

**HIGH COURT OF TRIPURA
AGARTALA**

RSA No.44 of 2022

- 1. Sri Ashutosh Debnath,**
Age 60 years,
Son of Late Nishi Kanta Debnath,
R/O South Singicherra,
P.O. Singicherra, P.S. Khowai,
District: Khowai, PIN: 799 201
- 2. Smt. Bakul Debnath,**
Age 55 years,
Wife of Sri Ashutosh Debnath,
R/O South Singicherra,
P.O. Singicherra, P.S. Khowai,
District: Khowai, PIN: 799 201
- 3.(a) Smt. Sailabala Debnath,**
Age 70 years,
Wife of Late Bhuvan Chandra Deb Nath,
R/O Char Ganki, P.O. Ganki,
P.S. Khowai, District: Khowai,
PIN: 799 202
- 3.(b) Sri Babul Debnath,**
Age 55 years,
Son of Late Bhuvan Chandra Deb Nath,
R/O Char Ganki, P.O. Ganki,
P.S. Khowai, District: Khowai,
PIN: 799 202
- 3.(c) Sri Nakul Debnath,**
Age 50 years,
Son of Late Bhuvan Chandra Deb Nath,
R/O Char Ganki, P.O. Ganki,
P.S. Khowai, District: Khowai,
PIN: 799 202
- 3.(d) Sri Bipul Debnath,**
Age 45 years,
Son of Late Bhuvan Chandra Deb Nath,
R/O Char Ganki, P.O. Ganki,
P.S. Khowai, District: Khowai,
PIN: 799 202
- 3.(e) Smt. Rama Debnath,**
Age 60 years,
Daughter of Late Bhuvan Chandra Deb Nath,
Wife of Late Jatindra Deb Nath,
R/O Dashamighat, P.S. Teliamura,
District: Khowai

-----Appellant-Defendant (s)

Versus

Sri Biswajit Dey,

Son of late Nirode Baran Dey,
Resident of BBC Para, P.S. Khowai,
P.O. Khowai Court, Sub-Division: Khowai,
District: Khowai, PIN: 799 202

---- Sole Respondent-Plaintiff (s)

For Appellant(s) : Mr. P. Roy Barman, Sr. Adv.

Mr. K. Nath, Adv.

For Respondent(s) : Mr. S. Lodh, Adv.

Date of Hearing : **21.02.2024**

Date of delivery of
Judgment and Order : **26.02.2024**

Whether fit for
Reporting : NO

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

This appeal is preferred by the appellant-defendants challenging the judgment and decree dated 12.07.2022 passed by Learned District Judge, Khowai Tripura in connection with Case No. Title Appeal 01 of 2021. By the said judgment Learned First Appellate Court dismissing the appeal affirmed and upheld the judgment passed by Learned Trial Court i.e. Learned Civil Judge (Junior Division), Khowai Judicial District, Court No.1 in Title Suit No.19 of 2013. Before entering in to the merit of the appeal let us discuss about the subject matter of the dispute amongst the rival parties.

02. The present respondent as plaintiff filed a suit before the court of Learned Civil Judge (Junior Division), Khowai Judicial District, Court No.1 seeking the following reliefs:

"i. Pass a decree declaring that the Plaintiff having adversely possessed the suit land continuously for more than the statutory period of 12 years as against the Defendant No 1 has attained the non-evictable status and continuous possession has matured into title as against the Defendant No.1.

ii. Pass a decree of perpetual injunction restraining the Defendants or their representatives, agents, workmen from entering into the suit land or disturbing the peaceful possession.

iii. If any deed of transfer is executed by the Defendant No 1 in favour of the Defendant No 2 in respect of the suit land is to be declared void and illegal.

iii.(a) The sale deed dated 13.12.2012 executed by the Defendant No 2 in favour of his wife, i.e., the Defendant No 3 by dint of deed of power of attorney executed by Defendant No 1 is to be declared void, sham in character and without consequence by a decree.

iv. Pass orders as to cost and any other order or orders as may be deemed fit and proper for ends of justice."

