

**HIGH COURT OF TRIPURA
AGARTALA
RFA 17 of 2024**

Sri Mrinal Kanti Mahalanabish		---Appellant(s)
Versus		
Smt. Anuradha Mahalanabish and 4 Ors.		---Respondent(s)

For Appellant(s)	:	Mr. S.M. Chakraborty, Sr. Advocate. Ms. Mampi Chakraborty, Advocate.
For Respondent(s)	:	Mr. Kushal Deb, Advocate. Mr. Monoswaee Dey, Advocate.
Date of hearing and delivery of Judgment and Order:		15.07.2025
Whether fit for reporting	:	No

**HON’BLE JUSTICE DR. T. AMARNATH GOUD
HON’BLE MR. JUSTICE BISWAJIT PALIT
Judgment & Order (Oral)**

Dr. T.Amarnath Goud, J

[1] This is an appeal under Section 96 of the Civil Procedure Code, 1908 against the judgment dated 04.04.2024 passed by the Ld. Civil Judge (Senior Division), Court No.-3, West Tripura, Agartala, in T.S. 84 of 2017 decreeing the suit in favour of plaintiff respondents.

[2] It is the case of the appellant that the plaintiff-respondents as plaintiffs filed a suit for declaration of title under Section 34 of the Specific Relief Act, 1963 and recovery of possession against the defendants for a land measuring 0.0260 acres before the Ld. Civil Judge (Senior Division) Court No-3 West Tripura, Agartala. On being transferred to the Court of Ld. Civil Judge(Senior Division) Court No-3, West Tripura, Agartala the suit was registered as T.S 84 of 2017. The appellant as defendant No-1 contested the suit by filing written statement denying the averments made in the plaint. It was also pleaded by the appellant petitioner that he constructed his dwelling hut to the eastern side of the suit land in the month of April 1974, when a quantum of land measuring 2½ gandas was taken under his adverse possession, which was lying adjacent west of his purchased homestead land since April 1974 and prayed for dismissal of the suit. The

Ld. Trial Court after completion of the trial passed the impugned judgment on 04-04-2024 declaring the right, title, interest of the plaintiff respondents over the suit land and for recovery of possession of the suit land by evicting the appellant from the land measuring 2 1½ gandas and also by removing all obstruction therefrom without considering the pleadings and evidence on record in correct and proper manner. Being seriously aggrieved by the impugned judgment of the Ld. Trial Court the appellant has preferred this appeal before this Court for redress.

[3] It is contended that the finding of the Ld. Court below that the defendant appellant could not produce any document like electric bill, water supply bill in support of the adverse possession is totally an unsustainable and perverse finding of the Ld. Court below in view of the fact that defendant appellant nowhere stated that he has constructed dwelling hut as the suit land by drawing electric line from the Electric Department and water supply line from the appropriate authority and that the suit land under his adverse possession is adjacent to the land purchased by him and under his continuous, open possession from the year 1974 and oral evidence given from the side of DW-2 confirmed his said.

[4] Further it is contended by the learned counsel for the appellant that Ld. Court below miserably failed to appreciate that it was the obligation of the plaintiffs to prove their case against the defendant by placing the correct and complete fact before the Court of law for getting decree in his favour but in the case in hand it would be found that the plaintiff did not approach the Ld. Court below with clean hand, as they suppress the fact of filing a case in the Lok Adalat against the defendant appellant with reference to the same suit land in the year 2009 and offered the defendant appellant to purchase the land within a consideration of Rs 1(one) Lakh, which was refund by the appellant and continued his possession in the same manner he continued it since 1974. and this suppression of material fact itself was sufficient to dismiss the suit by the Ld. Court below.

