

**HIGH COURT OF TRIPURA
AGARTALA**

RSA No.36 of 2023

Smt. Haridasi Paul,
W/O. Lt. Haribal Paul,
Resident of Teliamura Bazar,
P.S.- Teliamura, P.O.- Teliamura,
District-Khowai Tripura

.....The Petitioner Appellant

Versus

- 1. Smt. Uma Deb,**
W/O. Lt. Ashok Sankar Deb,
- 2. Sri Ashis Deb,**
S/O. Lt. Ashok Sankar Deb,
- 3. Sri Biswanath Deb,**
S/O. Lt. Ashok Sankar Deb,
- 4. Smt. Purnima Deb,**
D/O. Lt. Ashok Sankar Deb,
All are resident of Teliamura,
P.O. & P.S. Teliamura, Teliamura,
District-Khowai Tripura.
- 5. Smt. Shikha Deb (Sen),**
D/O. Lt. Ashok Sankar Deb,
W/O. Sri. Lal Mohan Sen,
Resident of Dhaleswar, P.S.- East Agartala,
Agartala, Dist.- West Tripura.
- 6. Smt. Rekha Deb (Sarkar),**
D/O. Lt. Ashok Sankar Deb,
W/O. Lt. Subinoy Ch. Sarkar,
Resident of Airport Road, Natunnagar,
P.S.-Airport, Agartala,
Dist.- West Tripura.
- 7. Smt. Rina Deb (Shil),**
D/O. Lt. Ashok Sankar Deb,
W/O. Sri Gobinda Prasad Shil,
Resident of Bank of Amar Sagar, Udaipur,
P.O. & P.S. Radhakishorepur,
Dist.- Gomati Tripura.

.....The Plaintiff D.H. O.P. Respondents

- 8. Sri Biswanath Paul,**
S/O. Lt. Gouranga Ch. Paul,

- 9. **Sri. Prabir Ch. Paul,**
S/O. Lt. Gouranga Ch. Paul,
- 10. **Sri. Pradip Ch. Paul,**
S/O. Lt. Gouranga Ch. Paul,
- 11. **Smt. Yamuna Paul,**
W/O. Lt. Gouranga Ch. Paul,
- 12. **Smt. Jayarani Paul,**
D/O. Lt. Gouranga Ch. Paul,
- 13. **Sri Nitai Ch. Paul,**
S/O. Lt. Haribal Paul,
All are residents of Teliamura Bazar,
P.O. & P.S.- Teliamura,
District- Khowai Tripura

.....**The Defendant JD O.P. Respondents**

For Appellant(s)	:	Mr. D. Deb, Adv, Mr. D. Debnath, Adv.
For Respondent(s)	:	Mr. Sankar Deb, Sr. Adv, Mr. R. Dasgupta, Adv.
Date of Hearing	:	11.07.2024
Date of delivery of Judgment and Order	:	22.07.2024
Whether fit for Reporting	:	YES

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

This Second Appeal under Section 100 of CPC is preferred challenging the judgment and order dated 27.07.2023 delivered by Learned Addl. District Judge, Khowai, Tripura, in connection with case No.Civil Misc (Appeal) 02 of arising out of Misc.45 of 2021 in Ex(T) 25 of 2018.

02. Heard Learned Counsel, Mr. D. Deb along with Learned Counsel, Mr.D. Debnath for the appellant and also

heard Learned Senior Counsel, Mr. Sankar Deb assisted by Learned Counsel, Mr. R. Dasgupta for the D.H. plaintiffs O.P. respondents. None appeared on behalf of J.D. O.P. respondents.

03. At the time of hearing, Learned Counsel for the appellant drawn the attention of this Court that the present appellant as petitioner filed a petition under Order XXI, Rule 97-101 of CPC before the Court of Learned Civil Judge, Senior Division, Court No.2, Khowai in connection with case No.Ex(T) 25 of 2018 which arose out of Suit No.T.S. No.49 of 2016 filed by the plaintiff D.H. O.P. respondents claiming adverse possession over the suit land on the ground that the appellant was not made party in the aforesaid suit filed by the D.H. plaintiffs O.P. respondents. But the Learned Court below did not consider the evidence on record of the appellant-petitioner and ultimately, dismissed the said petition.

Thereafter, the present appellant filed an appeal before the Court of Learned District Judge under Order XXI, Rule 103 of CPC, Khowai, which was later on transferred to the Court of Learned Addl. District Judge, Khowai in connection with case No.Civil Misc. (Appeal) No.02 of 2022. Learned First Appellate Court heard both the sides and finally, dismissed the appeal affirming the judgment and order of Learned Civil Judge, Senior Division in connection

with Case No.Misc. (Appeal) No.45 of 2021 with modification of exonerating the payment of cost of Rs.20,000/- on the ground that the appeal is a statutory right of the petitioner-appellant. After that, the present appellant has preferred this appeal on the ground that both the Courts below did not consider the long standing possession of the appellant, herein, being an aged lady. Nor they appreciated the evidence on record and urged for allowing this appeal setting aside the judgment of the Learned First Appellate Court and to pass an order for restoration of possession of the suit land i.e. the decretal land to the appellant.

