

**HIGH COURT OF TRIPURA
AGARTALA**

RSA NO.38 of 2022

01.* Smt. Jaleha Chowdhury, Age 54 years,**
W/o. Late Suraj Miah,

02(a)* Sukhen Miah, Age 34 years,**
S/o. Late Suraj Miah,

02(b)* Subed Miah, Age 29 years,**
S/o. Late Suraj Miah

All of Dhawajanagar, (Goal Gaon)
P.O.-Gakulpur, P.S.-R.K.Pur.
Udaipur, Gomati Tripura.

03. Sadhan Miah, Age 55 years,
S/o Late Siraj Miah

04. Smt. Rahela Begam, Age 58 years,
W/o Sadhan Miah.

All of Djwajanagar (Goal Gaon),
P.O. Gakulpur, P.S. R.K.Pur,
Udaipur, Gomati Tripura.

***As per the Hon'ble
Courts' order dated
22.09.2023 passed in I.A.
01 of 2023 necessary
correction has been made
in the following way:-

.....Petitioner-Appellants.

Versus

01. Smti Safia alias Sufia Bibi
W/o Late Nur Ahammed.

02. Md Mir Hossain,
S/o Late Nur Ahammed.

03. Smti Alpana Begam,
D/o Late Nur Ahammed.

04. Smti Shefali Begam,
D/o Late Nur Ahammed.

05. Smti Shiuli Begam,
D/o Late Nur Ahammed.

06. Smti Rupa Begam,
D/o Late Nur Ahammed.

07. Smti Soma Begam,
D/o Late Nur Ahammed.

All of West Bank of Jagannath Dighi,
P.S. R.K. Pur, Udaipur,
District-Gomati, Tripura

.....Respondent-Decree Holders

For Appellant(s)	:	Mr. S.M. Chakraborty, Sr. Adv. Ms. R. Majumder, Adv, Mr. B. Banerjee, Adv
For Respondent(s)	:	Mr. T.D. Majumder, Sr. Adv. Mr. D. Kalai, Adv,
Date of Hearing	:	19.02.2024
Date of delivery of Judgment and Order	:	05.03.2024
Whether fit for Reporting	:	YES

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

By means of this appeal, the present appellant-petitioners have challenged the judgment and order dated 16.06.2022 passed in connection with Civil Misc. Appeal No.01 of 2018 delivered by Learned District Judge, Gomati District, Udaipur, which arose out of the judgment dated 02.02.2018 delivered by Learned Civil Judge (Junior Division), Gomati District, Udaipur in connection with case No. Civil Misc. 06 of 2005 arising out of Ex (T) 03 of 2000.

02. Before entering into the merit of the appeal, let us discuss about the subject matter of the dispute amongst the parties.

The predecessor of the respondent-decree holders filed a suit bearing No. T.S. 16 of 1972 before the Court of Learned Munsiff, Udaipur, South Tripura, against the predecessors of the Judgment Debtors for right, title and interest and by recovery of possession of land as described in Schedule-I measuring 0.54 acres of land and Schedule-II

measuring 0.29 acres of land of the plaint in the original suit. The total land involved was 0.83 acres of land. The predecessors of the respondent-decree holders did not make Government of Tripura as a party in the main suit as well as the present appellants, though the suit land was all along Government Khas land. The suit was decreed partly in favour of the respondent-decree holders by the Learned Trial Court on 17.12.1974 and their predecessors accordingly, preferred First Appeal being numbered as Title Appeal No.02 of 1975 before the Court of Learned District Judge, West Tripura, Agartala for the land as mentioned in Schedule-I measuring 0.54 acres. The First Appellate Court fully decreed the suit in favour of the predecessors of the respondent-plaintiffs (decree holders). The Judgment Debtors preferred Second Appeal before the Hon'ble Gauhati High Court, which was registered as Appeal No. S.A. 25 of 1979. But the said Second Appeal was dismissed on 27.07.1993. After that, on 23.11.2000, the respondent-decree holders filed an execution petition before the Court of Learned Civil Judge, Junior Division, Udaipur, South Tripura against the Judgment Debtors. The said execution petition was registered as case No.Ex(T) 03 of 2000. In pursuance of the execution petition, the present appellant-petitioners herein were dispossessed on 19.09.2004 as per direction of the Learned Court. The Learned Executing Court handed over the possession of the suit land to the respondent-decree holders.

03. After that, the present appellants as petitioners filed an application under Order XXI, Rule 99 read with Section 144 and Section 151 of C.P.C. which was numbered as Civil Misc. 06 of 2005 before the Court of Learned Civil Judge, Junior Division, Gomati District for restoration of possession of land to the appellant-petitioners, which according to them was taken over in the colour of decreetal lands handed over to the decree holders i.e. the respondents herein. It was the case of the present appellants that the present decreetal lands are purely Government Khas land since long back which could be reflected from the relevant C.S. records but the Government of Tripura was not made as party nor Government was involved in any matter of the suit. So, the suit was decided in absence of the Government. More so, the decree was not a valid decree in the eye of law and it was not binding upon the State of Tripura.

