

**HIGH COURT OF TRIPURA
AGARTALA
RSA No.25 of 2021**

On the death of Swapan Debnath, whose legal representatives are:-
As per the order dt. 01.12.2023 of the Hon'ble Court necessary
correction has been made as follows:

- 1) a) **Smt. Anita Nath**, Age-52
W/O Late Swapan Kr. Debnath,
b) **Smt. Mandira Nath**, Age-26
D/O Late Swapan Kr. Debnath,
c) **Smt. Sebika Nath**, Age-20
D/O Late Swapan Kr. Debnath,
d) **Sri Satyam Kumar Nath**, Age-24
S/O Late Swapan Kr. Debnath,
e) **Smt. Mallika Nath(Minor)**, Age-13
D/O Late Swapan Kumar Debnath,
Appellant No.1(e) being minor is represented by her mother
and natural guardian Appellant No-1(a)
All are of village- Deocherra, P.O-Deocherra,
P.S-Panisagar, District- North Tripura.
- 2) **Sri Bijan Kumar Nath**, Age-56
S/O Late Jogendra Ch. Nath,
Village and P.O-Deocherra,
P.S-Panisagar, District- North Tripura

-----Plaintiff-Appellants

Versus

- 1) **Sri Jayanta Debnath**,
S/O Late Narendra Ch. Debnath,
of Netaji Para, Nayapara,
P.O & P.S-Dharmanagar,
District-North Tripura.

-----Principal Defendant Respondent

- 2) **Smt. Bharati Nath**,
W/O- Sri Sukumar Nath,
D/O- Late Jogendra Ch. Nath
Village and P.O- Deocherra,
P.S- Panisagar, District- North Tripura

----Pro Defendant Respondents

along with

RSA No.26 of 2021

- 1) a) **Smt. Anita Nath**, Age-52
W/O- Late Swapan Debnath,

b) **Smt. Mandira Nath**, Age-26

D/O- Late Swapan Debnath,

c) **Smt. Sebika Nath**, Age-20

D/O- Late Swapan Debnath,

d) **Sri Satyam Kumar Nath**, Age-24

S/O- Late Swapan Debnath,

e) **Smt. Mallika Nath(Minor)**, Age-13

D/O- Late Swapan Kumar Debnath,

Appellant No.1(e) being minor is represented by her mother and natural guardian Appellant No-1(a)

All are of village- Deocherra, P.O-Deocherra,
P.S-Panisagar, District- North Tripura.

2) Sri Bijan Kumar Nath, Age-56

S/O- Late Jogendra Ch. Nath,

Village and P.O- Deocherra,

P.S.- Panisagar, District- North Tripura

3) Smt. Bharati Nath, Age-54

W/O-Sri Sukumar Nath,

D/O-Late Jogendra Ch. Nath

Village and P.O- Deocherra,

P.S- Panisagar,

District- North Tripura

-----Defendant-Appellants

Versus

1. Shri Jayanta Debnath,

2. Shri Sushanta Debnath

S/O Late Narendra Ch Deb Nath,

Both of Nayapara, Dharmanagar town,

P.O. & P.S. Dharmanagar,

Dist. North Tripura, Tripura

3. Smti. Gita Deb Nath

D/O Late Narendra Ch Debnath,

W/O Sri Swapan Kr. Debnath

of Algapur Road, Dharmanagar town,

P.O. & P.S. Dharmanagar,

Dist.- North Tripura, Tripura

4. Smti. Sandhya Debnath,

D/O. Late Narendra Ch Debnath,

W/O Shri Parichay Debnath,

of Dhaleswar road, No.13,

Agartala, West Tripura, Tripura

----Plaintiff Respondent

In RSA No.25 of 2021

For Appellant(s)

:

Mr. S. M. Chakraborty, Sr. Adv,
Mrs. P. Chakraborty, Adv.

For Respondents : Mr. P. Roy Barman, Sr. Adv,
Mr. Samarjit Bhattacharjee, Adv,
Mr. Kawsik Nath, Adv.

In RSA No.26 of 2021

For Appellant(s) : Mr. S. M. Chakraborty, Sr. Adv,
Mrs. P. Chakraborty, Adv.

For Respondent(s) : Mr. P. Roy Barman, Sr. Adv,
Mr. Samarjit Bhattacharjee, Adv,
Mr. Kawsik Nath, Adv.

Date of hearing : 04.07.2024

Date of delivery of
Judgment & Order : 12.07.2024

Whether fit for
reporting : YES

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

This is an appeal under Section 100 of CPC filed by the appellants and both the appeals are taken up together for hearing and decision as both the appeals have arisen out of a common judgment dated 07.06.2018 delivered by Learned District Judge, North Tripura, Dharmanagar in T.A. No.11 of 2016 analogously with T.A. No.12 of 2016 which were preferred challenging the common judgment dated 11.02.2016 and decree dated 23.02.2016 passed in two separate title suits bearing no.T.S. No.9 of 2013(Original case no.T.S. No.41 of 2012) and T.S. No.37 of 2012.

2. Heard Learned Senior Counsel Mr. S. M. Charkraborty assisted by Learned Counsel Mrs. P. Chakraborty for the appellants and also heard Learned Senior Counsel Mr. P. Roy Barman assisted by Learned Counsel Mr. Samarjit

Bhattacharjee and Learned Counsel Mr. Kawsik Nath for the respondents.

3. Before coming to the conclusion, let us discuss about the subject matter of the dispute cropped up amongst the rival parties. The predecessor of the present appellants filed one suit before the Court of Learned Civil Judge(Junior Div.), North Tripura, Dharmanagar which was initially numbered as T.S. No.41 of 2012 for a decree of perpetual injunction and later on, the predecessor of the present appellants after withdrawing the said suit filed another suit which was numbered as T.S. No.9 of 2013 before the Court of Learned Civil Judge(Sr. Div.), North Tripura, Dharmanagar for declaration and for perpetual injunction against one Shri Jayanta Debnath and Smt. Bharati Nath and on the other hand, the defendants of that suit also filed another suit as plaintiffs against said Swapan Debnath and others for a decree of declaration of right, title and interest over the suit land and for recovery of possession and the Learned Civil Judge(Sr. Div.), North Tripura, Dharmanagar by a common judgment dated 11.02.2016 decreed the suit bearing no.T.S. No.9 of 2013 arising out of T.S. No.41 of 2012 in favour of the plaintiffs of that suit but dismissed the connected suit bearing no.T.S. No.37 of 2012 filed by the defendants(as plaintiffs) against the plaintiffs of suit No.T.S. No.9 of 2013.