04. On the other hand, Learned Senior Counsel, Mr. Sankar Deb, for the plaintiff D.H. O.P. respondents first of all drawn the attention of this Court that this appeal is not maintainable on the ground that in view of the provision provided under Section 100 of CPC, since no decree was passed by the Learned First Appellate Court, so, this present appeal is not maintainable as the same is barred by law. Learned Senior Counsel, Mr. Sankar Deb thereafter submitted that regarding the subject matter of the suit land, so many litigations took place amongst the parties and finally, the matter went up to the Hon'ble Supreme Court and the Hon'ble Supreme Court allowed the case of the plaintiff D.H. O.P. respondents. So, according to Learned Senior Counsel, Mr. Sankar Deb, the petition filed by the

appellant before the Learned Trial Court was not at all maintainable as she had got no basis to file any application before the Executing Court and Learned Senior Counsel, Mr. Sankar Deb also submitted that the application filed by the appellant before the Learned Trial Court was nothing but to delay the process of execution of decree granted in favour of the plaintiff D.H. O.P. respondents.

Learned Senior Counsel, Mr. Sankar Deb, further submitted that one Gouranga Chandra Paul i.e. the son of the present appellant and his brother, Nitai Paul initially filed a suit before the Court of the then Learned Assistant District Judge, West Tripura, Agartala in connection with T.S. No.73 of 1994 for declaration and for consequential relief claiming their possession over the suit land since 1968 and on the basis of an agreement to purchase. They further asserted that they have acquired right of adverse possession over the suit land by their long possession. But the said suit was dismissed by a judgment on 29.04.2002.

Learned Senior Counsel further submitted that in the said suit, the Learned Court below framed an issue No.3 on the assertions of agreement to purchase of the suit land from the predecessor of the present respondents and thereafter, the suit was dismissed. Challenging that judgment and decree, said Gouranga Chandra Paul and his brother, Nitai Chandra Paul further preferred an appeal which

was numbered as Title Appeal No.24 of 2002 and the case was heard by the then Learned Additional District Judge, Court No.2, West Tripura, Agartala and the Learned Court after hearing both the sides, dismissed the appeal by judgment dated 18.08.2006.

Learned Senior Counsel further drawn the attention of this Court that during the pendency of that appeal, Sri. Gouranga Chandra Paul was expired, so, his legal heirs were substituted. But that time no petition was submitted by the present appellant claiming to be the legal heir of said Gouranga Chandra Paul before the Learned First Appellate Court. Thereafter, said legal heirs preferred Second Appeal before the High Court which was numbered as RSA 36 of 2006 and this High Court by judgment dated 20.06.2014 was pleased to allow the appeal partly with certain observations that as the plaintiffs of the original suit were in possession of the suit land, so, they could not be evicted by due process of law. Thereafter, the plaintiff D.H. O.P. respondents filed one suit before the Court of Learned Civil Judge, Senior Division, Court No.2, West Tripura, Agartala against the legal heirs of said Gouranga Chandra Paul and Nital Chandra Paul for a decree of recovery of possession and the Learned Civil Judge, Senior Division, West Tripura, Agartala in connection with case No.T.S. No.49

of 2016 dated 03.04.2018 decreed the suit in favour of the present D.H. O.P. respondents.

According to Learned Senior Counsel, in the aforesaid cases, nowhere the name of the present appellant was shown as the legal heir of Sri. Gouranga Chandra Paul. After that, challenging that judgment and decree, the defendants of the said suit as appellant has preferred an appeal before the Court of Learned District Judge, West Tripura, Agartala which was numbered as T.A. No.15 of 2018 and the then Learned District Judge, by judgment dated 29.04.2019 further dismissed the appeal in favour of the original plaintiffs of case No.T.S. No.49 of 2016 and accordingly, decree was drawn up.

Thereafter, challenging that judgment of the then Learned District judge, West Tripura, Agartala, the appellant-defendants of that suit again preferred Second Appeal before the High Court which was numbered as RSA 24 of 2019 and this High Court by order dated 14.05.2019 also dismissed the appeal as no substantial question of law was made out.

After that, the said appellant-defendants further approached before the Hon'ble Supreme Court challenging the said judgments of the High Court and the Hon'ble Supreme Court by order dated 03.09.2021 in Special Leave to Appeal No.20169 of 2019 dismissed the SLP.

Learned Senior Counsel, Mr. S. Deb again submitted that before the High Court and also before the Hon'ble Supreme Court, nowhere, the appellants being the legal heirs of said Gouranga Chandra Paul never shown the name of the present appellant as the legal heir of said Gouranga Chandra Paul. Thus, they have suppressed the name of the present appellant as one of the legal heir of said Gouranga Chandra Paul.