04. Further according to the appellant-petitioners, since the decreetal land was Government Khas land, so, the Government of Tripura was kind enough to allot Khas land to any person by due procedure of law. So, the State of Tripura allotted land measuring 0.20 acres in favour of the appellant-petitioners No.1 and 2 for homestead purpose appertaining to old C.S. Plot No.286(P) corresponding to R.S. Plot No.658/4023 and accordingly, separate ROR was prepared in their name in Khatian No.1685, under Mouja-Dhajanagar, Tahashil-Dhajanagar in the year 1996. The said Khatian was

created on the strength of Allotment Order No.20/95, dated 29.07.1996. According to the appellant-petitioners, in the said land, the appellants were in possession till their dispossession i.e. on 19.04.2004 wherein they were residing by constructing their homestead huts with pucca, semi pucca and champa kumpa construction therein by investment of lakhs of rupees and by engaging their labourers. Similarly, the appellant-petitioner No.3 was allotted another piece of land measuring 0.08 acres vide Allotment Order No.20/95 dated 29.07.1996 appertaining to old C.S. Plot No.658/4022 and this plot was recorded in Khatian No.1684 under same Mouja and Tahashil and the appellant-petitioner Nos.3 and 4 were residing therein since long back making their permanent construction by investing lakhs of rupees for their homestead purpose. But on 19.09.2004, the appellant-petitioners were dispossessed from their land in execution of the decree passed in Ex (T) 3 of 2000. It was further submitted that the item No.1 of the Schedule of the plaint in Title Appeal No.02 of 1975 was a Government land, which was reflected in Khatian No.45 (Exhibit-1) and the Process Server as well as the Survey Commissioner was under obligation to cause survey of the decretal land properly in consultation with the Survey Map and also in presence of the owners of the surrounding plots. But they did not follow the same and dispossessed the appellants from their land illegally. Hence, the petitioners have filed the petition under Order XXI, Rule 99 Read with Section 144 and 155 of C.P.C.

The respondent-decree holders entered appearance before the Learned Court below and submitted written objection denying all the assertions of the petitioners in the petition.

Rather the respondents took the plea that the petitioners never possessed the decreetal land and they filed the petition in collusion with the Judgment Debtors, in order to prevent the respondent-decree holders from enjoying the fruits of the decree. So, the respondent-decree holders prayed for dismissal of the petition on the ground that it was false and not-maintainable in the eye of law.

05. On the pleadings of the parties, initially Learned Court below framed issues and after taking evidence vide judgment dated 16.08.2007 dismissed the petition of the petitioners and after that the petitioners preferred appeal against the said judgment before the Court of Learned District Judge, South Tripura, Udaipur and the Learned First Appellate Court by judgment dated 29.01.2008 upheld the judgment dated 16.08.2007 delivered by Learned Trial Court and thereafter the petitioners preferred Second Appeal before the Hon'ble Gauhati High Court which was numbered as RSA 19 of 2008. On 24.11.2014 the High Court of Tripura allowed the Second Appeal and remanded back this case to the Learned Trial Court with certain directions. The operative portion of the order dated 24.11.2014 in connection with RSA 19 of 2008 of the High Court of Tripura runs as follows:

"In view of the above, it is held that the substantial questions of law framed are answered in the affirmative and consequent thereto both the judgments of the learned Executing Court dated 16.08.2007 and the judgment of the appellate court dated 29.01.2008 are hereby set aside and the matter is remitted back to the learned Civil Judge, Jr. Div. Udaipur, South Tripura to decide the matter afresh, after framing proper issues as per the pleadings, considering the above observations of this Court and providing opportunity to the parties concerned allowing them to adduce fresh oral and documentary evidence, if so advised. In the result the appeal is allowed."

06. In compliance with the direction of the High Court of Tripura in RSA 19 of 2008, the Learned Trial Court below again by order dated 23.03.2017 framed the following issues:

- 1) Whether the present petition is maintainable in its present form and nature?
- 2) Whether the petitioners have right, title and interest over the decreetal land?
- 3) Whether the petitioners were dispossessed from their respective land at the time of execution of the decree in execution case No. EXE.(T) 03 of 2000?
- 4) Whether the petitioners are entitled to restoration of possession of the land from which they were dispossessed?
- 5) Whether the petitioners are entitled to get compensation for the damage caused to their standing huts and trees from the decree holder?
- 6) Whether the petitioners are entitled to get any other relief/reliefs?

07. To substantiate the issues both the parties i.e. the petitioners and the respondent Judgment Debtors have adduced their oral/documentary evidence on record:

Petitioners' Witnesses:-

PW1- Suraj Miah

PW2- Sadhan Miah

PW3- Rakhal Chandra Das

PW4- Maharan Miah

PW5- Pradip Bhowmik

Petitioners' Exhibits:-

1) Certified copy of sabek Khatian No-5 of Mouja Dhajanagar (Exhibit 1).

