

**HIGH COURT OF TRIPURA
AGARTALA**

CRP No.25 of 2023

1. Smti. Radha Rani Mallik, W/o Late Birendra Kr. Mallik,
2. Shri Dulal Mallik,
3. Shri Nepal Mallik,
4. Shri Badal Mallik,
5. Shri Nikhil Mallik,
6. Shri Shibu Mallik,

All are the sons of Late Birendra Kr. Mallik.

7. Smti Kajal Mallik (Sarkar), W/o Sadhan Sarkar,
8. Smti Bijali Mallik (Biswas), W/o Shri Nirupam Biswas,

Both are daughters of Late Birendra Kumar Mallik.

All are residents of Baikhora (Paschim Charakbari), P.O. and P.S. - Baikhora, Santir Bazar, South Tripura

..... Petitioner(s).

V E R S U S

1. Shri Gopal Chandra Mallik,
2. Shri Swapan Mallik,
3. Shri Tapan Mallik,
4. Shri Khokan Mallik,

S/o Late Rabindra Kumar Mallik and late Lilu Bala Mallik

And all are the residents of Santirbazar, P.O and P.S. - Santirbazar, District - South Tripura.

5. Smt. Laxmi Rani Mallik (Sarkar), W/o Shri Dulal Sarkar of Santirbazar, PO and PS - Santirbazar, District - South Tripura.
6. Smti Tulsi Mallik (Bhowmik), W/o Bishnupada Bhowmik of Vill, PO and PS - Baikhora, Santirbazar, District - South Tripura.
7. Smti Mukul Mahajan (Mallik), W/o Late Babul Mallik of Vill - Surpara, PO and PS - Santirbazar, District - South Tripura.
8. Rupa Mallik (Halder), D/o Late Babul Mallik, W/o Shri Himansh Halder of Vill - Nagda, PO and PS Santirbazar, District - South Tripura.
9. Smti Jhumpa Mallik (Das), D/o Late Babul Mallik (Das), W/o Shimul Das of Vill - Nagda, PO and PS - Santirbazar, District –South Tripura.
10. Shri Dipjit Mallik, S/o Late Babul Mallik of Surpara, PO and PS - Santirbazar, District – South Tripura.
11. Shri Bhabotosh Chowdhury, S/o Sarada Charan Chowdhury.
12. Smti Chandra Chowdhury (Sen), W/o Shri Dulal Sen.
13. Smti Jayanti Chowdhury, D/o Bhabatosh Chowdhury.
14. Shri Rajib Chowdhury, S/o Bhabotosh Chowdhury.

Sl. No. 11 to 14 are the residents of Vill - Gardhang, PO - Kanchannagar, PS - Santirbazar, District - South Tripura.

- 15(a) Smti Purnima Bhattacharjee, W/o Lt. Nibaran Bhattacharjee,
- 15(b) Sadhan Bhattacharjee, S/o Lt. Nibaran Bhattacharjee,
- 15(c) Sri Goutam Bhattacharjee, S/o Lt. Nibaran Bhattacharjee,
- 15(d) Smt. Radha Rani Bhattacharjee, D/o Lt. Nibaran Bhattacharjee,

All are the residents of Vill, PO and PS Baikhora, Santirbazar, District-South Tripura, Pin – 799144

- 16(a) Sri Sangam Bhattacharjee, S/o Late Rasamoy Bhattacharjee,
- 16(b) Sri Shyamal Bhattacharjee, S/o Late Rasamoy Bhattacharjee,
- 16(c) Sri Bimal Bhattacharjee, S/o Late Rasamoy Bhattacharjee,
- 16(d) Sri Bishnu Bhattacharjee, S/o Late Rasamoy Bhattacharjee,
- 16(e) Smt. Chandan Bhattacharjee, D/o Lt. Rasamay Bhattacharjee,

All are the residents of Vill - North Sonaichari, PS - Belonia, District - South Tripura, Pin – 799155.

..... Respondent(s).

For Petitioner(s)	: Mrs. Pinki Chakraborty, Advocate.
For Respondent(s)	: Mr. Sudipta Sekhar Debnath, Advocate, Mr. Arjun Acharjee, Advocate, Mr. Dipjyoti Paul, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Date of Argument : 3rd April, 2025.

Date of Judgment & Order : 3rd April, 2025.

Whether Fit for Reporting : Yes

JUDGMENT & ORDER

Heard Mrs. Pinki Chakraborty, learned counsel for the petitioners.

