

**HIGH COURT OF TRIPURA
AGARTALA
CRP No.10 of 2024**

Sri Manoranjan Debnath & others

..... Petitioner(s);

Versus

Sri Dulal Debnath & others

.....Respondent(s)

For Petitioner(s) : Mr. D. Deb, Advocate,
Mr. D. Debnath, Advocate.

For Respondent(s) : None.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

08/02/2024

Heard Mr. D. Deb, learned counsel for the petitioners.

2. Petitioners are the proforma-defendants in Title Suit No.75/2021. The suit has been instituted by the plaintiff/respondent No.1 against the defendants-legal heirs of late Iman Uddin Chowdhury, the owner of the suit land as recorded in khatian No.283/1, 283/2 and 283/3 for declaration of his title by adverse possession and for confirmation of possession and perpetual injunction with other consequential reliefs. Plaintiff/respondent No.1 filed Civil Misc.(Inj) No.50/2021 seeking temporary injunction/ad-interim injunction restraining the defendant-O.P.s, their men and agents from entering the suit land and not to disturb the possession of the plaintiff-petitioner on the suit land.

3. The Trial Court of learned Civil Judge (Sr. Div.), Court No.2, West Tripura, Agartala granted temporary injunction by order dated 07.02.2022 by which the principal defendants-O.P.s, their men and agents were restrained from entering into the suit land and/or interfering with the peaceful possession of the plaintiff over the suit land. The proforma-defendants i.e. the petitioners herein thereafter preferred a CM Appeal No.07/2022 before the Court of learned

Additional District Judge, Court No.2, West Tripura, Agartala under Order XLIII Rule 1(r) of CPC on the ground that the appellants and the plaintiff were joint owners and possessors of the suit land as per khatian. The learned Trial Court did not consider the right by virtue of constructive possession of the appellants as they, along with the plaintiff, were joint possessors of the suit land. The plaintiff had filed the suit concealing the actual facts that the predecessor of the appellants and the plaintiff namely Mahim Chandra Debnath was the actual owner of the suit land and after his death, the appellants and plaintiff became the joint owners and that possession of one owner amounted to possession of other owners. It was also stated that the suit is not maintainable because a co-owner could not be permitted to seek declaration of right, title, interest against other co-owners on the ground of adverse possession. The plaintiff objected before the learned Appellate Court also claiming that the learned Trial Court has found prima facie possession of the plaintiff and also the balance of convenience lies in favour of him.

4. The learned Appellate Court has discussed the bare facts of the case of the parties which reveal that the plaintiff and the proforma-defendants No.3 to 6 i.e. the present petitioners were the sons and daughters of late Mahim Chandra Debnath who died on 15.02.1985 and his wife also died on 01.03.2020. The original owner of the suit land was one Iman Uddin Chowdhury who died long back. During the lifetime of Iman Uddin Choudhury, the father of the plaintiff i.e. Late Mahim Chandra Debnath forcibly entered into the suit land on 28.03.1966 with his elder son Haripada Debnath and after developing the land, came in forceful possession of the suit land. Iman Uddin Chowdhury never resisted the forceful possession of the plaintiff who was cultivating the suit land, earning usufruct therefrom by harvesting the crops from 1966. In the year 1981 when Iman Uddin Chowdhury along with his men tried to evict Mahim Chandra Debnath,

they failed. His sons never gave any objection about the forceful possession of the suit land or sought to evict Mahim Chandra Debnath from the suit land. Such forcible possession has also been recorded in the record of rights.

5. The learned Appellate Court took note of the fact that after the death of Mahim Chandra Debnath, the forceful possession of the suit land was continued by his wife and sons, who were residing thereon by constructing dwelling house and cultivating fishes on the pond and maintaining their livelihood. In the year 2020, the defendant-O.P.s approached the plaintiff with a revenue record showing the name of the predecessor of the defendants and asked the plaintiff to vacate the suit land, which he denied as they were in occupation for last 55 years. Plaintiff further heard that the defendants in collusion with Sri Manoranjan Debnath i.e. the petitioner herein, tried to forcibly dispossess them from the suit land which would result in irreparable loss. Therefore, he prayed for a temporary injunction against the defendant-O.P.s. The proforma-defendants/petitioners herein claim to be the legal heirs of late Mahim Chandra Debnath and late Renubala Debnath, who were possessing the suit land along with their family members including all sons and daughters and after his death, his wife along with her sons and daughters continued possession over the suit land. The petitioner-Manoranjan Debnath has purchased some paddy lands adjacent to the suit land in the year 1993 and has also been cultivating the same and constructed a building over the suit land in 1984. It was also pleaded that all sons and daughters of Late Mahim Chandra Debnath were frequently visiting their joint property i.e. the suit land. Therefore, the proforma-defendants had a right to enjoy the ancestral property. They, therefore, prayed for rejection of the prayer.