2) Certified copy of revisional Khatian No 1/53 of Mouja Dhajanagar (Exhibit 2).

3) Original allotment order in allotment case No. 20/05 (Exhibit 3).

4) Certified copy of present Khatian No-1685 of Mouja Dhajanagar (Exhibit 4).

5) Original allotment order in allotment case No. 20/05 (Exhibit 5).

6) Certified copy of present Khatian No-1684 of Mouja Dhajanagar (Exhibit 6).

7) Xerox copy of ration in the name of the petitioner No-1 (Exhibit 7).

8) Xerox copy of consumer book of the power department (Exhibit 8).

9) Xerox copy of consumer book of electricity connection in Sadhan Miah (Exhibit 9).

10) Certified copy of Sabek Map of Mouja Dhajanagar (Exhibit 10).

11) Certified copy of report of process server dated 20.09.2004 (Exhibit 11).

12) Certified copy of warrant to the bailiff (Exhibit 12).

13) Certified copy of report of survey commissioner dated 22.09.2004 (Exhibit 13).

14) Computerized copy of Khatian No-1/53 (Exhibit 14).

15) Certified copy of map of Mouja Dhajanagar Sheet No 1(Exhibit 14).

Respondents' Witnesses:-

1) DW1- Mir Hossain.

2) DW2- Ali Miah.

3) DW3-Abdul Gafur Miah

4) DW4-Paban Miah

Respondents' Exhibits:-

1) Certified copy of decree passed in TS 16/1972, passed by the Learned Munsiff, Udaipur, South Tripura(Exhibit A).

2) Certified copy of decree passed in Title Appeal 02/1975, passed by the Learned Additional District Judge, Agartala Tripura. (Exhibit B).

3) Decree passed by the Hon'ble High Court in S.A. 25/79 (Exhibit C).

4) Survival Certificate of Sri Nur Ahamed (Exhibit D).

5) Certified copy of order dated 15.07.2000 passed in Ex(T) 03/2000 (Exhibit E).

6) Certified copy of report of survey commissioner dated 29.06.2002 in Ex (T) 03/2000 (Exhibit F).

07. And finally, after hearing, Learned Trial Court (Learned Civil Judge, Junior Division, Udaipur) in Case No. Civil Misc.06 of 2005 partly allowed the petition filed by the petitioners. The operative portion of the order dated 02.02.2018 of the Learned Trial Court runs as follows:

"In the result thereof, this petition stands partly allowed. The right, title and interest of the petitioners over the suit land stands declared. It is hereby declared that the petitioners are entitled to restoration of their possession over the suit land.

The respondents and their men and agents are hereby directed to hand over the vacant possession of the suit land to the petitioners.

This miscellaneous petition is thus disposed of on contest."

08. Challenging that judgment, the respondent-decree holders preferred an appeal before the Court of Learned District Judge, which was numbered as Civil Misc. Appeal No.01 of 2018 and after hearing, the then Learned District Judge, being the First Appellate Court allowed the appeal by judgment dated 03.07.2019 with certain directions. The operative portion of the appeal runs as follows:

"In the result, the appeal is allowed. The judgment dated 02.02.2018 passed by Ld. Civil Judge (Jr. Div.), Udaipur in Case no. Civil Misc. 06 of 2005 Arising out of Ex(T) 03 of 2000 is hereby set aside.

The case is remitted to the trial court with direction to implead the State of Tripura and the S.D.M., Udaipur, Gomati, as party and thereafter decide the matter according to law. The learned trial court may also frame additional issues and take further evidence, if so warranted.

The appeal is disposed of on contest.

The judgment is delivered in the open court.

Send back the LCR along with copy of this judgment."

09. Against that judgment of the First Appellate Court, the present respondent-decree holders preferred an appeal under Section 100 of C.P.C. before the High Court which was numbered as RSA 52 of 2019 and the High Court of Tripura by judgment and order dated 07.03.2022 disposed of the appeal with the following directions. The relevant portion of the order of the High Court of Tripura in the aforesaid case runs as follows:(Para 6 & 7)

"6. Admitted fact is that the defendants had been dispossessed by the bailiff from the suit land while executing the decree in favour of the defendants in the former suit. However, it is the burden upon the plaintiffs to prove possession prior to their dispossession from the suit land by the bailiff, which was decided by the learned trial court itself. I have noticed that there was a specific issue regarding the factum of possession and dispossession. If it is a khas land, then, it is only the state who can evict the person in possession of such khas land through due process of law. The state has not come forward to dispossess the plaintiffs, according to the plaint case. It is settled proposition of law that even a prior possessor of a khas land can file a suit for restoration of possession from a trespasser and in that case, it is not necessary to implead the State as one

of the parties to the suit, because, there may not be any grievance against the State. The dispute will be between the person who was in prior possession and the person who has dispossessed him from the land which was under his possession.