Learned Senior Counsel also submitted that thereafter, the D.H. plaintiff O.P. respondents filed execution petition before the Court of Learned Civil Judge, Senior Division for putting the decree into execution on 06.07.2018 which was numbered as Ex(T) 25 of 2018 arising out of T.S. 49 of 2016. In the said execution proceeding, the present appellant being a stranger/third party filed one objection petition on 12.11.2021 under Order XXI, Rule 97-101 of CPC and on the basis of that a separate misc. case was registered by Learned Trial Court and after hearing and taking evidence on record, Learned Trial Court/Executing Court dismissed the petition which was numbered as Civil Misc. No.45 of 2021 by order dated 29.09.2022 and after that the present appellant again preferred an appeal under Order XXI, Rule 103 of CPC challenging the judgment and order dated 29.09.2022 before the Court of Learned District Judge which was numbered as Civil Misc. (Appeal) No.02 of 2022 and thereafter, after

hearing, Learned Additional District Judge, Khowai by order dated 27.07.2023 passed in Civil Misc. (Appeal) No.02/2022 dismissed the appeal upholding the order of Learned Trial Court/Executing Court.

Thereafter, the present appellant again preferred another appeal under Section 104 read with Order XXI, Rule 103 of CPC against the said order of Learned First Appellate Court before this Court which was numbered as SAO 01 of 2023 and this High Court after hearing both the sides also dismissed the same and in para No.19, this High Court came to the observation that the present appellant has failed to convince the Court by producing any documentary evidence to say that the appellant was/is in adverse possession having right over the property. After that, this Second Appeal under Section 100 of CPC is again preferred by the appellant.

Referring the entire episode, Learned Senior Counsel drawn the attention of this Court that the order impugned was not a decree passed in an appeal for which this Second Appeal under Section 100 of CPC is not maintainable. Moreover, there were no substantial questions of law to formulate in this appeal, so, Learned Senior Counsel prayed for dismissal of this appeal at the stage of admission.

05. More so, in course of hearing of argument, Learned Senior Counsel for the appellant further drawn the

attention of the Court referring Exhibit P/1, exhibited in connection with case No.Misc.No.45 of 2021. From the said exhibited document, it appears that the present appellant is shown to be a legal heir of said deceased, Gouranga Chandra Paul but surprisingly, the other legal heirs of Gouranga Chandra Paul, during these few years, at the time of pressing for litigations from the lower Court to Hon'ble the Supreme Court, nowhere they have projected the name of the present appellant as one of the legal heir of said deceased, Gouranga Chandra Paul. There is also no evidence on record that the present appellant is/was separated from the other legal heirs of said Gouranga Chandra Paul.

06. Thus, according to Learned Senior Counsel, it is clear that the legal heirs of Gouranga Chandra Paul intentionally and purposefully suppressed the name of the present appellant as their co-sharer over the suit land left by the deceased, Gouranga Chandra Paul. The decree passed against the other legal heirs of Gouranga Chandra Paul and Nital Chandra Paul is also equally binding upon the present appellant. Now from the record of the Execution Court, passed in Misc. No.45 of 2021, it appears that the present appellant could not produce any cogent evidence on record to substantiate that the appellant has/had acquired right of adverse possession over the suit land. Although she filed the application as a stranger/third party, but the story of the

appellant that she was a stranger/third party cannot be accepted, since it is on record that she was one of the legal heirs of Gouranga Chandra Paul and the decree passed against the other defendants J.Ds. are also equally binding upon her.

Further, as referred by Learned Senior Counsel for the D.H. O.P. respondents, at the time of hearing of argument regarding earlier pendency of different cases, Learned Counsel for the appellant in course of hearing of argument did not dispute to that fact.

07. Learned Senior Counsel also submitted that although the appellant relied upon Exhibit-P/2 i.e. the Khatian No.60 under Mouza-Teliamura relied upon by the appellant before the Executing Court but wherein in column No.16, the name of Gouranga Paul had been shown as forceful possessor but during the revisional survey and settlement operation, the said record was published on 15.10.1990, wherein the said wrongful entry in the name of Gouranga Chandra Paul was deleted from the Khatian as he was not in lawful possession of the suit land at any point of time. In this regard, the appellant could not give any explanation.

08. Finally, Learned Senior Counsel submitted that since there is no scope to prefer any appeal under Section

100 of CPC as the order passed by the Learned First Appellate Court was not a decree and since the appeal under Section 104 read with Order XXI, Rule 103 of CPC filed by the appellant before the High Court which was numbered as SAO 01 of 2023 was dismissed with detailed observations. So, Learned Senior Counsel urged for dismissal of this appeal with costs.

