adverse possession means the hostile possession which is expressly or impliedly in denial of title of true owner. In order to substantiate adverse possession the possession proved must be adequate in continuity, publicity and in extent so as to show that it is adverse to the true owner. Here, the present appellant before the court of the Executive Magistrate took the plea that his predecessor purchased the suit land. But before the Civil Court he took the plea of adverse possession. In this regard Learned counsel for the appellant could not give any proper explanation at the time of hearing. It was the further case of the appellant that he entered into the possession of the suit land in the year 1971. But in this regard he could not prove any documentary evidence. More interestingly over the suit land the respondent-plaintiff adduce three exhibited documentary evidence Exbt.1(a) to 1(c)- Sale Deed No.1-7493, Exbt.2 Certified copy of Khatian No.1262, Exbt.3 Certified copy of old Khatian No.1262, Exbt.4 Certified copy of old Khatian No.1966. From those documents it appears that the suit land was initially recorded in the name of one Dhananjoy Chowdhury. Thereafter on purchase the same

was recorded in the name of Krishna Chandra Sarkar and after that on purchase the same was recorded in the name of present plaintiff in the case and as already stated in the said khatian in the respective column of possession there was no entry regarding possession of the appellant-defendant over the suit land. The respondent-plaintiff purchased the suit land on 02.07.2004 by a registered title deed [Exbt.1a- Exbt.1c] and thereafter the same was mutated in his name and the Revenue Authority finding him in possession recorded the suit land in his name in Khatian No.1262. In this regard I would like to refer herein below the provisions of Section 43 sub-section 3 of TLR & LR Act, 1960 which reads as under:

“(3) Every entry in the record of rights as finally published shall, until the contrary is proved, be presumed to be correct.”

The appellant-defendant never did take any steps to challenge those khatians also before any other authority.

20. So after hearing elaborate arguments of the Learned counsel of both the sides and after going through the record of the Learned court below it appears that the appellant-defendant has failed to satisfy the court regarding his claim of adverse possession over the suit land at any point of time rather the appellant in two forums took different pleas. Before the SDM he took the plea that the suit land was his purchased land which he got by way of

inheritance and before the Civil Court he took a different plea of adverse possession, not only that regarding his possession over the suit land he could not adduce any documentary evidence on record to draw attention of this court. Thus in my considered view, the Learned First Appellate Court rightly and reasonably delivered the judgment in favour of the respondent-plaintiff of the suit and furthermore the judgment of Civil Court shall always prevail over the finding of any criminal court and this is the settled position of law. Thus the substantial questions of law as formulated by the court are accordingly decided in negative against the appellant of this case.

21. In the result, this appeal stands dismissed on contest with costs. The judgment dated 26.04.2022 and decree dated 30.04.2022 passed by the Learned District Judge, Agartala, West Tripura in Title Appeal No.7 of 2021 affirming the judgment dated 22.02.2021 and decree dated 25.02.2021 passed by Learned Civil Judge (Senior Division), Court No.2, Agartala, West Tripura in Title Suit No.70 of 2017 is hereby upheld and accordingly it is affirmed.

Prepare decree accordingly and send down the LCRs along with a copy of this judgment.

JUDGE

MOUMITA
DATTA

Moumita

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MOUMITA DATTA
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