7. In the light of the aforesaid discussions, I am not in agreement with the findings of the learned first appellate court that State is a necessary party to determine the title and possession of the private parties i.e. the plaintiffs and defendants herein. Accordingly, the judgment and decree passed by the learned first appellate court, as aforesaid, stand set aside and quashed. The case is remanded to the court of learned District Judge, Gomati District, Udaipur for fresh hearing of the case on the basis of the materials brought on record. The learned District Judge after hearing the parties shall decide the appeal on merit. There shall be an endeavour to dispose of the case within a period of 45 days from the date of receipt of the relevant records.

With the aforesaid observations and directions, the instant appeal stands disposed.

Registry is directed to send back the LCRs immediately."

10. After that the Learned District Judge by another judgment dated 16.06.2022 again allowed the appeal and was pleased to set aside the judgment of the Learned Civil Judge, Junior Division, Udaipur in connection with Civil Misc. 06 of 2005. The operative portion of the order of the Learned First Appellate Court runs as follows:

"In the result, the appeal is allowed. The judgment dated 02.02.2018 passed by Ld. Civil Judge (Jr. Div.), Udaipur in case No. Civil Misc. 06 of 2005 arising out of Ex(T) 03 of 2000 is hereby set aside. Prayer for restoration of possession by the petitioner-respondents is dismissed.

The appeal is disposed of on contest.

The judgment is delivered in the open court.

Send back the LCR along with copy of this judgment."

11. Being dissatisfied with the judgment of the Learned First Appellate Court, the present petitioner-respondents as appellants have preferred this appeal before the High Court. At the time of admission of the appeal, by order dated 05.09.2022 following substantial question of law was formulated:

“Whether the executing Court can travel beyond the decree?”

12. Heard Mr. S.M. Chakraborty, Learned Senior Counsel, assisted by Learned Counsel Mr. R. Majumder and Mr. B. Banerjee appearing for the appellants and also heard Learned Senior Counsel, Mr. T. D. Majumder, assisted by Learned Counsel Mr. D. Kalai, appearing on behalf of the respondent-decree holders. At the time of hearing of argument, Learned Senior Counsel for the appellants, firstly, drawn the attention of the Court referring the relevant provisions of Order XXI, Rule 99, read with Rule 100, 101, 103 of C.P.C. and submitted that Learned Trial Court, after considering the evidence on record and also on the basis of documentary evidence on record laid by the appellant-petitioners have rightly delivered the order in favour of the appellant-petitioners. But the Learned First Appellate Court without appreciating the legal provisions passed an erroneous judgment. Learned Senior Counsel for the appellants at the time of hearing, further drawn the attention of the Court that the suit land was originally a Khas Land but

the State of Tripura was not made a party in the original suit. No relief was also sought for against the State of Tripura. So, the decree passed by the original Trial Court was not binding upon the present appellant-petitioners. Furthermore, in the original suit, there was no prayer for granting decree of right, title and interest and only the possessory right was declared. So, according to Learned Senior Counsel the decree was not binding upon the State of Tripura as well as to the appellant-petitioners. More so, the decreetal land was allotted in favour of the petitioner-appellants by this State but the State of Tripura was not made a party. Even the Allotment Orders were also not challenged by the respondent-decree holders and further submitted that the First Original Trial Court allowed decree in respect of Second Schedule land, but the Appellate Court granted full decree which was affirmed by the upper forum.

Learned Senior Counsel for the appellants again submitted that the judgment of the Learned Trial Court of the year 1972 was not a universal judgment, rather it was a judgment in personam. So, this cannot be binding upon the State Government. He further referred the provisions of Order XXI, Rule 6 of C.P.C. regarding contents of decree and finally, Learned Senior Counsel for the appellants urged for setting aside the judgment of the Learned First Appellate Court and to uphold the judgment of the Learned Trial Court.

14. On the contrary, Learned Senior Counsel for the respondent-decree holders submitted that the subject matter of dispute was decided by the Learned Trial Court first in T.S.16 of 1972 which was affirmed by the Learned First Appellate Court and after that, before the High Court, the same was further affirmed and accordingly, decree was executed in pursuance of the judgment of the Civil Court. At the time of decree, the survey knowing persons or the police personnel did not find the appellant-petitioners over the suit land and till filing of RSA, no step was taken by the appellant-petitioners and furthermore, as alleged by Learned Senior Counsel for the appellants, the original party sought declaration of right, title and interest and possession over the suit land, which was affirmed by the Learned First Appellate Court. So, contention raised by Learned Senior Counsel for the appellants, cannot be accepted.

Learned Senior Counsel for the respondents, Mr. Majumder also referred the provision of Section 43(3) of T.L.R and L.R. Act and submitted that entry in record of rights does not confer any title and he further submitted that Learned First Appellate Court, after considering all the aspects, rightly delivered the judgment in favour of the respondent-decree holders which needs no interference and finally argued that no substantial question of law leans in favour of the appellant-petitioners of the case.