09. I have heard detailed arguments of both the sides and gone through the records of the Learned Court below. As already stated by Learned Counsel for the respondent DHs that initially Gouranga Chandra Paul, being the son of the present appellant and his brother Nitai Chandra Paul filed one suit which was numbered as T.S. No.73 of 1994 before the Court of Learned Assistant District Judge, West Tripura, Agartala for a decree of declaration and for consequential relief. The said suit was dismissed by judgment and order dated 29.04.2002. In the said suit, as alleged by the Learned Senior Counsel, one specific issue was framed which is as follows:

"3. Whether Defendant No.1 agreed to sell the suit land to the plaintiff and accepted Rs.19,000/- being consideration but refused to execute the sale deed subsequently and whether sale deed to the Defendant No.2 collusive?"

And Learned Court below after conclusion of trial gave the following judgment/order dated 29.04.2002 in connection with case No. T.S. No.73 of 1994:

"The suit is dismissed on contest without cost. The Plaintiffs are not entitled to get declaration that they have acquired the title over the suit land by way of adverse possession and permanent injunction and also for declaration that the deed executed by the Defendant No.2 and also reconveyance deed by the Defendant No.2 in favour of the Defendant No.1, null, and void as prayed for. The parties are directed to bear their respective cost of the suit considering the circumstances. In other words, the Plaintiffs are not entitled to any relief in this suit and the parties shall bear their respective cost of the suit."

10. Challenging that judgment, said Gouranga Chandra Paul (since dead) and his brother preferred an appeal which was numbered as T.A. No.24 of 2002 and during the pendency of that appeal on his death, his following legal heirs were substituted, namely:

1. Smt. Jamuna Rani Paul, wife of Sri Gouranga Chandra Paul.

2. Sri Pradip Paul, son of Sri Gouranga Chandra Paul.

3. Sri Prabir Paul, son of Sri Gouranga Chandra Paul.

4. Sri Biswanath Paul, son of Sri Gouranga Chandra Paul.

5. Smt. Jayarani Paul, daughter of Sri Gouranga Chandra Paul.

11. But surprisingly, the appellant relied upon Exhibit-P/1 as already stated, wherein the name of the present appellant is shown as the legal heir of Gouranga Chandra Paul, but in the substitution application her name was suppressed by the legal heirs, the reason best known to them. However, Learned Additional District Judge, Court No.2, West Tripura, Agartala in connection with Title Appeal

No.24 of 2002 dated 18.08.2006 dismissed the appeal. The operative portion of the judgment and order of the Learned First Appellate Court runs as follows:

"17. Hence, ordered that the appeal is disallowed and dismissed on contest but without cost.

Send down the LCR along with a copy of this judgment."

12. Challenging that judgment, the legal heirs of Gouranga Chandra Paul and said Nitai Chandra Paul preferred Second Appeal before this High Court, which was numbered as RSA No.36 of 2006 and this High Court by judgment dated 20.06.2014 partly allowed the appeal preferred by them. The operative portion of the order runs as follows:

"22.In the present case, the appellate Court arrived at a definite finding that the plaintiffs are in possession of the suit land but the plaintiffs failed to prove their adverse possession. Since the plaintiffs are in possession of the suit land they cannot be evicted save due process of law and therefore, they are entitled to get an injunction in their favour as prayed for in the suit. Their claim of title by adverse possession, since not maintainable, has been rightly refused by the Courts below.

23.The appeal, therefore, is partly allowed.

24.The defendant-respondents are restrained from entering into and/or disturbing the possession of the plaintiffs in the suit land save and except due process of law.

25. Parties are to bear their own costs"

13. Thereafter, in pursuance of the judgment of the Hon'ble High Court the present D.H. plaintiff O.P. respondents filed one regular suit before the Court of Learned Civil Judge, Senior Division, Court No.2, West

Tripura, Agartala, which was numbered as T.S. No.49 of 2016 and Learned Trial Court below by judgment and order dated 03.04.2018 decreed the suit in favour of the present D.H. plaintiffs O.P. respondents. The operative portion of the judgment and order runs as follows:

"In the result, this suit stands decreed without contest and without costs that plaintiffs are entitled for recovery of the possession of the suit land measuring 1½ gandas of Mouja-Teliamura, Khatian no.60, plot no.2362 by way of eviction of the defendants from the suit land. The defendants are hereby directed to handover the vacant possession of the suit land to the plaintiffs within 2(two) months from today. With the above observation the suit is disposed of without contest and without costs."

14. Challenging that judgment, the respondent-defendants of said suit No.T.S. 49 of 2016 preferred an appeal before the Court of Learned District Judge, which was numbered as T.A. No.15 of 2018 before the Court of Learned District Judge, West Tripura, Agartala. Learned District Judge by judgment and order dated 29.04.2019 dismissed the said appeal. The operative portion of the judgment and order runs as follows:

"Now, therefore, it is held that the appeal is devoid of merit and accordingly same is dismissed with cost in favour of the plaintiffs-respondents. The judgment passed by Ld. Civil Judge, Senior Division, Court No.2, West Tripura, Agartala dated 03.04.2018 in Title Suit no.49 of 2016 and consequent decree thereof are affirmed. The appeal is disposed of on contest."