6. The learned Appellate Court also took note of the case of the appellants that Mahim Chandra Debnath had got the land including the suit land in exchange with Iman Uddin Chowdhury, but because of non-availability of original deed of exchange, the record of right in the name of Mahim Chandra Debnath could not be prepared. The learned Appellate Court held that since there was no denial about the possession of the plaintiff over the suit land, he should be protected from any kind of disturbance or interference. The question of constructive possession of the appellants could be proved during the trial. There was no record of right in the name of Mahim Chandra Debnath and the original deed of exchange was also not available which the appellants/petitioners herein had to prove. Therefore, the Appellate Court came to the conclusion that the plaintiff had been able to establish a prima facie case of possession which is also accepted by the appellants/petitioners herein, and were thus entitled to injunction as the balance of convenience lied in their favour and any dispossession during pendency of the suit would result in irreparable injury to him. The proforma-defendants/appellants/petitioners herein, being aggrieved by the impugned order passed by the learned Appellate Court in CM Appeal No.07/2022 have approached this Court under Article 227 of the Constitution of India.

7. Mr. D. Deb, learned counsel for the petitioners, submits that the petitioners are not only a co-owner but also are in adverse possession over the original owner Iman Uddin Chowdhury and constructively possessing the suit land along with the plaintiff. The plaintiff has sought injunction to claim exclusive possession of the suit land which he does not own or possess by virtue of any title. The declaration of title through adverse possession has to be established and the proforma-defendants/petitioners herein have objected to the exclusive possession of the plaintiff through their written statement. As such, the case of the plaintiff

that he was in exclusive possession of the suit land is not correct. Therefore, there was no prima facie case in his favour to allow injunction. Both the learned Trial Court and the Appellate Court have, therefore, erred in law in granting temporary injunction in his favour.

8. I have considered the submission of learned counsel for the petitioners and taken note of the relevant facts from the pleadings on record. I have also gone through the impugned order dated 07.02.2022 passed by the learned Trial Court on the injunction petition and the appellate order dated 11.08.2023 under challenge herein.

The suit for declaration of title on the basis of adverse possession and confirmation of possession with perpetual injunction is directed against the legal heirs of late Iman Uddin Chowdhury. Petitioners herein are the proforma-defendants who also claim to be the legal heirs of the common ancestors i.e. Mahim Chandra Debnath from which the plaintiff also claims inheritance. The revenue records are in the name of the contesting defendants i.e. legal heirs of Iman Uddin Chowdhury from whom the father of the plaintiff, Mahim Chandra Debnath is said to have got forceful possession over the suit land since 1966. Both the learned Trial Court and the Appellate Court appear to have taken note of the fact that the possession of the plaintiff is not in dispute, but the proforma-defendants, who are the petitioners herein, claim to be in constructive possession of the suit land and also assert title through adverse possession over the suit land. However, constructive possession is a matter of proof during trial and the physical possession of the suit land in favour of the plaintiff is not being disputed even by the petitioners herein. The learned Trial Court and the Appellate Court have thought it proper to protect the possession of the suit land in favour of the plaintiff till disposal of the suit by grant of temporary injunction finding a prima facie case

in his favour. Moreover, the proforma-defendants do not seem to have set up a case to claim title through adverse possession like the plaintiff, which they could have raised independently or through a counter claim in the instant suit. If the possession of the plaintiff is not in dispute, the findings of the learned Trial Court as affirmed in appeal that the plaintiff has a prima facie case for grant of interim injunction, which if not granted, could cause irreparable injury, cannot be said to be such an error of jurisdiction which can be gone into by this Court in its supervisory jurisdiction under Article 227 of the Constitution of India.

9. Needless to say, the trial of the suit is underway and the petitioners herein would get an opportunity to adduce evidence as per the case set up through the written statement. However, this Court does not find any grounds made out to interfere in the order of temporary injunction granted in favour of the plaintiff by the learned Trial Court as affirmed in appeal by the impugned order dated 11.08.2023 passed in CM Appeal No.07/2022 by the learned Additional District Judge, Court No.2, West Tripura, Agartala.

10. The instant petition is accordingly dismissed. Pending application(s), if any, shall stand disposed of.

(APARESH KUMAR SINGH), CJ

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