Learned Senior Counsel for the respondent-decree holders again submitted that the State of Tripura was not a necessary party for determination of the subject matter and in this regard, this High Court by judgment and order dated 07.03.2022 in RSA No.52 of 2019 has settled the matter. So, at this stage, there is no scope to re-agitate the issue again before this Court and finally urged for dismissal of the appeal with costs.

15. I have heard detailed arguments of both the sides at length and perused the records. It is the admitted position that the dispute amongst the parties is going on since long back and the parties had to move different forums to establish their legal rights. Here, in this appeal, we are to decide whether the judgment of the Learned First Appellate Court was lawful or not. It is the admitted position of parties that the original decree has already been executed and according to the appellant-petitioners, due to execution bearing No.Ex (T) 03 of 2000 decree in the original suit T.A. 02 of 1975 they were dispossessed from the decreetal land on 19.09.2014, although they were not made as parties in the original suit. So, as a stranger/third party, they approached the Learned Trial Court for restoration of their possession by filing a petition under Order XXI, Rule 99 of C.P.C.

16. Now, for the sake of convenience, I would like to refer herein below the relevant provision of C.P.C regarding restoration of possession in execution of decree.

Order XXI, Rule 99:-

"99. Dispossession by decreeholder or purchaser.—(1) Where any person other than the judgment debtor is dispossessed of immovable property by the holder of a decree for the possession of such property or, where such property has been sold in execution of a decree, by the purchaser thereof, he may make an application to the Court complaining of such dispossession.

(2) Where any such application is made, the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained."

Order XXI, Rule 100:-

"100. Order to be passed upon application complaining of dispossession— Upon the determination of the questions referred to in rule 101, the Court shall, in accordance with such determination,—

(a) make an order allowing the application and directing that the applicant be put into the possession of the property or dismissing the application; or

(b) pass such other order as, in the circumstances of the case, it may deem fit."

Order XXI, Rule 101:-

"101. Question to be determined.—All questions (including questions relating to right, title or interest in the property) arising between the parties to a proceeding on an application under rule 97 or rule 99 or their representatives, and relevant to the adjudication of the application, shall be determined by the Court dealing with the application and not by a separate suit and for this purpose, the Court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction to decide such questions."

Order XXI, Rule 103:-

"103. Orders to be treated as decrees.—Where any application has been adjudicated upon under rule 98 or rule 100, the order made thereon shall have the same force and be subject to the same conditions as to an appeal or otherwise as if it were a decree."

17. Thus, from the aforesaid provisions of law, it appears that what procedure is to be followed in the event of dispossession of the stranger/third party by the Executing Court. At the time of hearing of arguments, both the parties have made their rival contentions to substantiate their case. Now, here in this appeal, we are to decide as to whether the Learned Trial Court rightly passed the order or not in favour of the appellant-petitioners which was set aside by the Learned First Appellate Court. For the sake of gravity, let us discuss the evidence on record since both the parties of this appeal have adduced oral/documentary evidence on record to substantiate their case as already stated.

18. Before the Learned Trial Court, the appellant-petitioners have adduced three witnesses. On the other hand, the respondent-decree holders have adduced four numbers of witnesses. In addition to that they have adduced documentary evidence on record. PW1 Suraj Miah in his evidence stated that the suit land under old Khatian No.45, old Daag No.286, land measuring 0.54 acres was recorded in the name of Government of Tripura in the First Settlement Operation and Khatian was finally published. He and his wife as well as the petitioner nos.3 and 4 entered into the possession of 0.20 acres and 0.08 acres of land in the last

part of 1998 and they reclaimed it and later on, on their prayer land was allotted to them in the year 1996. After that, they constructed dwelling hut therein, but subsequently, they were dispossessed from the said land in execution of decree arising out of TS 16 of 1972 at the instance of decree holders in connection with execution case No. Ex(T) 03 of 2000 . PW2 Sadu Miah also deposed in the same manner like PW1. Similarly, PW3 and PW4 also deposed in the same manner like PWs 1 and 2. From the side of the respondent-decree holders, DW1, Mir Hussain stated that he and his mother, brothers and sisters are the decree holders in the case. The disputed land of sabek Khatian No. 45, plot No. 286 of Hal Khatian No.1685 and 1684(p-66), Hal plot no.658/4023, land measuring 0.20 acres and 0.08 acres respectively are part of Original Jote No.54, which were originally owned and possessed by one Keramat Ali prior to 1963 and total area of land was 0.54 acres and the said land along with other lands were possessed by his grandfather Faju Miah as permissive possessor of said Keramat Ali, since last 7/8 years prior to 1963.

19. Further, according to the respondent-decree holders, on 28.06.1963, elder brother of his grandfather, Keramat Ali gifted his land to his father Nur Ahammed (witness) who accepted the gift and took possession of the land. Later on, on 21.05.1972 the Judgment Debtors dispossessed Nur Ahammed from the suit land for which he

filed a Civil Suit bearing No. T.S. 16 of 1972 in the Court of Munsiff, Udaipur and the said Court decreed the suit in his favour in respect of land as mentioned in Schedule-II of the plaint but dismissed the suit in respect of land as mentioned in Schedule-I of the plaint. Thereafter, said Nur Ahammed filed an appeal bearing No.T.A. 02 of 1975 in the Court of the then Learned District Judge and after hearing the then Learned Additional District Judge, Agartala by a judgment dated 28.02.1979 declared the right, title and interest over the entire suit land of the original plaintiff.