15. Again, the defendants of the original suit i.e. the appellants of the aforesaid Title Appeal No.15 of 2018,

further preferred Second Appeal before the High Court which was numbered as RSA 24 of 2019 and after hearing both the sides, this High Court by judgment and order dated 14.05.2019 again dismissed the appeal filed by the appellants. The operative portion of the order of the High Court runs as follows:

"Mr. Biswas, learned counsel has further submitted that the suit may be remanded for extending opportunity to the defendant-appellants to file the written statement, but in a categorical words the first appellate court has discarded such prayer, inasmuch as, according to the first appellate court, no fruitful purpose in the circumstances of the case would be served. If the suit is remanded, this will be nothing short of abuse of the process of the court. In the premises as stated, the judgment of the trial court has been held to have not suffered any wrong or illegality. By means of this appeal, the said judgment of the first appellate court has been challenged.

No substantial question of law is made out in this appeal. The grounds of objection as raised are all shut and closed in the former suit or by the order of this High Court when similar objection was carried out. Hence, this appeal stands dismissed.

However, Mr. Biswas, learned counsel has submitted that the appellants may approach the apex court in respect of the order passed by this court, if some reasonable time is provided to them.

Within a period of 3(three) months, the appellants may take recourse as proposed. During that time, the execution case as reported to have set in motion shall not proceed."

16. After that, the said appellants further preferred SLP before the Hon'ble Supreme Court and the Hon'ble Supreme Court in SLP No.SLA (C) No.20169 of 2019 by order dated 03.09.2021 dismissed the Special Leave to Appeal:

"We do not see any reason to interfere. The Special Leave Petitions are, accordingly, dismissed. Pending application, if any, also stand disposed of."

17. Thereafter, the decree-holders preferred execution case which was numbered as Ex(T)25 of 2018 before the Learned Trial Court wherein the present appellant filed an application under Order XXI, Rule 97-101 of CPC which was numbered as Misc.45 of 2021 and after taking evidence, Learned Trial Court below dismissed the same application filed by the appellant. The operative portion of the order dated 29.09.2022 runs as follows:

"27. As a sequel to the above findings, I hold that the petitioner even failed to establish her claim of possession over any part of the decretal land and accordingly she is not entitled to any relief at all. The petition stands dismissed.

28. The petitioner is asked to pay an amount of Rs. 20,000/- (Rupees Twenty Thousand) to the DH/OPs for resisting the execution without any just ground."

18. Challenging that order, the present appellant further preferred appeal before the Court of Learned Additional District Judge, Khawai which was numbered as Civil Misc. (Appeal) No.02 of 2022 and the same was also dismissed by order dated 27.07.2023. For the sake of convenience, I would also like to refer here in below the operative portion of the order of Learned First Appellate Court in Misc. (Appeal) No.02 of 2022 which runs as follows:

"Due to the aforesaid findings, I hold that the appellant petitioner has failed to establish her claim of possession over any part of the decretal land and the Trial Court has arrived at a correct finding after

considering all the oral and documentary evidences. So, I do not find any ground to interfere with the order of Ld. Civil Judge (Sr. Div) Court No.2, Khowai dated 29.09.2022 in connection with case No.Misc 45 of 2021 arising out of Ex(T) 25 of 2018. But the cost which has been imposed upon the petitioner to pay an amount of Rs.20,000/- to the D.H./O.Ps appears to be exorbitant and meaningless because the statute provides, every right to the petitioner for resisting the execution if he or she has any legitimate case. Right to appeal is a statutory right which can be exercised by any legitimate person to substantiate his or her claim. The present appellant is an aged lady about 90 years of age and she may not be knowing the intricacies of law, so for preferring appeal, I do not find prudent to impose cost of Rs.20,000/- upon the appellant petitioner. So I direct that the cost of Rs.20,000/- imposed upon the appellant-petitioner is hereby rejected and I order no cost to be paid by the appellant-petitioner to the D.H/O.Ps.

In the result the appeal is dismissed as it is devoid of merit.

The Stay Order, if any, shall stands vacated.

With the aforesaid observation the present appeal is disposed of on contest.

Let the copy of this Final Order along with the L.C Record be sent back to the concerned Trial Court after observing all legal formalities."

19. Thereafter, as already stated the appellant again preferred appeal before the High Court under Order XXI, Rule 103 read with Section 104 of CPC which was numbered as SAO No.01 of 2023 and after hearing both the sides, this High Court by judgment and order dated 05.10.2023 also dismissed that appeal. The operative portion runs as follows:

"[21] The present SAO has also been filed under Order XXI, Rule 103 of CPC. As per Rule 103, it relates to Rule 97 to 101 and none of the rules comes to the rescue of the appellant for preferring the present appeal. Section 104 of CPC prescribes no appeals lie except on the enumerated provisions of the Code. Since the claim of the appellant has been rejected by the Court below in case No.Civil

Misc. (Appeal) 02 of 2022 by order dated 27.07.2023, if the same is read in consonance with the Rule 103 of CPC, it needs to be treated itself as a decree. Hence, the appellant herein, aggrieved by the said decree, ought to have preferred a regular appeal under the Code of Civil Procedure but not an appeal against the order.