[5] To support the case of the appellant, reliance has been placed on Para No.61 and 62 of the judgment of the apex court in *Amar Singh vs*

Union of India and Others reported in **(2011) 7 SCC 69** where the apex court has observed in the following manner:

61. *Following these principles, this Court has no hesitation in holding that the instant writ petition is an attempt by the petitioner to mislead the Court on the basis of frivolous allegations and by suppression of material facts as pointed out and discussed above. In view of such incorrect presentation of facts, this court had issued notice and also subsequently passed the injunction order which is still continuing.*

62. *This Court, therefore, dismisses the writ petition and vacates the interim order and is not called upon to decide the merits, if any, of the petitioner's case. No case of tapping of telephone has been made out against the statutory authorities in view of the criminal case which is going on and especially in view of the petitioner's stand that he is satisfied with the investigation in that case.*

[6] Further reliance has been placed on two other judgments of the apex court in ***Amrendra Pratap Singh vs. Tej Bahadur Prajapati and Others*** reported in **(2004) 10 SCC 65** and also in ***Ravinder Kaur Grewal and Others vs. Manjit Kaur and Others*** reported in **(2019) 8 SCC 729**.

[7] On the contrary, the learned counsel for the respondents argued strenuously before this Court that the appeal holds no merit and should be dismissed, upholding the trial court's well-reasoned judgment.

[8] It is primarily contended by the counsel for the respondents that the appellants, as defendants, failed to provide any documentary proof to back their claim of adverse possession. It was stressed that proving adverse possession is the responsibility of the party claiming it, and despite filing a written statement, the defendants produced no documents whatsoever to support their case or contentions through admissible evidence.

[9] Furthermore, the respondents' counsel submitted that the Lok Adalat proceedings involved a distinct cause of action separate from the current suit. It is further argued that any outcome from the Lok Adalat can't be confused with the merits of this dispute, nor does it imply any suppression of facts. The issues in this suit are independent, and prior Lok Adalat proceedings don't weaken the plaintiff's claim.

[10] Given the complete lack of documentary evidence from the defendants regarding adverse possession, the respondents' counsel asserted that the lower court was fully justified in ruling for the plaintiff. It is further contended that the trial court's findings are sound and based on a proper

understanding of the facts and law, warranting no interference from this Court.

[11] Heard learned counsel for the parties.

[12] The present dispute primarily involves Mrinal Kanti Mahalanabish, one of the sons of the late Harendra Ch. Mahalanabish, and two daughters and a son of the late Benoy Mahalanabish (the other son), who are the contesting parties before this Court. The central issue revolves around a claim of adverse possession asserted over 2 and ½ gandas of this total landholding by one of the parties, a claim vehemently opposed by the other. This Court is tasked with determining the validity of this claim, particularly in light of the familial relationship between the parties, and the evidentiary burden placed upon the party asserting adverse possession, especially in the absence of documentary proof.

[13] This Court has carefully considered the submissions of learned counsel for both parties and has perused the records.

[14] The appellant's case hinged on a claim of adverse possession. However, the respondents' counsel rightly pointed out a critical flaw: the appellants, despite filing a written statement, presented no documentary proof whatsoever to substantiate this claim before the trial court. It is a settled legal principle that the burden of proving adverse possession, with its stringent requirements, lies squarely on the claimant. The record is devoid of any evidence like revenue records or tax receipts that would lend credence to their assertion. This fundamental failure to discharge their burden of proof is fatal to their contention.

[15] Furthermore, the argument regarding the Lok Adalat proceedings is unavailing. As correctly submitted, the cause of action in those proceedings is distinct and separate from the present suit. The existence or outcome of the Lok Adalat proceedings neither amounts to suppression of fact nor diminishes the independent merits of the plaintiff's claim.

[16] In view of the complete absence of documentary evidence supporting the appellant's adverse possession claim, and considering the distinct nature of the Lok Adalat proceedings, this Court finds no infirmity

in the judgment of the learned court below. The trial court was entirely justified in allowing the plaintiffs' suit, as the defendants failed to substantiate their defence with credible material. Furthermore, this Court notes that the judgments relied upon by the appellant are factually distinguishable and therefore not relevant to the peculiar facts and circumstances of the present case.

[17] Consequently, this Court finds no reason to interfere with the well-reasoned decision of the learned court below and is of the view that the present appeal is liable to be dismissed.

[18] Accordingly, the appeal is hereby dismissed confirming the impugned judgment dated 04.04.2024 passed by the Ld. Civil Judge (Senior Division), Court No.-3, West Tripura, Agartala, in T.S. 84 of 2017.

B.Palit, J

Dr. T. Amarnath Goud, J



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