20. Challenging that judgment, the Judgment Debtors preferred appeal before the then Hon'ble Gauhati High Court and the Hon'ble Gauhati High Court by judgment dated 29.07.1993 dismissed the appeal and uphold the judgment of Learned Additional District Judge, Agartala. In the meantime, said Nur Ahammed died and the present respondent-decree holders stepped into his shoes and filed execution case and accordingly, the decree was executed on 19.09.2004 by evicting the Judgment Debtors namely, Jahar Miah, Sahar Miah, Bahar Miah and Ahar Miah by handing over vacant possession of suit land. DW1 further stated that the present petitioners did never possess the suit land at any point of time. Rather the Judgment Debtors of the main suit were all along in illegal possession of the suit land prior to 19.09.2004. He further stated that the present appellant-petitioners in connivance with the Judgment Debtors and

some staff of D.M. & Collector's Office managed to create some fabricated documents in their favour showing the allotment of the present alleged disputed land. Said witness further stated that appellant-petitioner No.1 previously worked under Survey Settlement Department and he was working as a cashier in the S.D.M. office, Udaipur, South Tripura, so, by virtue of his position, he managed to influence some officials and procured some fabricated documents. DW2 Ali Miah, DW3 Abdul Gofur and DW4 Puban Miah also in course of their examination deposed in the same manner like DW1 supporting the case. On perusal of the evidence on record, it appears that there is no dispute on record that the suit land at one point of time was recorded as Government Khas land. The respondent-decree holders took the plea that their predecessor Nur Ahammed had been possessing the suit land since from the year 1963 till 21.05.1972 and on that day they were dispossessed by the Judgment Debtors of the original suit namely Jahar Miah, Sahar Miah, Bahar Miah and Ahar Miah and said Judgment Debtors were evicted on 19.09.2004 in execution of case No. Ex(T) 03 of 2000 after a long legal battle and according to the respondent-decree holders, the present appellant-petitioners were never in possession of the suit land at any point of time, rather all on a sudden, they came as a stranger and approached the Court by filing a petition under Order XXI, Rule 91 of C.P.C. in collusion with the Judgment Debtors.

21. To the contrary, the appellant-petitioners submitted that they entered into the suit land in the last part of 1988 and later on they got allotment of the same in the year 1996.

It is further on record that in execution of the decree, Nazir and Survey Commissioner were appointed by the Decreetal Court to survey the suit land and to hand over the suit land to the respondent-decree holders. Accordingly, they handed over the vacant possession of the suit land as described in Schedule-I and II of the plaint of T.S.16 of 1972. At the time of execution of the decree, the Survey Commissioner or the Nazir did not submit anything that apart from the original Judgment Debtors, the present appellant-petitioners were also found in the suit land from which they evicted. Now, the question comes when the Civil Court has declared right, title and interest and possession of the original plaintiff decree holders over the suit land, then how the so called strangers i.e. the appellant-petitioners were given allotment of land by the Government in the year 1996, when the Judgment Debtors of the original suit were in illegal possession of the suit land against whom the decree was executed. More so, there is also no evidence on record from the side of the appellant-petitioners that at the time of execution of decree they were in possession of the suit land and furthermore, as per allotment rules of the State of Tripura in the event of allotment of land to any person

always the physical possession of the applicant/personal concerned is taken into consideration. Situated thus, if the Judgment Debtors of the original suit who were in illegal possession of the suit land unauthorizedly and later on evicted by due process of law, then how the Revenue Authority before granting allotment came to the observation that the appellant-petitioners were possessing the suit land treating the same as Khas. Moreover, before granting allotment as per rules, always possession is taken into consideration by the authority. No explanation in this regard from the side of the appellant-petitioners in course of arguments.

22. Furthermore, the issue regarding addition of State of Tripura as a party was also raised earlier before the Learned Lower Court. But no order to that effect was passed and even no petition was moved to the higher forum challenging that State of Tripura was not made as a party and furthermore, this Court at the time of delivery of judgment in RSA 52 of 2019 on 07.03.2022 specifically observed that the State of Tripura was not necessary to be impleaded as a party to this suit. So, there is no scope to accept this plea of the appellants at this stage that State of Tripura was not made party and that judgment and decree was not binding against the State of Tripura and this Court also cannot adjudicate this plea at this stage.

23. In course of hearing of argument, Learned Senior Counsel for the appellant also raised another point that no decree of right, title and interest was granted by the Lower Court below in favour of respondents rather only the possessory right was declared.