Also heard Mr. Sudipta Sekhar Debnath, learned counsel for the respondent Nos.1 to 10; Mr. Dipjyoti Paul, learned counsel for the substituted legal heirs of respondent No.15 and Mr. A. Acharjee, learned counsel for the substituted legal heirs of respondent No.16.

2. It is the case of the petitioners that the learned District Judge on a reference made by the competent authority under Section 3H(4) of the National

Highways Act, 1956 (for short NH Act, 1956), has wrongly apportioned the amount of compensation in 1/3rd ratio between the petitioners and the two sets of persons who are the respondents. By doing so it has simply confirmed the award passed by the learned Collector and distributed the compensation in three equal shares between the first party and the second party. The first party will get 1/3rd and the second party, consisting of two families i.e. the legal heirs of Subal Ch. Bhattacharjee and legal heirs of Lilu Bala Mallik and Rabindra Kr. Mallik will get 1/3rd each out of the total amount of compensation. Respondents were noticed and they have appeared. Respondent Nos.15 and 16 died and have been substituted by order passed during pendency of this proceeding.

3. Mrs. Pinki Chakraborty, learned counsel for the petitioner submits that in the year 1985, Smt. Bancha Bala Dey @ Hemlata Sarkar filed a partition suit for partition of the land bearing Khatian No.234, Hal Khatian No.139. But after decree of the partition, the suit land was not mutated by preparation of the final decree. Therefore, the entire amount awarded in the name of 11 persons was challenged by the petitioners under Section 3H(4) of the NH Act, 1956. After the said partition decree, Smt. Bancha Bala Dey @Hemlata Sarkar (now deceased) executed one registered Will by which she divided her entire share in favour of the petitioner No.2,3, 4 and 6. From the year 1989 onwards after partition decree, the entire land was under the possession of the predecessor-in-interest of the petitioners and no co-sharer was allowed to enter into the said land. Though the respondents had filed a suit for recovery of the possession of the land which they got as per judgment of partition decree yet they did not continue with the said suit which left the

petitioners possession over the entire suit land undisturbed. Since there was no execution of the partition decree and the petitioners were continuously in possession of the entire land from 1989 without allowing others to enter therein, they have acquired adverse title over the entire land. Therefore, the petitioners are entitled to get the entire compensation, exclusively. The learned Court has not considered the aforesaid fact while distributing the awarded amount in three equal shares. The learned Court under reference ought to have exercised its jurisdiction properly and computed the compensation as per settled law and evidence on record. Reference is made to the decisions rendered by this Court in the case of **Sri Pradip Debnath and others Versus Smt. Shilpi Debnath and others** passed in **WA No.228 of 2019** and by the Madras High Court in the case of **D. Kannan Versus Vijaya Ammal** reported in **2007 Legal Eagle (MAD) 151**.

4. It is submitted that as the petitioners title has been perfected through adverse possession since 1989, they have a valid claim over the entire amount of the award. The learned District Judge has simply confirmed the award passed by the Collector and distributed the compensation in three equal shares between the first party and second party comprising two families without appreciating the settled law of the land. Therefore, the entire amount of compensation to the tune of Rs.47,37,624/- be awarded in favour of the petitioners with statutory benefits.

5. Learned counsel for the respondents have strongly opposed the prayer. It is submitted that the contention of the petitioners that they have perfected their title by adverse possession has not yet seen the light of the day

since there is no decree or judgment to that effect in a duly constituted suit. The contentions raised by the petitioners before the referral Court and the evidence adduced do not justify apportionment of the entire compensation in favour of the petitioners on the plea that their title has been perfected by adverse possession since the respondents never gained possession over the suit land despite a partition decree. The judgment and decree passed in T.S. No.39/1985 dated 05.01.1989 has remained unchallenged. Unless there is a title in favour of the petitioners, the petitioners cannot claim the entire compensation in their favour. The learned referral Court has after consideration of the rival pleas of the parties and the evidence on record rightly held that the petitioners being the first party will get 1/3rd and the second party consisting two families i.e. the legal heirs of Subal Ch. Bhattacharjee and legal heirs of Lilu Bala Mallik and Rabindra Kr. Mallik will get 1/3rd each out of the total amount of compensation. It is submitted that the referral Court does not sit as a Court of original jurisdiction to decide title of the claimants or objectors in a reference made for apportionment of the award under Section 3H(4) of the NH Act, 1956. If the petitioners claimed that their title has been perfected through adverse possession, they may pursue their cause of action in an appropriate proceeding before the competent Court of civil jurisdiction in accordance with law.