4. Now for the sake of convenience, I would like to discuss herein below the subject matter of both the suits and the result thereof. Initially, the plaintiffs of the suit T.S. No.9 of 2013 filed

one suit T.S. No.41 of 2012 which was filed by one Swapan Debnath and his brother Bijan Kumar Nath against defendant No.1 Sri Jayanta Debnath and their sister as proforma-defendant in the Court of Learned Civil Judge(Junior Div.), Dharmanagar and on transfer, the suit was renumbered as T.S. No.9 of 2013 in the Court of Learned Civil Judge(Sr. Div.), North Tripura, Dharmanagar. In the suit i.e. T.S. No.9 of 2013, the subject matter was that one Labangabala Devi(since dead) was the owner of land measuring 0.98 acres of khatian No.558 apertaining to C.S. plot No.2345 and 2346 by way of purchase from one Smt. Gita Rani Debnath W/O Late Prahallad Ch. Debnath on the strength of registered sale deed No.1-4106 dated 15.11.2018. She also became the owner of land measuring 0.78 acres of khatian No.558 of C.S. Plot No.2342 by way of purchase from said Smt. Gita Rani Debnath by dint of another registered sale deed bearing No.1-10 dated 01.01.1981 and thus she became the owner of land measuring 1.76 acres and recorded her name in the khatian vide No.998 being finally published under Mouza-Deocherra and she was possessing the suit land by making homestead and digging pond with her family members. Said Labangabala Devi died in the year 2006 and after her death, her legal heirs i.e. the plaintiff Nos.1 and 2 of the aforesaid suit No.TS No.9 of 2013 and pro-defendant No.2 became the owners in possession of the said land and started possessing the suit land continuously and uninterruptedly without any obstruction from any corner. It was

further asserted that pro-defendant No.2 was married but she used to visit the suit land occasionally.

5. It was further asserted that on 01.08.2000 and on 05.08.2012 in the morning at about 8 a.m., the principal defendant along with his associates entered into the suit land and threatened the plaintiffs stating that if the suit land is sold to any person except him then he would forcefully evict the plaintiffs therefrom. Not only that he also resisted the plaintiffs from ploughing/cultivating the suit land for which the plaintiffs made objection and on that, there was an hot altercation and the defendant attempted to assault the plaintiffs when the neighbouring person appeared and the defendant fled away. Thereafter, the matter was reported to the village elders and to O/C Panisagar P.S. but no action was taken. The plaintiffs further submitted that they have had valid right title, interest and possession over the suit land and the defendants without any right, title, interest tried to create disturbance in peaceful possession of the plaintiffs of the suit land and tried to occupy the same illegally. Hence, the suit was filed.

6. The plaintiffs further asserted that one Prahallad Ch. Debnath and Labangabala Devi being the first party filed one application under Section 30 of L.A. Act for reference before the D.M. & Collector, North Tripura, Kailashahar which was ultimately referred to the Learned L.A. Judge, North Tripura, Dharmanagar regarding entitlement of the compensation money for acquisition of the portion of land which was the

purchased land of Labangabala Devi but the Learned L.A. Judge, Dharmanagar vide judgment dated 29.04.2000 in Civil Misc(L.A) No.36 of 1996 declared that the 2nd party claimants(Jayanta Debnath & Ors.) are entitled to get the entire awarded compensation money from the government since two registered sale deeds of Labangabala Devi were void and inoperative. Thereafter, Labangabala devi preferred an appeal before the then Hon'ble Gauhati High Court, Agartala Bench but the said appeal was dismissed for non-prosecution. It was further submitted that since 01.08.2000 Labangabala Devi started possessing her landed properties of khatian No.998 including the plaintiffs and pro-defendant No.2 adversely, continuously and uninterruptedly. Even after the death of Labangabala Devi on 15.03.2006 the plaintiffs and pro-defendant No.2 were possessing the suit land adversely and continuously till today. It was further submitted that the plaintiffs have been possessing total landed property of 2nd schedule of the plaint of T.S. No.37 of 2013 since 01.08.2000 adversely, continuously and uninterruptedly within the knowledge of the principal defendant denying his right, title and interest of the suit land.

7. It was further submitted that the registered sale deed No.1-5682 dated 15.06.1967 executed by Abhay Charan Debnath in favour of Narendra Ch. Debnath is ineffective as mutation was not done in respect of that land. It was also submitted that the right, title, interest of the principal

defendant in the suit land got extinguished as he did not seek the redress before the Court within the statutory period of limitation and as such the plaintiffs have acquired their right, title and interest on the suit land by way of adverse possession. But the principal defendant suppressing all those material facts filed another suit bearing No.T.S. No.37 of 2012 with a view to grab the suit land by misleading the court and prayed for dismissal of suit No. TS. No.37 of 2012. In response to the summons issued upon the defendants, the principal defendants appeared and contested the suit by filing written statement denying the entire assertions of the plaintiff and also submitted that the original owner i.e. Abhay Charan Nath sold out the suit land along with some other lands to their predecessor namely Narendra Ch. Debnath by dint of registered sale deed bearing No.1-5682 dated 15.06.1967 and after the death of Narendra Ch. Debnath, his legal heirs i.e. defendant became the owner of the purchased land of their predecessor. It was further submitted that Labangabala Devi & her sons had been inducted in the suit land as permissive possessor to maintain the possession since 1979 and after that Narendra Ch. Debnath continued to possess the suit land. Subsequently, said Labangabala Devi manipulated papers beyond the knowledge of the predecessor of defendant which were discovered subsequently.

8. It was further submitted that during the process of acquisition of the purchased land measuring 0.03 acre of C.S.

Plot No.2391(p) of acquisition Gazettee Sl. No.7 and area 0.265 acre of old C.S. Plot No.2346(p) and 2345(p) of Gazettee Sl. No.7(A) under khatian No.558(old) of Narendra Ch. Debnath for setting up visibility of level crossing of railway, said Prahallad Ch. Debnath was shown as awardee of the acquired land wrongly treating him as its owner and thereafter, one case under Section 30 of the Land Acquisition Act was cropped up between the parties on the ground that the award ought to have been made in favour of the legal heirs of deceased Narendra Ch. Debnath. Said Labanga Balla Devi also contested the said case vide No.Civil Misc.(LA) No.36 of 1996 and finally vide judgment and award dated 29.04.2000, the award was made in favour of defendant and others. After that, Labangabala Devi along with Prahallad Ch. Debnath preferred an appeal against the judgment and award of the Learned L.A. Judge, Dharmanagar, North Tripura dated 29.04.2000 before the then Hon'ble Gauhati High Court, Agartala Bench vide case No.L.A.(Appeal).92 of 2000 which was later on dismissed on 15.12.2010 and thus the original award dated 29.04.2000 attained finality. It was further submitted by the defendant that they are the absolute owners of the suit land which is the part and parcel of the land purchased by their predecessor under old khatian No.558. It was also contended by the defendant that the khatian No.558 of the suit land was falsely recorded in the name of Rup Charan Nath and Prahallad Ch. Debnath showing them as sons of Prakash Ch. Debnath even though Rup Charan