24. In this regard, I would like to refer herein below the relevant portion of decree passed by the then Learned Munsiff, Udaipur, South Tripura in T.S. 16 of 1972:

"In the result, suit be decreed in part with proportional cost against the defendants. The plaintiffs' possessory right on the part of the suit land measuring 16 gandas(0.29 acres) as described under Schedule-2 of the plaint is hereby declared and the plaintiff is entitled to retain possession of it."

25. Challenging that judgment, the original plaintiff filed appeal as already stated. The operative portion of the decree passed by the then Learned Additional District Judge, Agartala, Tripura in Title Appeal No.2 of 1975 is mentioned below:

"In the result, the appeal be allowed on contest with costs and the plaintiffs' possessory right over the item No.1 of plaint schedule be declared and he doth get khas possession of the land from the defendants by removing all sorts of obstruction. The judgment and decree of the learned lower court is set aside to the extent as stated above. The suit be decreed in full."

26. Thereafter, the original defendants preferred appeal before the then Gauhati High Court, Agartala Bench and the High Court of Tripura dismissed the appeal. Thus it

appears that, the then Learned Additional District Judge, Agartala declared the right, title and interest of the original plaintiff decree holders in respect of lands as mentioned in Schedule I and II of the original plaint in T.S. 16 of 1972.

27. In the original suit, the then Learned Munsiff in T.S. 16 of 1972 only allowed part decree and gave possessory right to the plaintiffs to only one portion of the suit land allowing the defendant Judgment Debtors to retain possession over the part of the suit land (Schedule-I), but in appeal the suit was decreed in full which means all the prayers including the right, title and interest and possessory right of the plaintiff-decree holders was also allowed. So, the submission of Learned Counsel for the appellants also cannot be accepted on the ground that only by the aforesaid judgment possessory right was declared.

28. In course of hearing of argument both the parties have referred some citations. Learned Senior Counsel for the appellant-petitioners referred few citations.

In **(2004) SC 511** Hon'ble the Apex Court in para 23 and 26 observed as under:

"23. Salmond on jurisprudence explains that the word 'possession' is a word of 'open texture'. Its legal meaning has to be ascertained from the context. The property involved in the present case is open vacant land. Such property is possessed by a person who has control over the same. This 'control' over the property means 'power to exclude all others'. The test then for determining whether a man is

in possession of anything is whether he is in 'general control' of it - maybe that he is not in actual and physical possession or using the same.

26. The High Court in the impugned judgment dated 23.4.2001 has construed the word "dispossessed" under Order XXI Rule 99 of the Code to mean actual and physical dispossession. The reasoning adopted is that if the expression 'dispossessed' is thus not narrowly construed, 'anybody apprehensive of dispossession or anybody claiming right although not actually dispossessed can come within the purview of Rule 99 and there would be flood-gate and a decree holder who obtained a decree by due process of law would be frustrated in not getting the fruit of the decree'."

29. In **Uttam Kumar Sen & Ors. v. Gita Das Choudhury & Ors.** dated 11.09.1997 reported in **(1998) 1 GLR 145** wherein Hon'ble the Gauhati High Court in para nos.8 and 9 observed as under:

"8. The entry in record of rights is admissible in evidence under section 35 of the Evidence Act. The principle on the basis of which it has been accepted to be admitted is that law reposes the confidence in public officers entrusted with public duties that it be presumed that they will discharge their duties with accuracy and fidelity. The Privy Council in *Kesho Prasad Vs. Mr. Bhagjogna Kuer*, AIR 1937 PC 69 (76) has pointed out that entries on such Government records are evidence of title mainly because they are good evidence of possession but if contrary to the facts as to the possession at the time they were made they carry little, if any, weight.

9. Keeping the above legal position in view, the finally published khatian marked as Ext. 1 must be construed to have authenticity as to the possession of the plaintiff in the suit premises."

30. In **Employees State Insurance Corporation and Ors. v. M/s. Key Dee Cold Storage Pvt. Ltd.** dated 19.05.2022 reported in **AIR (2022) SC 2550** wherein in para no.28 Hon'ble the Supreme Court observed as under:

"28. In any case, non-joinder of a necessary party goes to the root of the matter and could also be fatal to a legal proceeding. For this we can usefully read the opinion of this court in Khetrabasi Biswal v. Ajaya Kumar Baral and Ors. where it was held as follows:-

6. The procedural law as well as the substantive law both mandates that in the absence of a necessary party, the order passed is a nullity and does not have a binding effect."

Referring the aforesaid principles of law laid down by the Hon'ble Apex Court and the High Court, Learned Senior Counsel for the appellants drawn the attention of the Court that Learned Trial Court below rightly allowed the petition of the present appellant-petitioners which the Learned First Appellate Court reversed without any basis and furthermore, since the State of Tripura was not made as party, so, the decree was not binding upon the present appellant-petitioners and finally urged for setting aside the judgment passed by Learned First Appellate Court, upholding the judgment of the Learned Trial Court.