6. I have considered the submissions of the learned counsel for the parties and taken note of the materials placed from records. I have also gone through the impugned judgment and order of the referral Court. The reasons and the decision taken by the referral Court are extracted hereunder in order to avoid repetition:

“8. First party-petitioners have examined six witnesses. PW-1, Sri Dulal Mallik has exhibited and relied on total eleven different documents. PW-2 to PW-5 have given the same ground of deposition in favour of the first party. PW-6, Sri Rakhal Ch. Datta is a Deed Writer and he has been examined to identify his signature and the signature of one Sri Niranjan Chakraborty, the scribe of the registered Will dated 05.06.1993 executed by one Smt. Bancha Bala Dey, D/O. Late Uday Ch. Malla @ Smt. Hemlata Sarkar, W/O. Late Rajkumar Sarkar. By this Will, Bancha Bala Dey has given her share to Nepal Mallik, Badal Mallik, Dulal Mallik, Nikhil Mallik and Shibu Mallik, sons of Birendra Mallik, the first party. By this Will, total land measuring 0.14 acres from Hal (present) Plot No. 897 and land measuring 0.16 acres from Hal (present) Plot No. 883 were given to the above five members from the first party. Exhibit-1, 1(i) to 1(xx) are the judgment, decree and report of Survey Commissioner of Case No. T.S. 39 of 1985. On perusal of these documents this court finds that one Smt. Bancha Lata Dey filed the partition suit against Sri Gopal Chandra Mallik and others i.e. the legal heirs of Lila Bala Mallik, W/O. Rabindra Kr. Mallik, the second party-petitioners. By this judgment learned Court has given finding that Smt. Bancha Lata Dey is entitled to get 1/6th share out of total suit land measuring 1.81 decimals by way of this partition suit.

9. In the judgment of Case No. T.S. 39 of 1985 the name of the petitioner has been written as Bancha Lata Dey, but in the Will the name of testator has been written as Bancha Bala Dey @ Hemlata Sarkar. The first party has also relied on the old Khatian No. 139/1, 139/2 which has been exhibited as exhibit-6, 6(i) and 7, 7(i) and the new Khatian No. 139/1 and 139/2 has been exhibited as exhibit-8, 8(i) and 9, 9(i). From the exhibited documents of the first party this court comes to the conclusion that the names of the second party have been mentioned in judgment of Case No. T.S. 39 of 1985 as other co-sharers of the land measuring 1.81 acres which was before the court for partition through that case. The other documents like khatian also shows that the names of second party have also been mentioned in old khatian and also in new khatian exhibited by the first party. Although learned counsel of the first party has argued that his party is claiming the right in the land on the principle of adverse possession against the second party as the second party has not challenged the judgment and decree given in Case No. T.S. 39 of 1985. But this court is of the view that this court has not to decide the title in this reference, rather this court has to decide only the point that whether the amount of compensation for the acquired land can be given to both the parties or only the first party is entitled.

10. One Sri Swapan Mallik has filed his examination-in-chief on affidavit as OPW-1 and one another witness namely Sri Pramal Kanti Majumder has been examined as OPW-2. OPW-1 in his examination-in-chief, in Para-2 has also admitted the same khatian which has been relied by the first party. So, this court finds that exhibit-6 to 9(i) have been relied by both the parties and as per these exhibits the names of both the parties have been mentioned with their shares. In Column No.16 of the Khatian No. 139/1 and 139/2, the name of Birendra was

written against the Hal (present) Plot Nos. 882 and 897 and the name of Hemlata Sarkar was written against the Plot No. 883 as permissive possessor. This exhibited khatian also shows the share of the second party-petitioners i.e. the legal heirs of Late Lilu Bala Mallik, W/O. Rabindra Kr. Mallik. But the portion of which plot of land they are in possession is not mentioned. It appears from the exhibited judgment of Case No. T.S. 39 of 1985 that it was passed for a preliminary decree, so the right of the parties have been identified by this judgment. But there is no final decree of this judgment. So, it appears that the land mentioned in the khatian has not been parted between the parties. Both the parties also admitted that the land was not mutated. The first party has also admitted by their documents the shares of second party and these admitted exhibited documents have disclosed that both the parties have equal share on the total land. It is admitted fact that the acquired land has not been partitioned between the parties. So, this court is of the opinion that the first party will get 1/3rd and second party consists two families i.e. the legal heirs of Subal Ch. Bhattacharjee and legal heirs of Lilu Bala Mallik and Rabindra Kr. Mallik will get 1/3rd each out of the total amount of compensation. In other words, the total amount will be distributed in three equal share between the first party and the second party i.e. the legal heirs of Subal Ch. Bhattacharjee and legal heirs of Lilu Bala Mallik and Rabindra Kr. Mallik.