Nath was the brother of original owner Abhay Charan Debnath. During the revisional survey being completed in the year 1990, the suit land has been recorded in khatian No.477/1 dated 20.09.1990 wrongly in the name of Rup Charan Nath showing him as son of Abhay Charan Nath instead of recording the same in the name of Narendra Ch. Debnath while Narendra Ch. Debnath did not take any proper care of such anomalies in the khatian as he was out of station. According to defendant, earlier they had no knowledge about these matters which they discovered later on after collecting the certified copies. Moreso, the matter regarding suit land including the purchased land of Narendra Ch. Debnath remain subjudiced before the Hon'ble High Court for the claim of Labanga Bala Devi in connection with L.A. Appeal No.92 of 2000 which was ultimately dismissed on 15.12.2010.

9. According to the defendant, the registered sale deed No.1-4106 dated 15.12.1980 purportedly executed by Gita Rani Debnath, W/O Late Prahallad Ch. Debnath in favour of Labangabala Devi for land measuring 0.98 acre within the old khatian No.558 was a concocted and fraudulent document which the defendant would know after obtaining the certified copy of the sale deed on 04.05.2011, that the widow of Late Prahallad Ch. Debnath was not only his legal heir but also he had 3 sons. Besides the registered sale deed No.1-10 dated 01.01.1981 purportedly executed by Gita Rani Debnath in favour of Labangabala Devi for land measuring 0.78 acre under

khatian No.558(old) is also ineffective, fraudulent and collusive which the defendant would know after obtaining a certified copy on 03.11.2011. It was also alleged by the defendant that basing on these fraudulent documents, Labangabala Devi procured mutated khatian No.998 in her name fraudulently in respect of land measuring 1.69 acre within the land of first schedule of the suit land and the copy of the khatian was obtained on 11.08.2011. It was further submitted that the previous seller and purchaser of the suit land were well aware about the adjudication declaring the fact that Prahallad Ch. Debnath had no title or right over the suit land and inspite of that Gita Rani Nath and Labangabala Devi fraudulently created those sale deeds even though the predecessor of plaintiffs inducted Labangabala Devi and her sons on the suit land as permissive occupiers/possessor. It was further pleaded that Labangabala Devi did not include into her two sale deeds the old C.S. Plot No.2341 against which she was subsequently shown as permissive occupier in R.S. khatian being prepared in the name of Rup Charan Nath. Thus, by the written statement, the contesting defendants prayed for dismissal of the suit with costs.

10. Now let us discuss about the subject matter of the case filed which was numbered as T.S. No.37 of 2012. The background of the case of the plaintiffs in T.S. No.37 of 2012 is that one Abhay Charan Nath of Deochara was the original owner and possessor of khash jote No.160 measuring total 2.43

acres appertaining to present khatian No.477/1 and he sold out some landed property in favour of Prahallad Ch. Debnath by executing some instrument but owing to some mistake said Prahallad Ch. Debnath received back his consideration money by dint of Money Suit No.37 of 1964 and restored the purchased land to the original owner Abhay Charan Debnath. Thereafter, Abhay Charan Debnath filed a suit bearing No.T.S.41 of 1996 in the Court of Learned Munsiff, Dharmanagar against the Prahallad Ch. Debnath with a view to restore his clear title in respect of the land under Jote No.160 including the first schedule suit land since the name of Prahallad Ch. Debnath was recorded in the khatian of Jote No.160. Abhay Charan Nath sought for declaration of his jote right over the suit land of jote No.160 and 112 along with declaration of some sale deeds to be void and correction of record on the ground that jote khatian(old) No.558 comprising of the first schedule suit land with some other land was wrongly prepared in the name of Prahallad Ch. Debnath and one stranger Rup Charan Nath as his brother on 06.12.1965 and secondly Prahallad Ch. Nath and Rup Charan Nath had no right, title, interest or possession over the land of Jote Khatian No.558 which ought to have been prepared in the name of Abhay Charan Nath. Ultimately, the suit of Abhay Charan Nath vide T.S. No.41 of 1966 was declared in his favour vide judgment dated 28.02.1967 and consequential decree was passed whereby jote right and ownership of Abhay Charan Nath including his right of

possession was declared with further relief of correction of khatian in favour of his name. Rup Charan Nath was the predecessor of pro-defendant Nos.18 to 28 who had no right, title, interest and possession over the suit land.

11. It was the further case of the plaintiff that thereafter in the execution of the decree Abhay Charan Nath was put into possession of the suit land upon satisfaction of decree vide order dated 27.12.1967 and then he continued to own and possess the first scheduled suit land along with other lands and thus the false entry in the name of Prahallad Ch. Debnath and Rup Charan Nath in khatian No.558(Old) had no value. Thereafter, said Abhay Charan Nath sold out the first schedule suit land along with some other lands to the predecessor of the plaintiffs namely Narendra Ch. Debnath by dint of registered sale deed No.1-5682 dated 15.06.1967 executed by Abhay Charan Nath and after death of Narendra Ch. Debnath, his legal heirs i.e. the plaintiffs became the owner of the purchased lands of their predecessor including the land as mentioned in 2nd schedule of the plaint. It was also pleaded that Labanga Bala Devi & her sons had been inducted in the first schedule suit land as permissive possessors to maintain the possession since 1979 and after that Narendra Ch. Debnath continued to possess the suit land. Later on Labangabala Devi manipulated papers beyond the knowledge of the predecessor of plaintiffs which were discovered subsequently.