03. In the plaint the respondent-plaintiff asserted that the original defendant Bhuban Debnath No.1 was the owner of the suit land, but the father of the respondent-plaintiff was in possession of the suit land since 18.10.1962 and after his death in the year 1991 the respondent-plaintiff started possessing the suit land and thus acquired right of adverse possession. Initially one Bhuban Chandra Debnath and Ashutosh Debnath were the original defendants in Title Suit No.19/2013. Thereafter the respondent-plaintiff filed an application before the Learned Trial Court under Order 1 Rule 10(2) read with Order VI Rule 17 of CPC for addition of party and for amendment of pleading. Learned Civil Judge vide order dated 12.02.2014 rejected the prayer of amendment of pleading and allowed the petition for addition

of party and thus one Smt. Bakul Debnath, i.e. the present appellant No.2 was impleaded as defendant No.3. In the amendment of plaint the respondent-plaintiff contended that portion of suit land measuring 0.16 acre has been transferred by registered sale-deed on 13.12.2012 by which the present appellant No.1 by way of Power of Attorney transferred a portion of suit land in favour of appellant No.2, i.e his wife and the respondent-plaintiff contended that the sale-deed dated 13.12.2012 was nothing but a mere paper transaction and sham in character and in absence of delivery of possession the said sale-deed was liable to be declared as void. Thereafter the respondent-plaintiff preferred Civil Revision Petition before the High Court against the order dated 12.02.2014 passed by Learned Civil Judge (Junior Division), Khowai, West Tripura in T.S.19/2013 and vide order dated 25.06.2014 passed in CRP No.23 of 2014 the High Court allowed the petition and also allowed amendment of pleading and addition of party in connection with Case No. T.S.19/2013. After that said Bhuvan Chandra Debnath died and his legal heirs i.e. the present appellant Nos.3(a), 3(b), 3(c), 3(d) and 3(e) and Bakul Debnath were substituted and later on Bakul Debnath also died.

04. The present appellant contested the suit by filing written statement and it was asserted by the appellant that suit land was never possessed by the father of the

respondent-plaintiff and after his death the respondent did not possess the suit land. Rather it was all along under the possession of the appellant-defendants. It was further asserted that the appellant No.1 on the basis of Power of Attorney transferred 0.16 acres of land to the wife of the appellant No.2. Thus the appellant-defendants by the written statement prayed for dismissal of the suit with costs. Upon the pleadings of the parties Learned Court below framed the following issues:

- (i) Whether the suit is maintainable in its present form and nature?
- (ii) Whether the plaintiff has acquired non evictable status and title upon the suit land on the principle of adverse possession?
- (iii) Whether the sale deed dated, 13.12.2012 is void and sham in character?
- (iv) Whether the plaintiff is entitled to the decree as prayed for?

05. Before the Learned court both the parties adduced oral/documentary evidence on record as under:

(A) Defendants Witness:-

DW-1:- Ashutosh Debnath
DW-2:- Smt. Saila Debnath
DW-3:- Sri Haridhan Paul

(B) Defendants Exhibits:-

- (1) Exhibit. A- Original General power of Attorney executed by Bhuban Ch. Debnath dated, 10.09.2012 in three sheets.
- (2) Exhibit. A-1- Signatures of Bhuban Ch. Debnath in the power of Attorney.
- (3) Exhibit. B- Signatures of DW No.1 in the Original sale deed being No.1-1414 executed by Ashutosh Debnath in favour of his wife.
- (4) Exhibit. C – 02 Nos. of certified copy of Khatian No.3223 and 897.

(C) Plaintiffs Witnesses:-

PW-1:- Sri Biswajit Dey.