The issue is decided accordingly.

A W A R D

11. In the result, the total amount will be distributed in three equal share between the first party and the second party i.e. the legal heirs of Subal Ch. Bhattacharjee and legal heirs of Lilu Bala Mallik and Rabindra Kr. Mallik. The first party will get 1/3rd and second party consists two families i.e. the legal heirs of Subal Ch. Bhattacharjee and legal heirs of Lilu Bala Mallik and Rabindra Kr. Mallik will get 1/3rd each out of the total amount of compensation.

12. The case is decided accordingly and stands disposed of.

13. Make necessary result entry into the Trial Register.”

7. The judgment and preliminary decree passed in T.S. No.39/1985 instituted for partition of the suit property vide judgment dated 05.01.1989 is not in dispute. The suit was for partition and recovery of khas possession of the schedule land between the petitioners and the respondents. The suit land measures 1.81 decimals under Korfa Khatian No.234. The operative part of the judgment reads as under:

“O R D E R

In the light of the decision arrived issue wise in the preceding paragraphs of the judgment the suit is preliminary decreed on contest

and without cost against the defendants No.1 to 9 and on admission against the defendant No.10 to 13. The plaintiff's share to the extent of $\frac{1}{6}$ th over the suit land is hereby declared. She (Smti. Banchalata Dey) is entitled to get $\frac{1}{6}$ th share out of total suit land measuring 1.81 decimal by way of partition.

Hence both plaintiff and defendants are directed to make partition of this suit land amicably in the aforesaid manner within 3(three) months from the date of judgment failing which the plaintiff will have the right to get the suit land partitioned through Court as well as the recovery of the Khas possession of the same by removing all obstruction therefrom.

No order as regards costs of the suit.

Prepare preliminary decree accordingly.

Announced.”

8. It is the case of the petitioners as pleaded before the learned referral Court that since the partition was not made by metes and bounds despite passing of the preliminary decree, the petitioners continued in possession over the suit land and have thereby perfected their title by adverse possession. Therefore, the compensation in lieu of acquisition of the said land measuring 0.02 acres of Chara class of land bearing plot No.882/p of Khatian No.139/1, 0.25 acres of Bagan (Till) class of land acquired from plot No.883/p of Khatian No.139/1 and 0.01 acres of Bastu (Tilla) class of land acquired from Plot No.897/p of Khatian No.139/2 under Mouja and T.K. Baikhora, Santirbazar Sub-division Dokan should be awarded in their favour. Whether the petitioners have perfected their title by adverse possession or not is to be determined by a competent Court of law. The referral Court only has the jurisdiction to apportion the compensation between the claimant and the objectors based upon the valid documents of title and evidence in proof thereof. Admittedly petitioners have not instituted any suit for declaration of their title over the entire piece of land perfected by virtue of adverse possession. Such a claim has neither been raised nor decided by a competent Court of Law. Therefore, the

entire plea for seeking the entire compensation of the acquired land on the basis of adverse possession could not have been entertained by the learned referral Court. The learned referral Court, therefore, after going through the materials and evidence on record, rightly held that the exhibited documents of the first party give the impression that the names of the second party have been mentioned in the judgment of Case No. T.S. 39 of 1985 as other co-sharers of the land measuring 1.81 acres which was before the Court for partition. The other documents, like the khatian, also show the names of the second party in the old khatian as also in new khatian exhibited by the first party. Although the first party has argued that his party is claiming the right in the land on the principles of adverse possession against the second party and the second party has not challenged the judgment and decree in T.S. 39 of 1985, but the Court was of the view that it cannot decide the title in this reference. It had to decide only on the point that whether the amount of compensation for the acquired land can be given to both the parties or only the first party is entitled. Such plea of the learned referral Court is correct. The Court also found that the exhibits 6 to 9(i) relied by both the parties show the names of both the parties with their shares. In Column No.16 of the Khatian No. 139/1 and 139/2, the name of Birendra was written against the Hal (present) Plot Nos. 882 and 897 and the name of Hemlata Sarkar was written against the Plot No. 883 as permissive possessor. This exhibited khatian also shows the share of the second party-petitioners i.e. the legal heirs of Late Lilu Bala Mallik, W/O. Rabindra Kr. Mallik. But the portion of which plot of land they are in possession is not mentioned. As per the judgment in T.S. No.39/1985 under which a preliminary decree was passed, the right of the parties have been identified though there