12. It was also submitted that during the process of acquisition of the purchased land measuring 0.03 acre of C.S. Plot No.2391(p) of Gazettee Sl. No.7 and area of 0.265 acre of old C.S. plot No.2346(p) and 2345(p) of Gazettee Sl. No.7(A) under khatian No.558(old) of Narendra Ch. Debnath for setting up of visibility of level crossing of railway, said Prahallad Ch. Debnath was shown as awardee of the acquired lands wrongly treating him as its owner and then one case under Section 30 of the L.A. Act was cropped up between the parties on the ground that the award ought to have been made in favour of the legal heirs of deceased Narendra Ch. Debnath. Labanga Bala Devi contested the said case vide No. Civil Misc.(L.A.) No.36 of 1996 and finally vide judgment and award dated 29.04.2000, award was made in favour of plaintiffs of T.S. No.37 of 2012. Thereafter, Labangabala Devi along with Prahallad Ch. Debnath preferred an appeal against the judgment and award of the Learned L.A. Judge, Dharmanagar, North Tripura dated 29.04.2000 before the then Hon'ble Gauhati High Court, Agartala Bench vide L.A. (Appeal) No.92 of 2000 which was later on dismissed on 15.12.2010 and thus the original award dated 29.04.2000 attained finality.

13. It was further submitted that the plaintiffs are the absolute owners of the first schedule suit land and the 2nd schedule is the part of first schedule land which stands after deducting from the concerned plot of acquisition. It was also contended by the plaintiffs that none of the defendants or pro-

defendants have had any title on this suit lands while the khatian No.558 of the first schedule suit land was falsely recorded in the name of Rup Charan Nath and Prahallad Ch. Debnath showing them as sons of Prakash Ch. Debnath even though Rup Charan Nath was the brother of original owner Abhay Charan Debnath. During the revisional survey being completed in 1990 the suit land was recorded in khatian No.477/1 dated 20.09.1990 wrongly in the name of Rup Charan Nath showing him as son of Abhay charan Nath instead of recording the same in the name of the predecessor of Narendra Ch. Debnath, the present plaintiffs while Narendra Ch. Debnath did not take proper care of such anomalies in the khatian and according to plaintiffs, they had no knowledge about those anomalies and circumstances which they could know after collecting of certified copies and also they could take step due to pendency of case before the High Court.

14. It was further submitted that the registered sale deed No.1-4106 dated 15.12.1980 purportedly executed by Gita Rani Debnath in favour of Labangabala Devi for land measuring 0.98 acre within the old khatian No.558 was a fraudulent and collusive document which could be known to him after collecting the certified copy of the sale deed in the year 2011 and moreso, widow of Late Prahallad Ch. Debnath was not his only legal heir as he had 3 sons namely defendants No.4 & 5 and deceased Govinda Debnath. Besides the registered sale deed No.1-10 daed 01.01.1981 purportedly executed by Gita Rani Debnath in

favour of Labangabala Devi for land measuring 0.78 acres under khatian No.558(old) is also ineffective, fraudulent and collusive which the plaintiffs could know after obtaining the certified copy on 03.11.2011 and both these fraudulent sale deed relating to the first schedule suit land since during 1980 and 1981 sons of Gita Rani Debnath including deceased Govinda Debnath were the minor legal heirs of Late Prahallad Ch. Debnath while widow Gita Rani Debnath was not competent to execute those sale deeds fraudulently.

15. It was further submitted that basing on these two fraudulent deeds Labangabala Devi arranged to mutate her name in khatian No.998 fraudulently in respect of land measuring 1.69 acre within the land of first schedule suit land and the copy of the khatian was obtained on 11.08.2011. It was further averred that the previous seller and purchaser of the suit land were well aware about the fact that Prahallad Ch. Debnath had no title or right on the suit land and inspite of that Gita Rani Nath and Labangabala Devi fraudulently created those deeds and thereafter the plaintiffs sought for correction of khatian No.998 by a petition dated 23.09.2012 under Section 95 of the TLR & LR Act, 1960. Thus, the plaintiffs prayed for declaration of title over the suit land and for recovery of possession. The suit was contested by the defendants No.1 & 2 by filing written statement where in they denied all the assertions and claim of plaintiffs and further took the plea that the suit was not maintainable as the same was barred by the

law of limitation and lack of cause of action. It was further submitted that the mother of the principal defendants No.1, 2 & 3 namely Labangabala Devi (since dead) during her life time became the owner of total land measuring 1.76 acre appertaining to C.S. Plot No.2345, 2346 and 2342 of khatian No.558 of Mouza-Deocherra by way of purchase from one Gita Rani Debnath W/O Prahallad Ch. Debnath vide two registered sale deeds on 15.12.1980 and 01.01.1981 respectively. Prahallad Ch. Debnath and Labangabala Devi being a first party filed a case under Section 30 of L.A. Act before the then D.M & Collector, North Tripura, Kailashahar which was later on transferred to the Court of L.A. Judge, North Tripura, Dharmanagar for their claim of compensation money for acquisition of a portion of the purchased land of Labangabala Devi vide Case No.Civil Misc.(L.A.) No.36 of 1996. In that L.A. case, verdict was passed on 29.04.2000 wherein it was declared that the 2nd party claimants of the L.A. case are entitled to realize the entire awarded compensation money from the Govt. declaring that these two registered sale deeds in the name of Labangabala Devi were void and inoperative. It was also pleaded by defendants that said Labangabala Devi preferred vide L.A.(Appeal) No.92 of 2000 before the Hon'ble Gauhati High Court, Agartala Bench being admitted on 03.07.2000.

16. It was further submitted that since 01.08.2000 Labangabala Devi started to possess the landed properties recorded in her name under khatian No.998 along with the

defendants adversely, continuously and uninterruptedly after which she did not proceed with her appeal No.92 of 2000 and subsequently the same was dismissed for non-prosecution. After the death of Labangabala Devi on 15.03.2006, the principal defendant No.1 to 3 since from 01.08.2000, have been possessing the landed properties of their mother adversely. It was pleaded that plaintiff No.1 created disturbance in the peaceful possession of the defendants in respect of the recorded land of khatian No.998 after which the defendants Nos.1 & 2 filed civil suit bearing No.T.S. No.41 of 2012 in the Court of Learned Civil Judge(Jr. Div.), Dharmanagar against the plaintiff No.1 of T.S. No.37 of 2012 Sri Jayanta Debnath seeking the relief of perpetual injunction. It was further submitted that landed properties of R.S. Plot No.3116 of khatian No.477/1 of Mouja-Deocherra showing Labangabala Devi as permissive occupier was not actually recorded under khatian No.998 and the principal defendants have been possessing the land of R.S. Plot No.3116 C.S. Plot No.2341 under khatian No.477/1 adversely since 01.08.2000 along with their deceased mother Labangabala Devi during her life time. So, according to the defendants, the name of their mother has been wrongly reflected as permissive possessor in respect of the relevant plot of khatian No.477/1 and the principal defendants No.1, 2 & 3 have been possessing the total landed properties measuring 2.18 acres of 2nd schedule suit land since 01.08.2000 as adverse possessors within the knowledge of plaintiffs denying

their right, title and interest over the land. It was further contented that the registered sale deed No.1-5682 dated 15.06.1967 executed by Abhay Charan Debnath in favour of Narendra Ch. Debnath was ineffective as mutation in respect of the said purchased land could not be done and according to the defendants, the right, title and interest of the plaintiffs in the suit land has been extinguished since they did not seek the redress within the period of limitation while the principal defendants No.1, 2 & 3 have perfected their right, title and interest on the suit land by way of adverse possession. It was also alleged that plaintiffs being aware of the relevant facts instituted the suit with some false assertions suppressing the real facts with a view to mislead the Court and to grab the suit land.