(D) Plaintiffs Exhibits:-

- (1) Exhibit. 1- Certified copy of Khatian No.897 of Mouja-Fatikroy in favour of Subal Das.
- (2) Exhibit.2 – Certified copy of the order of District Collector dated, 22.05.2013 along with enquiry report from SDM, DCM, Revenue Inspector and Tehshilder passed in Revenue case No.39 of 2012.

(E) Court Witness:- Nil.

(F) Court Exhibits:- Nil.

06. The operative portion of the judgment and order dated 22.01.2021 passed by the Learned Trial court runs as under:

"12. In the result, the instant suit is decreed with costs in favour of the plaintiff Sri Biswajit Dey and it is declared that he has right, title, interest and possession over the suit land which has matured into title by way of adverse possession against the true owner, Defendant No.1- Bhuvan Ch. Debnath.

13. Perpetual injunction is also granted in favour of the plaintiff Sri Biswajit Dey over the suit land with the result that the defendants and their men/agents are perpetually restrained from entering into the suit land or in anyway disturbing the peaceful possession and enjoyment of the said suit land by the plaintiff.

14. The sale deed being no.1-1414 dated 13.12.2012 is hereby declared illegal, void for all purpose.

15. Prepare decree accordingly and put up for signature within 14(fourteen) days from today.

16. The judgment is given under my hand and seal of this court on this 22nd day of January, 2021.

17. The case is thus disposed of on contest.

18. Make necessary entry in the trial register.

19. Upload the judgment in CIS and consign the record to the Record Room in due course of time."

07. Challenging the judgment the present appellants preferred an appeal under Section 96 of CPC before the Learned District Judge, Khowai Tripura which was numbered as Title Appeal 01 of 2021 and after hearing of arguments Learned First Appellate court by judgment and decree dated 12.07.2022 dismissed the appeal of the present appellant upholding the judgment of the Learned Trial Court. The operative portion of the judgment of the Learned First Appellate Court runs as follows:

"The appeal is hereby dismissed.

The Judgment and decree passed by the trial court is hereby upheld.

Send down the case record along with a copy of this judgment to the Ld. Trial Court.

Accordingly, this appeal is disposed of on contest.

Make necessary entry in the relevant TR as well as in the CIS."

08. Challenging that judgment the present appellants have preferred this appeal before the High Court. At the time of admission of the appeal before this High Court the following substantial questions of law were formulated by order dated 20.09.2022:

“(I) Whether the finding of the court below to the effect, that, the Respondent is in possession of the suit land being his name recorded in the Khatian of the suit land as occupier is perverse in view of the Exhibit C i.e., Khatian Nos.3223 & 897, wherefrom it is established, that, the Appellant No.2 is Rayati of land measuring 0.16 acre out of suit land measuring 0.17 acre and Respondent is not shown either and permissive possessor or forceful possessor of the suit land.

(II) Whether finding of the Court below declaring, that, the Respondent has adverse possession over the suit land is against the settled principle of law as to how adverse possession is to be proved.”

09. At the time of hearing of argument Learned Senior counsel Mr. P. Roy Barman appearing for the appellants submitted that both the courts below misinterpreted the legal proposition of ‘adverse possession’ and came to an erroneous and perverse finding. According to Learned senior counsel before the Learned Trial Court there was no evidence of adverse possession to allow the Learned Court below to grant the decree of adverse possession in favour of the respondent-plaintiff. Because to substantiate the contention of ‘adverse possession’ the respondent-plaintiff save and except himself could not adduce any further oral evidence on record nor could produce any documentary evidence on record to substantiate his claim. Learned senior counsel further submitted that in the judgment of the Learned Trial court