was no final decree of the judgment. But it appeared that the land mentioned in the khatian had not been parted between the parties. Both the parties also admitted that the land was not mutated. The first party had also admitted by their documents the shares of second party and these admitted exhibited documents have disclosed that both the parties have equal share on the total land. Therefore, the referral Court came to the opinion that the first party will get 1/3rd and second party consisting of two families i.e. the legal heirs of Subal Ch. Bhattacharjee and legal heirs of Lilu Bala Mallik and Rabindra Kr. Mallik will get 1/3rd each out of the total amount of compensation. In other words, the total amount will be distributed in three equal shares between the first party and the second party.

9. This Court, upon scrutiny of the impugned order in the light of the materials referred to hereinabove and placed from record, does not find any error of jurisdiction or misappreciation of evidence on record warranting interference under Article 227 of the Constitution of India. In the facts and circumstances and for the reasons recorded hereinabove, the contention of the petitioners that their title has been perfected over the acquired land to adverse possession is not tenable as there is no adjudication on this issue by any competent Court of Civil Jurisdiction. What is available is the judgment and decree passed in T.S. No.39/1985 dated 05.01.1989 and other exhibited documents adduced by the parties profusely referred to by the referral Court.

10. Reliance is placed upon the decision of the Apex Court in ***Vinod Kumar & Ors., Vs. District Magistrate, Mau & Ors.*** reported in **2023 SCC OnLine SC 787** on the issue of apportionment of compensation between the interested persons under Section 3(H)4 of the National Highways Act, 1956.

The Apex Court has referred to the decision rendered in ***Sharda Devi Vs State of Bihar*** reported in **(2003) 3 SCC 128** wherein the ambit and scope of the Land Acquisition Act, 1894 was under consideration. The Apex Court at para 34 held as under:

“34. Our final conclusion is as under : - If any dispute arises as to the apportionment of the amount or any part thereof or to any person to whom the same or any part thereof is payable, then, the competent authority shall refer the dispute to the decision of the Principal Civil Court of original jurisdiction within the limits of whose jurisdiction the land is situated. The competent authority possesses certain powers of the Civil Court, but in the event of a dispute of the above nature, the summary power, vesting in the competent authority of rendering an opinion in terms of sub-section (3) of Section 3H, will not serve the purpose. The dispute being of the nature triable by the Civil Court that the law steps in to provide for that to be referred to the decision of the Principal Civil Court of original jurisdiction. The dispute regarding apportionment of the amount or any part thereof or to any person to whom the same or any part thereof is payable, would then have to be decided by that Court.”

11. The learned Principal Civil Court of original jurisdiction has the mandate to decide the dispute as to the apportionment of the compensation or any part thereof to any person whom the same or any part thereof is payable. On such dispute being raised, the Collector rightly referred it to the court of the learned District Judge being the Principal Civil Court of original jurisdiction as per Section 3H(4) of the Act of 1956.

12. The petitioners herein sought to establish a claim of adverse possession for claiming compensation though their plea of perfection by title of adverse possession was never decided by any competent court of law. Since the mandate of the learned Principal Civil Court of original jurisdiction is limited to deciding the dispute between the interest persons on the question of apportionment of compensation, it rightly refused to acknowledge the unsubstantiated claim of title based on adverse possession pleaded by the petitioners. The dispute regarding apportionment of compensation amongst the parties was therefore decided on the basis of existing oral and documentary

evidence. Therefore, this court does not find any reason to interfere in the matter.

13. Learned counsel for the petitioners at the end submits that a liberty may be granted to the petitioners to institute a suite for claiming title through adverse possession.

14. This Court refrains from making any specific observations on such a plea. If the petitioners have a cause of action, it is open for them to pursue it before a competent Court of civil jurisdiction in accordance with law.

15. Accordingly, the instant petition is dismissed. Interim order, if any, stands vacated. Pending application(s), if any, shall stand disposed of. The amount of compensation as apportioned by the order dated 28.02.2023 passed by the learned District Judge, South Tripura, Belonia be distributed amongst the parties.

(APARESH KUMAR SINGH), CJ