17. Upon the pleadings of the parties, Learned Trial Court below framed the following issues in respect of suit No.T.S. No.9 of 2013:

ISSUES

(i) Whether the suit is maintainable?

(ii) Whether the suit is barred by law of limitation?

(iii) Whether the registered sale deed vide No.1-4106 dated 15.12.1980 purportedly executed by Gita Rani Debnath W/O Prahallad Ch. Debnath in favour of Labangabala Devi was illegal, fraudulent and not binding upon Principal defendant?

(iv) Whether the registered sale deed vide No.1-10 dated 01.01.1981 purportedly executed by Gita Rani Debnath W/O Prahallad Ch. Debnath in favour of Labangabala Devi was illegal, fraudulent and not binding upon Principal defendant?

(v) Whether principal defendant has got right, title and interest over the suit land?

(vi) Whether the plaintiffs have started to possess the suit land adversely w.e.f. 01.08.2000 against the real owner of the suit land and acquired title on the suit land by way of adverse possession?

(vii) Whether plaintiffs are entitled to get the decree of declaration that they have been possessing the suit land adversely since 01.08.2000?

(viii) Whether plaintiffs are entitled to get the decree of perpetual injunction against the principal defendants and his agents in respect to the suit land?

18. Upon the pleadings of the parties, Learned Trial Court below also framed following issues in respect of suit No.T.S. No.37 of 2012:

ISSUES

(i) Whether the suit is maintainable in its present form?

(ii) Whether there is any cause of action for filing of the instant suit?

(iii) Whether the suit is barred by Limitation or any Act?

(iv) Whether the plaintiffs are entitled to get decree as prayed for?

(v) To what other relief/relieves the plaintiffs are entitled to?

19. The Learned Trial Court below also after hearing framed the following additional issues in respect of suit No.T.S. No.37 of 2012:

ADDITIONAL ISSUES

(vi) Whether plaintiffs have right, title and interest over the suit land of Schedule-1 and Schedule-2 of plaint?

(vii) Whether Principal Defendants No.1, 2 & 3 have acquired right, title and interest over the suit land by way of adverse possession?

(viii) Whether the registered sale deed No.1-5862 dated 15.06.1967 and the registered sale deed No.1-4106 dated 15.12.1980 and the registered sale deed No.1-10 dated 01.01.1981 are fraudulent, illegal and void deeds?

(ix) Whether the khatian No.477/1 was wrongly prepared in the name of Rup Charan Nath?"

20. In the trial of T.S. No.9 of 2013, the plaintiffs examined one witness and exhibited 4 nos. of documents and those documents were also exhibited in the analogous suit T.S. No.37 of 2012 in support of their case. On the other hand, the

defendant No.1 examined 4 witnesses and exhibited no documents in that suit.

Further, in the trial of suit No.T.S. No.37 of 2012, the plaintiffs examined as many as 4 witnesses and exhibited 22 nos. of documents in support of their case but on the other hand, the defendants examined one witness and exhibited 4 documents in the suit which were specifically marked.

Finally, after hearing both the sides and after going through the evidence on record, Learned Trial Court below by the judgment dated 11.02.2016 decreed the suit of the plaintiffs in connection with case No.T.S. No.9 of 2013 but dismissed another suit bearing No.T.S. No.37 of 2012 filed by the plaintiffs.

21. Now, for the sake of convenience, I would like to mention hereinbelow the operative portion of the judgment/order of the Learned Trial Court in connection with case No.T.S. No.9 of 2013:

Order of T.S. No.09 of 2013
(arising out of T.S. 41 of 2012)

[65] In the result, it is hereby held that the plaintiffs have succeeded to establish the cause of action for this suit against defendant No.1 and the suit is allowed and decreed with cost with a declaration that plaintiffs & Pro-defendant No.2 of T.S. 09 of 2013 have been possessing the suit land since 01.08.2000 by way of adverse possession for a period of 12 years and the right, title and interest of defendant No.1 on the suit land extinguished.

[66] Defendant No.1 and his men or agents are perpetually restrained from entering into the suit land or disturbing the peaceful possession of plaintiffs and pro-defendant No.2 over the suit land.

[67] Prepare decree accordingly and place it before me for signing within 14 days.

[68] The suit is thus disposed of on contest.

[69] Make necessary entry in the relevant Trial Register. The record shall be consigned to the Record Room after due compliance.

and also for the sake of convenience, I would like to refer hereinbelow the operative portion of the judgment/order dated 11.02.2016 passed by the Learned Trial Court below in connection with T.S. No.37 of 2012:

Order of T.S. 37 of 2012

[70] In the result, it is hereby held that the plaintiffs have not succeeded to establish the cause of action for this suit against defendants and the suit is not allowed for being non-maintainable. Accordingly this suit stands dismissed with cost.

[71] Plaintiffs are not entitled to get the declaration of their right, title and interest over the second schedule suit land of T.S. 37 of 2012. Plaintiffs are also not entitled to get recovery of vacant possession of the second schedule suit land evicting the defendants No.1, 2 & 3 therefrom or any mesne profit arising out of the suit land.

[72] Prepare decree accordingly and place it before me for signing within 14 days.

[73] The suit is thus disposed of on contest.

[74] Make necessary entry in the relevant Trial Register. The record shall be consigned to the Record Room after due compliance.

22. Challenging these judgment, both the rival parties preferred appeal before the Court of Learned District Judge, North Tripura, Dharmanagar and accordingly, those cases were registered before the Court of Learned District Judge as T.A. No.11 of 2016 and T.A. No.12 of 2016 and after elaborate hearing of argument of both the sides, Learned 1st Appellate Court by judgment dated 07.06.2018 reversed the finding of Learned Trial Court in respect of T.S. No.9 of 2013 and dismissed the suit which was allowed by the Learned Trial court and also by the said judgment decreed the suit bearing No.T.S. No.37 of 2012 which was dismissed by the Learned Trial Court. For the sake of convenience, the operative portion of

judgment/order dated 07.06.2018 of both the appeals passed by Learned 1st Appellate Court runs as follows:

ORDER

[16] In the result, both the appeals are allowed on contest. The common judgment and decree dated 11.02.2016 and 23.02.2016 respectively passed by Ld. Civil Judge(Senior Division), Dharmanagar, North Tripura in Title Suit No.09 of 2013 and Title Suit no.37 of 2012 whereby and where under Ld. Trial court has decreed Title Suit No. 09 of 2013 and dismissed Title Suit No.37 of 2012 on contest is hereby set aside.