there was no clear finding and observation regarding acquisition of 'adverse possession' as alleged by the respondent-plaintiff. He also drawn the attention of the court the para numbers 2, 3, 5 and 6 of the plaint submitted by the respondent-plaintiff and submitted that according to the respondent-plaintiff since from the year 1962 the respondent-plaintiff and his father were/are in possession of the suit land, but in this regard no oral/documentary evidence could be produced and proved by the respondent-plaintiff. Furthermore, regarding possession no evidence could be laid by the respondent-plaintiff and more so, the Learned Trial Court below was not supposed to decide the 'sale-deed' as a sham transaction. But without proper determination of the plea of adverse possession as alleged by the respondent-plaintiff gave an erroneous observation in favour of the respondent-plaintiff. Further, Learned senior counsel submitted that to substantiate the inquiry report and the order of the Revenue Authority no authority of the Revenue Department was produced as witness by the respondent-plaintiff to substantiate his case. Further, Learned senior counsel drawn the attention of the court that the Learned Trial Court below wrongly decided issue No.3 in favour of the respondent-plaintiff and finally in absence of proper evidence on record decreed the suit in favour of the respondent-plaintiff illegally and the judgment of the Learned First Appellate Court was nothing but a replica of

this judgment of the Learned Trial Court and finally urged before the court to set aside the judgment of the Learned First Appellate Court.

10. On the contrary, Learned counsel Mr. S. Lodh appearing for the respondent-plaintiff taking part in the hearing and submitted that in para-2 of the plaint the respondent-plaintiff specifically stated that since from the date of 18.10.1962 the father of the respondent-plaintiff was possessing the suit land within the knowledge of Bhuban Chandra Debnath and after his death in the year 1991 the present respondent-plaintiff has been possessing the suit land denying the right, title and interest of the appellant-defendants over this suit land. Thus the respondent-plaintiff has acquired the right of adverse possession over the suit land and said Bhuban Chandra Debnath during his lifetime never raised any protest. But in the year 2012, suddenly the appellant-defendant No.2 (original suit) appeared and raised objection to the respondent-plaintiff stating that the defendant No.1 (original suit) has sold the suit land to him by executing registered sale-deed. It was further asserted that knowing the same the respondent-plaintiff searched the matter to the office of the Sub-Registrar, Khowai but he could not trace out anything. According to him said Bhuban Chandra Debnath through attorney sold the suit land to the defendant No.3 (original suit) who collusively purchased the

same knowing fully that the respondent-plaintiff was in forceful possession against the defendant No.1 (original suit) for about 50 years. Thereafter, he filed an application before the Collector, Khowai under Section 95 of the TRL & LR Act claiming that his name has not been recorded in column No.16 of the relevant Khatian No.897 as forceful occupier and accordingly the District Collector arranged for inquiry and on the basis of inquiry report the District Collector directed SDM, Khowai to incorporate the name of respondent-plaintiff in column No.16 of the relevant khatian as forceful occupier and according to Learned counsel the respondent-plaintiff was in possession of the suit land for more than 50 years without any obstruction from any corner by doing all acts of possession continuously, openly, peacefully and adversely against the defendant No.1 (original suit) in hostile assertion of his right in the suit land and thus he acquired right, title and interest of the suit land. Learned counsel further submitted that as the respondent-plaintiff has been able to establish his 'adverse possession' against the original true owner so the title of the appellant-defendant No.1 has been extinguished by way of adverse possession and he was possessing the suit land which was adequate in continuity, publicity and without interruption from any corner more than statutory period of 12 years. Finally Learned counsel for the respondent-plaintiff submitted that both the courts below after

considering oral/documentary evidence on record granted decree in favour of the respondent-plaintiff and urged for dismissal of this present appeal.