In view of the above, the SAO is not maintainable and accordingly, the same is dismissed.

As a sequel, miscellaneous application(s), pending if any, shall also stand closed."

20. From the said judgment, it appears that in para No.19 of the said judgment, this High Court specifically gave the following observation:

"[19] It is seen from the record i.e from the petitions filed by the appellant in the instant SAO as well as in the Civil Misc. (Appeal) 02 of 2022 and Civil Misc.45 of 2021, that one of the defendants, „Sri Nitai Ch. Paul“ is the son of „Lt. Haribal Paul“ and the present appellant herein, Smt. Haridasi Paul, wife of Lt. Haribal Paul is related to the Page 10 of 11 defendant in the suit. The name of the said defendant (respondent herein) reflected in the cause-title of the aforesaid petitions, is as under:

".....13. Sri Nitai Ch. Paul
S/O Lt. Haribal Paul -all are
residents of Teliamura Bazar,
PO & PS Teliamura, District
Khowai, Tripura"

It is reasonably presumed that appellant herein is the mother of the defendant. In view of the same, this Court has no hesitation to draw adverse inference against the appellant and the defendant to say that since the defendant had failed to succeed, they have found out a method by filing an application under Order XXI Rule 97 to 103 before the Court below contending that the appellant herein is a stranger/third party to the suit. Therefore, the judgment and decree and the execution proceeding is not binding on her. Admittedly, the appellant herein, failed to convince the Court below by producing any documentary evidence to say that the appellant is in adverse possession and he is having right over the property.

In view of the above, this Court draws an adverse inference against the appellant as well as the defendant as indicated above."

21. Further, I would also like to refer herein below the relevant portion of Section 104 of CPC which runs as follows:

“104. Orders from which appeal lies.—(1) An appeal shall lie from the following orders, and save as otherwise expressly provided in the body of this Code or by any law for the time being in force, from no other orders:—

[*]**

[(ff) an order under section 35A;]

[(ffa) an order under section 91 or section 92 refusing leave to institute a suit of the nature referred to in section 91 or section 92, as the case may be;]

(g) an order under section 95;

(h) an order under any of the provisions of this Code imposing a fine or directing the arrest or detention in the civil prison of any person except where such arrest or detention is in execution of a decree;

(i) any order made under rules from which an appeal is expressly allowed by rules:

[Provided that no appeal shall lie against any order specified in clause (ff) save on the ground that no order, or an order for the payment of a less amount, ought to have been made.]”

22. Now, after hearing detailed argument of both the sides and after going through the records of the Learned Court below and after going through the series of judgments and the last judgment of this High Court in SAO No.01 of 2023 wherein this High Court already gave a specific finding in para No.19 of the said judgment that the appellant has failed to prove her right of adverse possession over the suit land. So, this Court deems it prudent to decide the following questions to decide this appeal:

“1) Whether the appeal filed by the appellant is maintainable under Section 100 of CPC?

2) Whether there is any substantial questions of law to be formulated in this appeal?”

23. Learned Counsel for the appellant as already stated that in pursuance of the judgment of the High Court in SAO No.01 of 2023, the appellant has preferred this Second Appeal under Section 100 of CPC. Learned Counsel further submitted that both the Courts below failed to appreciate the evidence on record of the appellant regarding her plea of adverse possession over the suit land for which the appellant was compelled to file the Second Appeal under Section 100 of CPC.

Learned Counsel for the appellant further submitted that the order passed by the Learned First Appellate Court was a decree, so, there was every scope on the part of appellant to file this Second Appeal, since, as per Section 100 of CPC, appeal shall lie to the High Court from every decree passed in appeal and the order of Learned Additional District Judge was also a decree, so, on this point, Learned Counsel for the appellant submitted that this present appeal is very much maintainable and since the Learned Courts below failed to appreciate the evidence on record, the plea of adverse possession raised by the appellant. So, the interference of this Court is required and urged for setting aside the order passed by Learned Additional District Judge, Khowai, Judicial District in Civil Misc. (Appeal) No.02 of 2022.

24. On the other hand, as already stated, Learned Senior Counsel, Mr. S. Deb for the respondents D.H. submitted that this present appeal was not maintainable as the order passed by Learned Additional District Judge was not a decree, so, the present appeal filed under Section 100 of CPC be dismissed henceforth.

Learned Senior Counsel further submitted that the present appellant suppressed the fact that she was one of the legal heirs of Gouranga Chandra Paul and as already stated the legal heirs of Gouranga Chandra Paul in the series of litigations pending amongst the rival parties never submitted that the appellant was one of the legal heirs.

