

**HIGH COURT OF TRIPURA
AGARTALA**

RSA No.37 of 2023

1. Amal Baidya,
S/o Late Jagadish Baidya
Age 46 years

2. Krishna Baidya,
S/o Late Jagadish Baidya
Age 52 years

All are residence of North Kalabaria, P.O. Maichara,
P.S-Belonia, District-South Tripura.

.....Appellant(s).

Versus

1. Shri Joydev Das,
S/o Late Nishi Kanta Das
A resident of Village:-North Jolaibari
P.S:-Baikhora, District:-South Tripura

2. Shri Vidyasagar Baidya,
S/o Late Jagadish Baidya,
A resident of Kalabaria, P.O- Maichara, P.S-Belonia,
District-South Tripura. PIN-799155

.....Respondent(s).

With

RSA No.38 of 2023

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S/o Late Jagadish Baidya
Age 46 years

2. Krishna Baidya,
S/o Late Jagadish Baidya
Age 52 years

All are residence of North Kalabaria, P.O. Maichara,
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.....Respondent(s).

For Appellant(s)	:	Ms. Pinki Chakraborty, Advocate.
For Respondent(s)	:	Mr. P. Roy Barman, Senior Advocate. Ms. A. Debbarma, Advocate.
Date of Hearing & Judgment	:	12.04.2024
Whether fit for reporting	:	No.

 B E F O R E
HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA

J U D G M E N T (O R A L)

Both the appeals RSA No.37 of 2023 and RSA No.38 of 2023 have arisen out of a common judgment passed by Ld. District Judge, South Tripura, Belonia dated 03.04.2023 in Title Appeal No.2 of 2018 and Title Appeal No.03 of 2018 (Cross Appeal) and are heard simultaneously and are being disposed of by a common order.

[2] The present appellants and respondent no.2, the three brothers as plaintiffs instituted Title Suit No.08 of 2011 praying for declaration of their right, title and interest in the suit land by way of adverse possession along with consequential relief of injunction against the present respondent no.1. The present respondent no.1 in turn instituted Title Suit No.44 of 2011(CC) by way of filing counter claim against the present appellants and respondent no.2 praying for declaration of his right, title and interest over the suit land alongwith prayer for recovery of possession. Ld. Civil Judge, Junior Division, Belonia dismissed the

suit bearing no. TS 08 of 2011 vide judgment dated 23.3.2018 and allowed said TS 44 of 2011 (CC) on the same day by a separate judgment by declaring right, title and interest of the present respondent no.1 in the suit land and by directing recovery of possession of the suit land from the present appellants and respondent no.2.

[3] Against the judgment and decree passed in TS 08 of 2011, the original plaintiffs i.e. the three brother preferred Title Appeal bearing no. 02 of 2018 and against the judgment and decree passed in said TS 44 of 2011 (CC), they preferred Title Appeal No. 03 of 2018 (Cross Appeal). Both the appeals were heard together by the Ld. District Judge, South Tripura, Belonia and were dismissed by the said Ld. Court vide common judgement dated 03.04.2023. Now, against the said common judgment and decree, two second appeals are filed in this Court bearing no. RSA No.38 of 2023 (against the judgment passed in relation to TA No.02 of 2018) and RSA No.37 of 2023 (against the judgment passed in relation to Title Appeal No.03 of 2018). In that context, though a common order is being passed in respect of both the second appeals, but for convenience of discussions, RSA No.38 of 2023 is being taken up as the lead case.

[4] The claim of the plaintiffs has been that the original owner of the suit land of 1.96 acres of Mouja-Kalabaria under Maichara T.K. within the Belonia Revenue Circle was the present respondent no.1 getting the same by way of allotment from

Government and he transferred the suit land to the plaintiffs' predecessor namely Late Jagadish Baidya by an unregistered deed of sale dated 25.04.1989 and since then they have been possessing the suit land adversely to the interest of the original owner i.e. respondent no.1. In the year 2007 the department of Railway through the Government of Tripura initiated the proposal for acquisition of certain lands including some portion of suit land for extension of railway track from Agartala to Sabroom and suddenly hearing the same, the respondent no.1 came forward to lodge his claim over the suit land with an intention to grab the awarded money and tried to dispossess the plaintiffs from the suit land. This is the reason why the suit was instituted by the plaintiffs for declaration of their right, title and interest in the suit land by way of adverse possession which was thwarted by the sole defendant-respondent no.1 by filing the counter claim for recovery of his possession.

[5] Both side led their respective evidences both oral and documentary in the said suit and counter claim and finally Ld. Trial Court rejected said original suit and allowed the counter claim as indicated above. Said decisions of the Trial Court were also affirmed by the First Appellate Court as stated.

[6] Ms. Pinki Chakraborty, learned counsel representing the said original plaintiff appellants refers different paragraphs of judgments of both Trial Court and the First Appellate Court to contend that there were manifest errors committed by the Trial

Court in appreciation of the evidences as adduced by the appellants in the original suit leading to a perverse decision which was further carried over in the judgment of the Ld. First Appellate Court.