11. I have heard arguments of both the sides and gone through the records of the Learned courts below. To substantiate the suit before the Learned Trial court the respondent-plaintiff was examined as PW-1 and he relied upon two documents which were marked as Exbt.1 and 2. On the other hand, the appellant-defendants adduced three witnesses and relied upon some documents which were marked as exhibits. The respondent-plaintiff as PW-1 in his examination-in-chief in affidavit stated that suit land measuring 0.17 acres under Mouja West Singicherra of Khatian No.897 appertaining to C.S. Plot Nos.1309/3892, 1309 corresponding to R.S. Plot No.1639 & 1640 of Viti(Nal), shop(Nal) classes of land and the same was the jote land of the original defendant No.1 and he was the sole owner of the suit land and record of right was also prepared in his name. He further stated that his father was in possession of the suit land since from 18.10.1962 forcibly i.e. by virtue of the right of adverse possession knowing fully that the said defendant was the real owner of the suit land and his father developed the suit land in its present position and he constructed a shop therein which was the earning source of his income and the rest other portion of the suit land was used by his father for agricultural purpose.

He further stated that his father died in the year 1991 and since then he has been possessing the suit land as one of the successor in the way his father possessed and on expiry of the stipulated period of 12 years the right of adverse possession was ripened and he was also possessing the suit land in continuation of his father denying the right, title and interest of the lawful owner i.e. the defendant No.1 but said defendant No.1 never raised any objection and thus he was possessing the suit land more than 50 years without any interruption from any corner. On 21.09.2012 the defendant No.2 appeared and raised objection to his peaceful possession and stated that he has purchased the suit land by virtue of registered sale-deed. But he could not trace out any deed. Later on, he filed an application before the Collector, Khowai for recording his name. The matter was inquired by SDM, Khowai along with other Revenue staff when it was found that he was the forceful occupier of the suit land and he possessed the same more than the statutory period and accordingly he filed the suit. He relied upon khatian No.897 which was marked as Exbt.1 and relied upon certified copy of the order of the District Collector dated 22.05.2013 which was marked as Exbt.2 in five sheets. During cross-examination save and except denial nothing came out relevant. He further stated that he heard Bhuban Chandra Debnath executed Power of Attorney in favour of one Ashutosh Debnath and said Ashutosh

Debnath by way of sale-deed transferred the suit land to one Bakul Debnath. But he volunteered that the suit land was never handed over to said Bakul Debnath and all along it was under his possession. He further stated that he knows that the Amin and Tehshildar are required to enquire any land prior to mutation. But in the instant case they did not visit the suit land. But again he was put under cross-examination with the negative form that the Amin and Tehshildar did not visit the suit land and he filed a prayer before the SDM, DCM for cancellation of the khatian of Bakul Debnath.

12. As already stated the present appellants as defendants adduced three witnesses. DW-1, Ashutosh Debnath in his examination-in-chief tried to support his version in the written statement. He also relied upon the original Power of Attorney executed by Bhuban Chandra Debnath on 10.09.2012 marked Exbt.A in three sheets, sale-deed No.1-1414 executed by him in favour of his wife and identified his signature marked Exbt.B and submitted two numbers of certified copy of finally published khatian No.3223 marked as Exbt.C and certified copy of finally published Khatian No.897 marked Exbt.C. During cross-examination he stated that he reside along with his wife and Bhuban Debnath breathed his last at Charjanki and stayed therein for a period of 35 years and Nirode Dey had a shop located in the land of Bhuban Debnath.

Similarly, DW-2 in her examination-in-chief tried to support the version of DW-1 and in her examination-in-chief she stated that her husband Bhuban Chandra Debnath executed a Power of Attorney in favour of Ashutosh Debnath and identified her signature on the Power of Attorney marked as Exbt.A1 in four pages. During cross by the respondent-plaintiff she stated that they did not sell any land and Ashutosh Debnath is her nephew who was given some power. But they did not get any purchase money.

13. DW-3, Haridhan Paul also in his examination-in-chief tried to support the version of DW-1. During cross he deposed that Bhuban Debnath breathed his last at Charjanki and the distance between the suit land and Charjanki is about 05 kms.

These are the synopsis evidence on record of the parties.