25. Now, only to resist the decree with a vague plea of possession, she appeared before the Learned Trial Court stating to be a stranger and a third party filed objection petition which was lawfully dismissed by the Learned Trial Court in Civil Misc. No.45 of 2021 and thereafter, the present appellant preferred an appeal under Order XXI, Rule 103 of CPC, which was also dismissed by the Learned First Appellate Court on the ground that the plea of adverse possession could not be established by the appellant. So, Learned Senior Counsel urged for dismissal of this appeal being not maintainable and there are no substantial questions of law to be formulated.

26. Now for the sake of convenience, I would like to refer herein below the relevant provisions under Order XXI, Rule 97-101 of CPC which provides as under:

“97. Resistance or obstruction to possession of immovable property.—

(1) Where the holder of a decree for the possession of immovable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the Court complaining of such resistance or obstruction.

(2) Where any application is made under sub-rule (1), the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.

98. Orders after adjudication.—(1) Upon the determination of the questions referred to in rule 101, the Court shall, in accordance with such determination and subject to the provisions of sub-rule (2),—

(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.

(2) Where, upon such determination, the Court is satisfied that the resistance or obstruction was occasioned without any just cause by the judgment-debtor or by some other person at his instigation or on his behalf, or by any transferee, where such transfer was made during the pendency of the suit or execution proceeding, it shall direct that the applicant be put into possession of the property, and where the applicant is still resisted or obstructed in obtaining possession, the Court may also, at the instance of the applicant, order the judgment-debtor, or any person acting at his instigation or on his behalf, to be detained in the civil prison for a term which may extend to thirty days.

99. Dispossession by decree-holder 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.

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.

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."

27. In the given case, the appellant challenging the order passed by the Learned Trial Court in Civil Misc.45 of 2021 arising out of Ex(T)25 of 2018 preferred appeal before the Court of Learned District Judge which was later on transferred to the Court of Learned Additional District Judge, Khowai and the case was numbered as Civil Misc. (Appeal) 02 of 2022 under Order XXI, Rule 103 of CPC and challenging the order of dismissal of appeal, they preferred SAO before the High Court which was also dismissed by this High Court vide order dated 05.10.2023 in connection with SAO 01 of 2023, as already stated.

28. Now, we are to decide whether the order passed under Order XXI, Rule 103 of CPC is a decree or not. For the sake of convenience, I would like to refer herein below Order XXI, Rule 103 of CPC, which provides as under:

"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."

29. In this regard, I would like to refer one citation of our Hon'ble Supreme Court reported in **Asgar and Others vs. Mohan Varma and Others** dated 05.02.2019, reported in **(2020) 16 SCC 230**, wherein in para No.46 Hon'ble the Apex Court observed as under:

"46 .In view of the settled position in law, as it emerges from the above decisions, it is evident that the appellants were entitled, though they were strangers to the decree, to get their claim to remain in possession of the property independent of the decree, adjudicated in the course of the execution proceedings. The appellants in fact set up such a claim. They sought a declaration of their entitlement to remain in possession in the character of lessees. Under Order 21 Rule 97, they were entitled to set up an independent claim even prior to their dispossession. Under Order 21 Rule 101, all questions have to be adjudicated upon by the court dealing with the application and not by a separate suit. Upon the determination of the questions referred to in Rule 101, Order 21 Rule 98 empowers the court to issue necessary orders. The consequence of the adjudication is a decree under Rule 103."

30. Further, in **Sameer Singh and Another vs. Abdul Rab and Others** dated 14.10.2014 reported in

(2015) 1 SCC 379, wherein in para No.22, Hon'ble the Apex Court also observed as under:

"22. In Babulal: *Babulal v. Raj Kumar*, (1996) 3 SCC 154 the appellant apprehending that it would be dispossessed in an execution proceeding had filed an application based on possessory title and obtained interim injunction. He had also filed an application stating, inter alia, that he should not be dispossessed. His objection was overruled by the executing court holding that since he had not been dispossessed, an application under Order 21, Rule 98 was not maintainable. The said view was affirmed by the High Court in civil revision petition. The Court while interpreting the Order 21, Rules 98 to 102 referred to the decision in *Bhanwar Lal v. Satyanarain*:(1995) 1 SCC 6 and opined that it is clear that an adjudication is required to be conducted under Order 21, Rule 98 before removal of the obstruction caused by the objector or the appellant and a finding is required to be recorded in that behalf. The Court ruled that the order is treated as a decree under Order 21, Rule 103 and it is subject to an appeal. It has been observed in the said case that prior to 1976, the order was subject to suit, but under the amended Code, right of suit under Order 21, Rule 63 of old Code has been taken away, and the determination of the question of the right, title or interest of the objector in the immovable property under execution needs to be adjudicated under Order 21, Rule 98 which is an order and is a decree under Order 21, Rule 103 for the purpose of appeal subject to the same conditions as to an appeal or otherwise as if it were a decree. The Court further opined that the procedure prescribed is a complete code in itself and, therefore, the executing court is required to determine the question.