[17] The right, title and interest over the suit land, described in the second schedule of the plaint of TS 37 of 2012 is hereby declared in favour of plaintiffs of TS 37 of 2012 and they are also entitled to recover the possession of the suit land by evicting defendant no.1, 2 and 3 of TS 37 of 2012 and their men and agents therefrom by demolition and removal of all obstruction with their cost.

[18] Prepare decree accordingly. Send back the L. C. Record along with a copy of this judgment.

Challenging that judgment of the Learned 1st Appellate Court preferred under Section 96 of CPC, the present appellants have preferred this appeal before the High Court.

23. Before the High Court, by order dated 21.02.2023, the following substantial question of law was framed:

"Whether the judgment of the first appellate court is perverse in view of the fact that the learned first appellate court did not consider the pleadings as well as evidence surface during the course of trial?"

24. At the time of hearing of argument, Learned Senior Counsel, Mr. S. M. Chakraborty appearing for the appellants submitted before the Court that the Learned Trial Court below in delivering the judgment of case No.T.S. No.9 of 2013 rightly decided the issues in favour of the appellants and came to the observation that the plaintiffs of the said suit along with pro-defendant No.2 have acquired right of adverse possession over the suit land since 01.08.2000 and accordingly decreed the suit.

But the Learned 1st Appellate Court without considering the long possession of the plaintiffs of that suit i.e. the appellants herein and without considering the evidence on record reversed the finding of Learned Trial Court and passed an erroneous judgment which cannot be sustained in the eye of law and urged for setting aside the judgment of the Learned 1st Appellate Court. Learned Senior Counsel, Mr. S. M. Chakraborty further submitted that after the judgment of the Learned L.A. Judge, Dharmanagar as discussed earlier, the present appellants have acquired right of adverse possession over the suit land with effect from 01.08.2000 but the Learned 1st Appellate Court at the time of delivery of judgment did not consider the evidence on record of the appellants rather relied upon the judgment of the land acquisition proceeding delivered by Learned L.A. Judge which also does not attract the suit land.

25. Further Learned Senior Counsel Mr. S. M. Chakraborty also submitted that Learned Trial Court below after elaborate discussions of the evidence on record came to the observation that the plaintiffs of that suit i.e. the present appellants herein have acquired right, title, interest over the suit land by way of adverse possession but the Learned 1st Appellate Court ignoring the fact of possession reversed the finding of the Learned Trial Court.

Learned Senior Counsel also submitted that the contesting defendants of that suit i.e. the respondents herein could not adduce any rebuttable evidence on record to

disbelieve the case of the appellants herein but the Learned 1st Appellate Court did not consider the same and delivered the judgment ignoring the factual aspects and reversed the finding of Learned Trial Court for which he urged for allowing this appeal by setting aside the judgment of the Learned 1st Appellate Court and to uphold the judgment of the Learned Trial Court in the aforementioned case i.e. T.S. No.9 of 2013. It was further submitted that Learned L.A. Judge did not decide the title of the parties and on the basis of that judgment there was no scope for the 1st Appellate Court to decide the appeal. It was further submitted that suit land was all along under possession of the appellants but the predecessor of the respondents did not take any step for recovery of the suit land thus extinguished his right as prescribed under Section 27 of the Limitation Act.

26. In support of his contention, Learned Senior Counsel for the appellant Mr. S. M. Chakraborty relied upon the judgment of High Court of Tripura in **Laxmi Patari(Datta) and Ors. v. Bibha Datta and Ors.** bearing case no. RSA No.46 of 2006 dated 30.09.2015 reported in **(2016) 2 TLR 1055** wherein in para No.17, this High Court observed as under:

"17. In Amrendra Pratap Singh v. Tej Bahadur Prajapati, [(2004) 10 SCC 65], the Apex Court held as follows:-

"22. Every possession is not, in law, adverse possession. Under article 65 of the Limitation Act, 1963, a suit for possession of immovable property or any interest therein based on title can be instituted within a period of twelve years calculated from the date when the possession of the defendant becomes adverse to the plaintiff. By virtue of Section 27 of the Limitation Act, on the determination of the period limited by the Act to any person for instituting a suit for possession of any

property, his right to such property stands extinguished.

The process of acquisition of title by adverse possession springs into action essentially by default or inaction of the owner. A person, though having no right to enter into possession of the property of someone else, does so and continues in possession setting up title in himself and adversely to the title of the owner, commences prescribing title on to himself and such prescription having continued for a period of twelve years, he acquires title not on his own but on account of the default or inaction on the part of the real owner, which stretched over a period of twelve years, results in extinguishing of the latter's title. It is that extinguished title of the real owner which comes to vest in the wrongdoer. The law does not intend to confer any premium on the wrongdoing of a person in wrongful possession; it pronounces the penalty of extinction of title on the person who though entitled to assert his right and remove the wrongdoer and re-enter into possession, has defaulted and remained inactive for a period of twelve years, which the law considers reasonable for attracting the said penalty. Inaction for a period of twelve years is treated by the doctrine of adverse possession as evidence of the loss of desire on the part of the rightful owner to assert his ownership and reclaim possession.

23. The nature of the property, the nature of title vesting in the rightful owner, the kind of possession which the adverse possessor is exercising, are all relevant factors which enter into consideration for attracting applicability of the doctrine of adverse possession. The right in the property ought to be one which is alienable and is capable of being acquired by the competitor. Adverse possession operates on an alienable right. The right stands alienated by operation of law, for it was capable of being alienated voluntarily and is sought to be recognised by the doctrine of adverse possession as having been alienated involuntarily, by default and inaction on the part of the rightful claimant, who knows actually or constructively of the wrongful acts of the competitor and yet sits idle. Such inaction or default in taking care of one's own rights over property is also capable of being called a manner of "dealing" with one's property which results in extinguishing one's title in property and vesting the same in the wrongdoer in possession of property and thus amounts to "transfer of immovable property" in the wider sense assignable in the context of social welfare legislation enacted with the object of protecting a weaker section.""