14. After going through the pleadings of the parties and also after going through the evidence on record of the parties adduced before the Learned Trial Court and also after going through the judgments of the Learned Court below it appears that there was/is no dispute on record that the suit land was/is under peaceful possession of the father of the respondent-plaintiff since from the year 18.10.1962 and after his death in the year 1991 the respondent-plaintiff has been possessing the suit land. It is also on record that in a portion of suit land there is a shop and the rest portion

of the suit land was possessing by the respondent-plaintiff for agricultural purpose. The appellant-defendants by the trend of cross-examination of the respondent-plaintiff could not raise any cloud to disbelieve his evidence. Similarly from the order of the Learned District Collector along with the inquiry reports marked as Exbt.2 in five sheets it appears that the Learned District Collector in his order dated 22.05.2013 specifically observed that the respondent-plaintiff is the forceful occupier of the land under Khatian No.897 Mouja West Singicherra for the last 50 years and accordingly ordered for incorporating his name as 'forceful occupier' in the respective column No.16 of the khatian. The said order also has not been challenged by the present appellants. The appellants relied upon the title deed executed by the appellant Ashutosh Debnath as an attorney in favour of Bakul Debnath which was marked as Exbt.B. But from the evidence on record it appears that the deed was executed without any possession and also without any consideration money. In this regard I would like to refer herein below the definition of 'Sale' as mentioned in Section-54 of Transfer of Property Act, 1882:

"54. "Sale" defined.- "Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised."

15. From the aforesaid provision it appears that sale is a transfer ownership in exchange of price paid. But here in the given case there is no evidence on record from the

side of the appellants that for execution of sale-deed the party had received any consideration money. There is also no evidence on record that delivery of possession was handed over to Bakul Debnath either by Bhuban Debnath or by Ashutosh Debnath. So Learned Trial Court below in deciding issue No.4 rightly decided that the sale-deed dated 13.12.2012 was nothing but a mere paper transaction which has got no legal validity in the eye of law. In respect of issue No.3 Learned Court below relied upon few judgments of the Hon'ble Apex Court. Similarly, the Learned First Appellate court came to the observation that the respondent-plaintiff has been forcefully occupying the suit land for the last 50 years denying the right, title and interest of the original owner i.e. the defendant No.1 and the appellant-defendant Ashutosh Debnath during his cross-examination specifically stated that Nirode Dey i.e. the father of the respondent-plaintiff had a shop over the suit land of Bhuban Debnath. The report of SDM and the final order of the District Collector discloses about the possession of the respondent-plaintiff over the suit land for a long period. So in my considered view the Learned First Appellate Court also rightly delivered the judgment in favour of the respondent-plaintiff upholding the judgment of the Learned Trial Court.

16. Learned senior counsel for the appellant in course of hearing of argument relied upon two citations. In

Poona Ram vs. Moti Ram and Others reported in **(2019)**

11 SCC 309 in para No.15 Hon'ble the Apex Court observed

as under:

"15. The crux of the matter is that a person who asserts possessory title over a particular property will have to show that he is under settled or established possession of the said property. But merely stray or intermittent acts of trespass do not give such a right against the true owner. Settled possession means such possession over the property which has existed for a sufficiently long period of time, and has been acquiesced to by the true owner. A casual act of possession does not have the effect of interrupting the possession of the rightful owner. A stray act of trespass, or a possession which has not matured into settled possession, can be obstructed or removed by the true owner even by using necessary force. Settled possession must be (i) effective, (ii) undisturbed, and (iii) to the knowledge of the owner or without any attempt at concealment by the trespasser. There cannot be a straitjacket formula to determine settled possession. Occupation of a property by a person as an agent or a servant acting at the instance of the owner will not amount to actual legal possession. The possession should contain an element of animus possidendi. The nature of possession of the trespasser is to be decided based on the facts and circumstances of each case."