[7] Ms. Chakraborty, learned counsel also relies on a decision of Hon'ble Supreme Court in **Ravinder Kaur Grewal & Others vs Manjit Kaur & Ors, (2019) 8 SCC 729** wherein at para 52 & 53 it was observed that under Article 64 also suit can be filed based on the possessory title and law never intends a person who has perfected title to be deprived of filing suit under Article 65 to recover possession and to render him remediless. Regarding law of adverse possession it was also observed that such law does not qualify only a defendant for the acquisition of title by way of adverse possession, it may be perfected by a person who is filing a suit. It only restricts a right of the owner to recover possession before the period of limitation fixed for the extinction of his rights expires.

[8] Ms. Chakraborty, learned counsel also refers another decision of this Court rendered in **Laxmi Patari (Datta) & Ors. vs Bibha Datta & Ors, (2016) 2 TLR 1055** wherein at para 17 this Court had given reference of another decision of Hon'ble Supreme Court rendered in **Amrendra Pratap Singh vs Tej Bahadur Prajapati, (2004) 10 SCC 65** and the relevant paragraphs as quoted therein are reproduced below:

"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 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."

[9] Ms. A. Debbarma, learned counsel representing the respondent no.1 on the other hand submits that contradictory and self condemning pleas were taken by the plaintiffs by asserting on one hand that their predecessor had entered into the suit land by way of purchase by an unregistered deed dated 25.04.1989 and on the other hand, asserting adverse possession therein. According to her, such contradictory claims are not tenable at law. Ms. Debbarma, learned counsel also argues that the possession howsoever be long cannot be treated as an adverse possession unless the elements of adverse possession are satisfied. Finally Ms. Debbarma, learned counsel submits that there has been concurrent findings of both Ld. Trial Court as well as of Ld. First Appellate Court and, therefore, the passageway for admission of both the regular second appeals is now closed for absence of any substantial questions of law.

[10] It is the specific plea of the plaintiffs that their predecessor had entered into the suit land on the strength of an unregistered deed of sale dated 25.04.1989. The relevant

paragraph No.5 of the plaint of TS 08 of 2011 in this context assumes relevance and, therefore, quoted hereinbelow:

"5. That the defendant released his possession by way of an unregistered sale deed and it was made on 25.04.1989 and thenceforward the predecessor of the plaintiff and thereafter the plaintiffs are in peaceful possession of the said land. As such the plaintiffs have perfected their title over the land on and from 25.04.2001. The possession was open, uninterrupted and continuous and it hostile to the right, title and interests of the plaintiff. The predecessor of the plaintiff and thereafter the plaintiff knowing fully well that by an unregistered deed, they did not derive or adaptable title, till then they retained the title in hostile assertion of their adverse title."

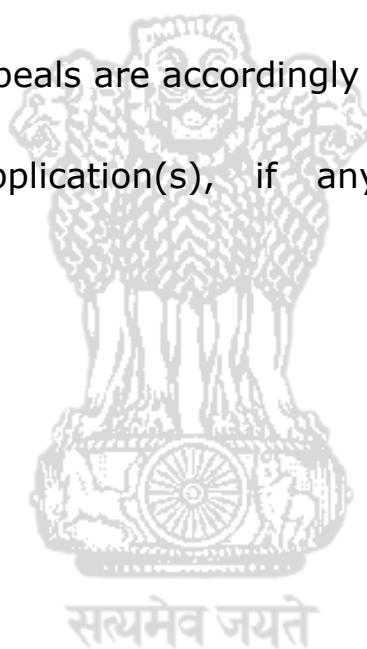
[11] Thus, this assertion itself evinces that the basic claim of the plaintiffs over the suit land was on the basis of purchase by said unregistered deed of sale and they continued their possession based on such right of transfer/purchase. There is no material in the record as to how suddenly their possession became hostile to the original owner. Ms. Chakraborty, learned counsel argues that when the unregistered deed of sale was an illegal deed, so, the basic entry of plaintiff into the suit land was unauthorised and such unauthorised possession was continued by the plaintiffs for more than the statutory period of limitations continuously and uninterruptedly and therefore, the title of the plaintiffs became perfected for inaction on the part of the original owner. This Court is not, however, convinced with this submission inasmuch as when there was no existence of any *hostile animus* while taking entry into the suit land, mere continuance of possession by the plaintiffs

would not change the nature of their possession unless there has been a specific plea of ouster taken and proved by the plaintiffs.

[12] Thus, this Court finds no error or perversity in the judgments passed by both the Trial Court and the First Appellate Court. In absence of any substantial questions of law to be formulated for admission of the appeal, both the appeals bearing RSA No.37 of 2023 and RSA No.38 of 2023 are hereby dismissed being not admitted.

Both the appeals are accordingly disposed of.

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



JUDGE

**RUDRADEEP
BANERJEE**

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