Relying upon the same, Learned Senior Counsel for the appellants submitted that although the respondents claimed

that they purchased the suit land but they did not take any step for recovery of possession within time thus their rights have been extinguished under Section 27 of the Limitation Act and furthermore, after the judgment of the Learned District Court, North Tripura, Dharmanagar in L.A. proceeding with effect from 01.08.2000, the possession of the appellants have become adverse to the respondents/defendants and thus the appellants have acquired right, title, interest by way of adverse possession over the suit land.

27. It was further submitted by Learned Senior Counsel that the suit land was all along under the peaceful possession of one Labangabala Devi, the predecessor of the appellants and after her death, the appellants were/are in possession of the suit land and the contesting respondents i.e. the defendants of the original suit have had no right, title, interest or possession at any point of time over the suit land. So, the story of possession as projected by them was nothing but a false and fabricated story and relying upon the said judgment finally Learned Senior Counsel for the appellants submitted that the Learned 1st Appellate Court could not consider the factual aspects and passed an erroneous judgment for which he urged for allowing the appeal by setting aside the judgment of the Learned 1st Appellate Court.

28. On the other hand, Learned Senior Counsel Mr. P. Roy Barman assisted by Learned Counsel Mr. Samarjit Bhattacharjee and Learned Counsel Mr. Kawsik Nath first of all

drawn the attention of the Court that the appellants have not come before the Court with clean hands. According to Learned Senior Counsel, initially the appellants filed a suit which was registered as T.S. No.41 of 2012 claiming title over the suit land by one Labangabala Devi i.e. the predecessor of the appellants but later on, when she could realize that they have got no valid title over the suit land, took the plea of adverse possession without any basis then they converted their suit claiming adverse possession over the suit land by way of amending the plaint. It was further submitted that in the plaint, there was no plea of adverse possession by the present appellants or their predecessor and furthermore, in the L.A. proceeding before the Court of Learned District Judge, it was observed by Learned L.A. Judge, North Tripura, Dharmanagar that the title deeds on the basis of which, said Labangabala Devi claimed title over the suit land were found to be manufactured and fabricated and before the Learned Court also, the present appellants could not produce any convincing oral/documentary evidence on record to substantiate that the appellants have acquired right, title, interest over the suit land by way of adverse possession and furthermore, Learned Senior Counsel drawn the attention of this Court that from the evidence of PW-1 during his cross-examination, it is crystal clear that the said witness very specifically stated the following words in his deposition:

"I do not know the original owner of the suit land against whom we claimed adverse possession. We did not file any khatian so as to show that our

possession on the suit land has been recorded as adverse possessor."

29. Learned Senior Counsel further submitted that to prove the plea of adverse possession, the plaintiff of a case should prove the following factors:

1. The plaintiff must plead and prove that he was claiming possession adverse to the true owner.
2. The plaintiff must plead and establish that the factum of his long and continuous possession was known to the true owner.
3. The plaintiff also must plead and establish when he came into possession and the plaintiff must establish his possession was open and undisturbed.

Referring the aforesaid points and also the evidence of PW-1 during his cross-examination, Learned Senior Counsel drawn the attention of the Court that the said witness who is one of the party to the suit specifically stated that he was unable to say the name of the original owner against whom they claimed adverse possession over the suit land and there was no evidence on record that the possession was found to be open and undisturbed and referring the para nos.36, 37, 38 and 39 of the judgment of Learned Trial Court, Learned Senior Counsel submitted that from the contents of the judgment, it was also clear that initially it was the case of the plaintiffs that their predecessor Labangabala Devi purchased the suit land by strength of registered deeds and accordingly, she got the land

recorded in her name but during L.A. proceeding, it was clearly established before the L.A. Judge that those documents were manufactured one and on the basis of those documents, said Labangabala Devi could not accrue any valid right, title, interest over the suit land and when that story was found to be baseless then the present appellants took the plea of right of adverse possession but the Learned Trial Court ignoring all these aspects delivered the judgment in favour of the appellants which the Learned 1st Appellate Court after considering everything has reversed the finding of the Learned Trial Court. Rather Learned 1st Appellate Court based upon the oral/documentary evidence on record of the respondents decreed the suit in favour of the present respondents of the suit for which according to Learned Senior Counsel, the judgment of the Learned 1st Appellate Court was well reasoned and there is no scope to interfere with the judgment delivered by the Learned 1st Appellate Court and urged for dismissal of this appeal with costs.

30. I have heard detailed argument of both the sides and gone through the records of the Learned Courts below. It is the admitted position that initially the present appellants took the plea that their predecessor Labangabala Devi purchased the suit land on the basis of registered deeds but those registered deeds were found to be manufactured one in the L.A. proceeding then the present appellants took the plea of right of adverse possession with effect from 01.08.2000 and filed the suit

seeking injunction simplicitor with the plea of adverse possession. Learned 1st Appellate Court at the time of delivery of judgment elaborately discussed all the aspects and came to the observation that one Prahallad Ch. Debnath was shown as awardee of the acquired land wrongly and then one case under Section 30 of the L.A. Act was cropped up between the rival parties on the ground that the award ought to have been made in favour of the legal heirs of deceased Narendra Ch. Debnath i.e. the present respondents herein. In the said proceeding, Labangabala Devi contested and after hearing, judgment/award was passed on 29.04.2000 in favour of legal heirs of deceased Narendra Ch. Debnath i.e. the present respondents. After that, Labangabala Devi with said Prahallad Ch. Debnath preferred an appeal against the judgment and award of L.A. Judge, Dharmanagar, North Tripura dated 29.04.2000 before the then Hon'ble Gauhati High Court, Agartala Bench vide L.A. case no.L.A. Appeal No.92 of 2000 which was dismissed for non-prosecution on 15.12.2010 for which according to Learned 1st Appellate Court there was continuation of possession over the suit land upto 15.12.2010 by the contesting respondents. Learned 1st Appellate Court also came to the view that when the possession became adverse if the true owner does not sue the adverse possessor for recovery of possession of the immovable property on interest based on title, his right to property extinguishes after 12 years but in the given case, there was continuation of suits over the possession till 15.12.2000.