In **Ravinder Kaur Grewal and Others vs.**

Manjit Kaur and Others reported in **(2019) 8 SCC 729,**

Hon'ble the Apex Court in para No.60 further observed as

under:

"60. The adverse possession requires all the three classic requirements to coexist at the same time, namely, nec vi i.e. adequate in continuity, nec clam i.e., adequate in publicity and nec precario i.e. adverse to a competitor, in denial of title and his knowledge. Visible, notorious and peaceful so that if the owner does not take care to know notorious facts, knowledge is attributed to him on the basis that but for due diligence he would have known it. Adverse possession cannot be decreed on a title which is not pleaded. Animus possidendi under hostile colour of title is required. Trespasser's long possession is not synonym with adverse possession. Trespasser's possession is construed to be on behalf of the owner, the casual user does not constitute adverse possession. The owner can take possession from a trespasser at any point in time. Possessor looks after the property, protects it and in case of agricultural property by and the large concept is that actual tiller should own the land who works by dint of his hard labour and makes the land cultivable. The legislature in various States confers rights based on possession."

Referring the aforesaid citations Learned senior counsel submitted that to prove adverse possession three classic requirements must be proved in declaring adverse possession namely *nec vi* i.e. adequate in continuity, *nec clam* i.e., adequate in publicity and *nec precario* i.e. adverse to a competitor, in denial of title and his knowledge and further submitted that the plaintiff-respondent before the Learned Trial court could not prove the aforesaid requirements of law to substantiate his case of adverse possession which the Learned Courts below erred in deciding the case and delivery of judgment and finally submitted for setting aside the judgment of the Learned First Appellate Court.

17. In this regard I would like to refer herein below one citation of the Hon'ble Apex court in **Vasantha (Dead) Thr. Lr. vs. Rajalashmi @ Rajam (Dead) Thr. Lrs.** reported in **2024 SCC OnLine SC 132** in para-43, Hon'ble the Apex Court observed as under:

"43. In Saroop Singh v. Banto:2005 SCC OnLine SC 1486 (2-Judge Bench), this Court observed that Article 65 states that the starting point of limitation does not commence from the date when the right of ownership arises to the plaintiff but commences from the date the defendant's possession becomes adverse. Further relying on Karnataka Board of Wakf v. Govt. of India (2-Judge Bench), it observed that the physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases related to adverse possession. Plea of adverse possession is not a pure question of law but a blend of fact and law. Therefore, a person who claims adverse possession should show: (a) on what date he came into possession; (b) what was the nature of his possession; (c) whether the factum of possession was known to the other party; (d) how long his possession has continued; and (e) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour. Since he

is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all facts necessary to prove his adverse possession."

18. Here in the given case from the evidence on record it appears that since from the year 1962 i.e on and from 18.10.1962 the predecessor of the respondent-plaintiff possessed the suit land by raising one shop therein and also by cultivating the rest part of the suit land and after his death the present plaintiff in the year 1991 has been possessing the suit land within the true knowledge of said Bhuban Debnath and the other appellants denying their right, title and interest and in view of the principle of law laid down by the Hon'ble Supreme Court of India it appears that in the given case the respondent-plaintiff has been able to prove his right, title and interest over the suit land by way of adverse possession and also has been able to prove that the sale-deed dated 13.12.2012 was nothing but a sham and void transaction and in my considered view both the courts below after elaborate discussions of the issues framed came to the proper and reasonable finding and decreed the suit in favour of the respondent-plaintiff of this appeal for which this court does not find any scope to interfere with the judgment of the Learned First Appellate Court. The substantial questions of law formulated are accordingly answered in favour of the respondent-plaintiff of this appeal.

19. In the result, the appeal filed by the present appellants is hereby dismissed on contest with costs. The judgment and decree of the Learned First Appellate Court in Title Appeal No.1 of 2021 is hereby upheld and accordingly it is affirmed. The respondent-plaintiff is entitled to get all the reliefs as awarded by Learned Trial Court confirmed by Learned First Appellate court.

Pending application, if any, stands disposed of.

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

JUDGE



MOUMIT A DATTA

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MOUMITA DATTA
Date: 2024.02.28
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