31. Per contra, Learned Senior Counsel for the respondent-decree holders in support of his contentions referred few citations:

In **Dayal Hari Paul and Ors. v. Pradip Kumar Lahkar and Ors.** dated 24.04.2006 reported in **(2007) 4 GLR 610** wherein in Para no.9 Hon'ble the Gauhati High Court observed as under:

"9.The alleged admission of the plaintiffs on which heavy reliance was put by the learned trial court is, in fact, is a perverse finding, inasmuch as, the plaintiff No.1 immediately after stating that the defendants vacated the suit houses in the year 1969 has further stated that in the year 1972 in the month of March, the defendants again returned back to the suit premises and this vital aspect was left out of the consideration by the learned trial court and this statement of the plaintiffs is in consonance with the statements made in the plaint, inasmuch as, the claim of the plaintiffs is that the suit premises were taken into rent in the month of March 1972. The other considerations of the learned trial court was that the order of the revenue Board set aside the mutation order. The order of mutation is only to facilitate the payment of land revenue. Revenue court is not entitled to decide title in respect of landed property, which is the subject-matter of civil court. The order or mutation does not confer any title, which has been categorically held by the Apex Court in the case of *Smt. Sawarni v. Smt. Inder Kaur and Others*, (1996) 6 SCC 223, *Balwant Singh and Another v. Daulat Singh (dead) by Lrs. and Others*, (1997) 7 SCC 137 and other cases decided by this court. Consequently, the finding of the learned trial court not tenable in law on that count."

32. In **Hashyabala Ghosh & Ors. v. Ghanshyam Nunia** dated 30.04.2003 reported in **(2005) 1 GLR 366** wherein Hon'ble the Gauhati High Court in para no. 17 observed as under:

"17. A claim of adverse possession will vary from case to case depending upon the facts and circumstances of each case and it was held that mere possession, however long, does not, necessarily mean that it would be, adverse against the true owner. (Rf. AIR 1995 SC 73.) It was also held by Hon'ble Apex Court and the law till holds the field that a person pleading adverse possession has no equity in his favour. Refer AIR 1996 SC 869 (para 36). In law it is for the party claiming to plead and establish title by adverse possession."

Referring the same, Learned Senior Counsel for the respondent-decree holders submitted that mere creation of Khatian does not confer any title and furthermore, there is no evidence on record that the appellant-petitioners were in adverse possession of the decreetal land at any point of time. So, the plea as taken by them cannot be accepted at this stage. I have gone through the citations. After going through the aforesaid citations, further it appears that the right, title and interest of the respondent-decree holders over the entire suit land was declared by the Additional District Judge, Agartala which has now attained finality and on the basis of decree of the Learned Additional District Judge, West Tripura, Agartala, the decreetal land is already been handed over to the respondent-decree holders by due process of law through execution proceeding No.Ex(T)03 of 2002. But the State Authority without any justified reasons allotted a portion of the decreetal land in favour of the appellant-petitioners without conducting any proper spot

enquiry/field verification, which in my considered opinion was made illegally violating the decree of the Civil Court.

33. Furthermore, as alleged by the decree holders, the Judgment Debtors of the original suit were in possession of the decreetal land before execution of decree by the Learned Trial Court, so, if for argument sake, if it was found the Judgment Debtors of the original suit were in possession of the decreetal land in that case also the Revenue Authority before granting allotment in favour of the present petitioner-appellant as alleged definitely could find the original Judgment Debtors over the decreetal/suit land and in that case, before granting allotment also the State of Tripura definitely could exercise the power provided under Section 15 of the TLR and LR Act, 1960, for their eviction but here in the case, there is no such evidence on record like that.

34. More so, as already stated this High Court has already given observation that the State of Tripura was not a necessary party which also still stands good. Situated thus, it appears that the decree passed by the Civil Court is also equally binding upon the State of Tripura as well as the present appellant-petitioners and thus, in my considered view, the present appellant-petitioners have got no valid right, title and interest over the decreetal land as alleged and their so called title as alleged is inferior to that of the present respondent-decree holders. As such the substantial question of law is accordingly, answered in affirmative in favour of the

respondent-decree holders and the present appellant-petitioners are not entitled to restoration of possession of the suit land from which they have been alleged to be evicted at the time of execution of decree in Ex(T) 03 of 2000 arising out of T.S. 16 of 1972.

33. In the result, the appeal filed by the appellant-petitioner is hereby dismissed on contest with costs. The judgment dated 16.06.2022 passed by the Learned First Appellate Court i.e. the Learned District Judge, Gomati District, Udaipur in Civil Misc. Appeal No.01 of 2018 is hereby upheld and accordingly, it is affirmed.

34. The present appellant-petitioners are not entitled to get the relief of restoration of possession by the respondent-decree holders as alleged.

Send down the LCRs along with the copy of the order.

JUDGE

SABYASACHI
BHATTACHARJEE

Digitally signed by
SABYASACHI BHATTACHARJEE
Date: 2024.03.11 12:06:04
+05'30'

Purnita