31. Moreso, the legal heirs of Narendra Ch. Debnath i.e. the present respondents herein filed a petition under Section 95 of TLR & LR Act in the year 2012 for correction of record of rights in their favour which reveals from Ext.22. So, according to Learned 1st Appellate Court, the claim of adverse possession over the suit land was not established. Moreover, from Ext.4, original registered sale deed bearing No.1-5682 dated 15.06.1967 executed by one Abhay Charan Debnath(since dead) in favour of said Narendra Ch. Debnath, clearly shows that land of old khatian no.558 was sold to Narendra Ch. Debnath and from Ext.17 i.e. certified copies of judgment and award dated 29.04.2000 passed in Civil Misc.(LA) No.36 of 1966, it revealed that Learned LA Judge confirmed the ownership of legal heirs of Narendra Ch. Debnath over the suit land so the Learned 1st Appellate Court based upon oral evidence came to the observation that Labangabala devi was a permissive possessor over the suit land and thus came to the observation that said Labangabala Devi may be evicted from the 2nd schedule of the suit land of T.S. No.37 of 2012 and accordingly reversed the finding of Learned Trial Court in respect of T.S. No.9 of 2013 and also reversed the finding of Learned Trial Court in respect of T.S. No.37 of 2012 and decreed the suit of T.S. No.37 of 2012 in favour of the plaintiffs of that suit i.e. the respondents herein.

32. In course of hearing, Learned Senior Counsel for the respondent relied upon the judgment of Hon'ble Apex Court in

M. Radheshyamlal v. V. Sandhya and Another dated 18.03.2024 reported in **2024 SCC OnLine SC 318** wherein in para Nos.11, 12, 13 and 14, the Hon'ble Apex Court observed as under.

"11. In the case of *Karnataka Board of Wakf v. Govt. of India*, in paragraph 11, this Court has laid down the law regarding the plea of adverse possession. Paragraph 11 reads thus:

"11. In the eye of the 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 the 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 Sakina* [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 the true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession. [*Mahesh Chand Sharma (Dr.) v. Raj Kumari Sharma* [(1996) 8 SCC 128.]"

(underline supplied)

12. Therefore, to prove the plea of adverse possession:-

(a) The plaintiff must plead and prove that he was claiming possession adverse to the true owner;

(b) The plaintiff must plead and establish that the factum of his long and continuous possession was known to the true owner;

(c) The plaintiff must also plead and establish when he came into possession; and

(d) The plaintiff must establish that his possession was open and undisturbed.

13. It is a settled law that by pleading adverse possession, a party seeks to defeat the rights of the true owner, and therefore, there is no equity in his favour. After all, the plea is based on continuous wrongful possession for a period of more than 12 years. Therefore, the facts constituting the ingredients of adverse possession must be pleaded and proved by the plaintiff.

14. Therefore, it is necessary to consider the averments made in Original Suit No. 12091 of 2010. A plea of adverse possession can be found in paragraph 3 of the plaint, which reads thus:

"3. The plaintiff is for the last 45 years in open uninterrupted and continuous possession and enjoyment of the premises being land and building bearing Old Door no. 14, New No. 18, Peria Neikaran Street, Sowcarpet, Madras-600079, more fully described in the schedule hereunder and he has thus perfected his title by adverse possession from before 1951, alongwith his father, J. mangilal Radhakishen Joshi, other members of his family. In proof thereof, the plaintiff has filed several documents to establish his said possession adverse to the interests of anyone else including the defendants. The said documents may be treated as part and parcel hereof. Several years prior to 1951, the said property had been owned by on Sukri Bai who died in or about 1947, she died leaving no issues. The father of the plaintiff and later the plaintiff have been paying taxes only in her name. The mutation in the Corporation and other registries remain unchanged.""

Relying upon the same, Learned Senior Counsel for the respondents submitted that before the Learned Trial Court the original plaintiffs i.e. the appellants herein could not adduce any strong oral/documentary evidence on record to prove that they have acquired right of adverse possession over the suit land and furthermore from the evidence of PW-1 during his cross-examination, it was clear that he was unaware about the original owner of the suit land.

So, according to Learned Senior Counsel for the respondents, there was no scope to believe the story presented by the appellants of that suit i.e. the appellants herein and according to Learned Senior Counsel, Learned 1st Appellate Court after elaborate discussions of everything has rightly reversed the finding of the Learned Trial Court and urged for upholding the judgment of the Learned 1st Appellate Court.

Learned Senior Counsel for the respondents further submitted that since the right, title, interest of Abhay Charan Nath was declared by judgment dated 28.02.1967 in connection with T.S. No.41 of 1966 and he got decree from the Court and thereafter the decree was executed which includes the land of the first schedule including the suit land and later on said Abhay Charan Nath sold out the first schedule land along with some other landed properties to the predecessor of the present contesting respondents Narendra Ch. Debnath by registered deed of the year 1967 and thereafter the same was inherited to the present respondents. So, the learned 1st Appellate Court considering all the aspects rightly decreed the suit filed by the respondents before the Learned Trial Court which was dismissed and there was no perversity or infirmity to that judgment.

33. Since I have already discussed the factual aspects of both the cases in detail above and it appears to this Court that regarding accrual of right of adverse possession over the suit land, the appellants could not adduce any convincing documentary evidence on record and since the Learned L.A.

Judge by judgment and award dated 29.04.2000 passed in Civil Misc(L.A.) No.36 of 1996 clearly confirmed the ownership of the legal heirs of Narendra Ch. Debnath over the suit land disbelieving the title of Labangabala Devi over the suit land on the basis of title deeds. Further after going through the evidence on record both oral and documentary of the Learned Trial Court below, it appears that the present appellants did not have any valid title over the suit land nor they could establish their right of adverse possession over the suit land with effect from 01.08.2000 rather it appears that the respondent-defendants have had their valid title over the suit land for which in my considered view, the Learned 1st Appellate Court after considering all the factual and legal aspects has rightly delivered the judgment for which I do not find any scope to interfere with the judgment delivered by Learned 1st Appellate Court. The substantial question of law thus leans in favour of the answering respondents of this appeal.

34. In the result, both the appeals filed by the appellants stands dismissed being devoid of merit with costs. The appellants herein are not entitled to get any relief in respect of suit No.T.S. No.9 of 2013 and accordingly, the judgment of the Learned Trial Court in respect of suit No. T.S. No.9 of 2013 stands dismissed confirming the order of Learned 1st Appellate Court and the right, title, interest of the respondent-plaintiffs of suit No.T.S. No.37 of 2012 is hereby declared reversing the judgment of the Learned Trial Court and affirmed by the

Learned 1st Appellate Court vide judgment dated 07.06.2018 in connection with T.A. No.11 of 2016 analogously with T.A. No.12 of 2016 and as such the respondents(the plaintiffs of suit No.T.S. No.37 of 2012) are entitled to recover possession of the suit land by evicting the defendants No.1, 2, 3 of T.S. No.37 of 2012 and their men and agents by way of demolition and also after removing all obstructions therefrom with their costs.

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

Prepare decree accordingly.

Send down the LCR alongwith a copy of this judgment.

JUDGE



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