31. From the aforesaid principals of law laid down by the Hon'ble Supreme Court, it is clear that the order passed under Order XXI, Rule 103 be treated as a decree which is subjected to an appeal. More so, in deciding the matters in controversy, this Court also has done some legal exercise on on ChatGPT, searching for the following query:

"i) Whether the Second Appeal would lie under Section 100 of CPC challenging the order passed in First Appeal under Order XXI, Rule 103?

Research taking assistance of GPT-4o shows:

An order passed under Order 21 Rule 103 of the Civil Procedure Code (CPC) is considered a decree. As such, it is appealable as a decree under Section 96 of the CPC. A second appeal to the High Court under Section 100 of the CPC is permissible against the first appellate court's order under Order 21 Rule 103, provided that the appeal involves a substantial question of law. Thus, a second appeal under Section 100 CPC can be preferred against an order of the first appellate court under Order 21 Rule 103, subject to the condition that it raises a substantial question of law."

From the above, also it appears that there is scope for preferring appeal under Section 100 of CPC, if there is material to raise substantial question of law.

32. Situated thus, as submitted by the Learned Senior Counsel, Mr. S. Deb for the respondent D.H., that the present appeal is not maintainable under Section 100 of CPC is not correct, cannot be accepted, rather it appears that the appeal filed by the appellant was very much maintainable under Section 100 of CPC before the High Court since, the order of Learned Additional District Judge in Misc. Appeal No.45 of 2021 was a decree.

33. Now, regarding formulation of substantial question of law in the light of judgment of the Hon'ble Supreme Court of India in **Nazir Mohamed vs. J. Kamala And Ors.** reported in **(2020) 19 SCC 57**, it appears that

the following factors are needed to be taken into consideration:

“(i) The word “substantial” means having substance, real, of sound worth, important or considerable. It contrasts with something technical, of no consequence, or merely academic.

(ii) A substantial question of law must be debatable, not previously settled by law or binding precedent, and must have a material bearing on the decision of the case and/or the rights of the parties.

(iii) There must be a foundation for the question of law laid in the pleadings, and it should emerge from the findings of fact by lower courts. It must be necessary to decide the question of law for a just decision of the case.

(iv) The High Court will generally not interfere with the concurrent findings of the lower courts. Exceptions include cases where material evidence has been ignored or where there is no evidence at all.

(v) The legal effect of the terms of a document is a question of law. Misconstruction of a document or wrong application of a legal principle in construing a document gives rise to a question of law.

(vi) A question of law having a material bearing on the decision of the case, affecting the rights of the parties, will be substantial if it is not covered by any specific legal provisions or settled legal principles and involves a debatable legal issue.

(vii) A substantial question of law arises when a court below has decided a matter ignoring or acting contrary to a clear principle or binding precedent. This arises not because the law is debatable but because the decision violates the settled position of law.

34. Further in **M. Radheshyamlal v. V. Sandhya and Another** dated 18.03.2024 reported in **(2024) SCC OnLine SC 318** wherein in para Nos.11 and 12, 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.

35. Here in the given case from the record of the Learned Trial Court, it appears that the present appellant has totally failed the aforesaid factors to establish her right of adverse possession over the decretal land. So, both the Learned Court below/Executing Court and the Learned First Appellate Court rightly turned down the claim of the appellant in respect of the suit land. Furthermore, in the application filed by the appellant before the Executing Court, the quantum of land was shown as 14 ½ gandas in the schedule but factually, it should be 0.030 acres. There was no explanation in this regard from the side of the appellant in course of hearing of argument. Even, in view of the principle of law laid down by the Hon'ble Apex Court in **Nazir Mohamed vs. J. Kamala And Ors.(supra)** and also on perusal of the records of the Learned Court below, further it appears that there is no material in this case to formulate any substantial question of law. So, the points for determination, as mentioned above are accordingly answered in negative.

36. Situated thus, after hearing both the sides and also on considering the materials on record, it appears to this

Court that there is/are no material in this appeal to formulate any substantial questions of law. So, the present appeal filed by the appellant under Section 100 of CPC is not maintainable and the same is liable to be dismissed which I hereby do.

37. In the result, the appeal filed by the appellant under Section 100 of CPC is hereby dismissed on contest on the ground that there is no materials to formulate any substantial questions of law in this appeal. Hence, the same is dismissed on admission stage. The judgment/order dated 27.07.2023 delivered by the Learned Additional District Judge, Khowai in connection with case No.Civil Misc (Appeal) No.02 of 2022 arising out of the case No.Misc.45 of 2021 in Ex(T) 25 of 2018 is hereby upheld and accordingly, it is affirmed.

38. Since, the subject matter of the dispute is a long pending one and the matter is pending for execution of decree before the Learned Trial Court. So, all endeavour should be made by the Learned Trial Court to execute the decree passed in connection with T.S. 49 of 2016 in case No.Ex(T) 25 of 2018 preferably within a period of three months from the date of receipt of the copy of this judgment.

Prepare decree accordingly.

Send down the LCRs along with copy of the judgment for immediate compliance.

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

JUDGE



**MOUMITA
DATTA**
Purnita

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