

**HIGH COURT OF TRIPURA
AGARTALA
RSA No.17 of 2023**

Sri Gopal Debnath,
son of Late Chandra Mohan Debnath,
resident of village: North Srirampur,
PS & PO: Puran Raj Bari, Belonia,
District- South Tripura, Tripura.

----- Defendant-Appellant

Versus

Legal representatives of late Nabadwip Chandra Das and late
Nandi Rani Das:

- 1. Sri Babul Das,**
- 2. Sri Badal Das,**
- 3. Sri Sajal Das,**
- 4. Sri Ranjit Das,**

All are sons of late Nabadwip Chandra Das and Late Nandi Rani
Das,
and resident of village: North Srirampur,
PO- Chottakhola - 799157, Dist: South Tripura;

- 5. Smt. Kanchan Das,**

Daughter of late Nabadwip Chandra Das
and Late Nandi Rani Das and wife of Haridhan Das,
Vill & PO: North Barabil, 782481,
District: Karbi Anglong, Assam;

- 6. Smt. Sabitri Das,**

Daughter of late Nabadwip Chandra Das
and Late Nandi Rani Das and wife of Sankar Das,
resident of Vill: Rabindranagar,
PO: Purba Pratapgarh,-799004, Distt: West Tripura;

- 7. Smt. Silpi Das,**

Daughter of late Nabadwip Chandra Das
and Late Nandi Rani Das and wife of Maran Das,
resident of village: Sachindranagar Colony,
PO: Jirania, Dist: West Tripura;

- 8. Smt. Aparna Das,**

Daughter of late Nabadwip Chandra Das
and Late Nandi Rani Das and wife of Paritosh Das,
resident of Vill & PO: Radhanagar, 799150, Dist: South Tripura;

----- Plaintiffs-Respondents

For Appellant(s) : Mr. Dilip Kumar Daschowdhury, Adv.

For Respondent(s) : Mr. Alik Das, Adv,
Mr. Ashutosh De, Adv.

Date of hearing : 10.03.2025

Date of delivery of
Judgment & Order : 25.03.2025

Whether fit for
reporting : YES

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

This appeal under Section 100 of CPC is preferred challenging the judgment dated 31.03.2023 and consequential decree dated 01.04.2023 delivered by Learned District Judge, South Tripura, Belonia in connection with case No.TA No.17 of 2019. By the said judgment and decree, Learned 1st Appellate Court has upheld the judgment dated 31.07.2019 and decree dated 06.08.2019 delivered by Learned Civil Judge (Jr. Division), South Tripura, Belonia in connection with case No.TS No.44 of 2015.

2. Heard Learned Counsel Mr. Dilip Kumar Daschowdhury appearing on behalf of the appellant-defendant and also heard Learned Counsel, Mr. Alik Das along with Learned Counsel, Mr. Ashutosh De appearing on behalf of the contesting respondent-plaintiffs.

3. Before proceeding with the merit of the appeal let us discuss about the subject matter of the dispute amongst the rival parties. The predecessor of the respondents as plaintiffs filed one suit before the Court of Learned Civil Judge (Junior Division), South Tripura, Belonia which was numbered as TS No.44 of 2015 against the defendant i.e. the present appellant herein for declaration of right, title and interest and also for recovery of possession. It was alleged in the plaint that in the year 1990 vide allotment order No.182 dated 30.12.1990, the

respondent-plaintiffs were given allotment by the Government for the land measuring 2.63 acres and the plaintiffs possessed the same without any hindrances and interruption. It was further asserted that during the revisional survey and settlement operation, the names of the respondent-plaintiffs were duly recorded in the finally published khatian but on 01.06.2015 the defendant i.e. the appellant herein along with some of the local hooligans entered into the suit land of the respondent-plaintiffs and planted some cashew nut trees therein. As both the respondent-plaintiffs are old aged persons with a physically handicapped son so they failed to resist the defendant-appellant. In this regard, various communications were made to the District Magistrate & Collector for protecting their person and property but no response was taken. Hence the respondent-plaintiffs have filed the suit for declaration of right, title and interest and for recovery of possession.

4. The present appellant as defendant contested the suit by filing written statement denying the entire claim of the respondent-plaintiff rather the appellant-defendant took the plea that the respondent-plaintiffs never possessed the suit land and the defendant was possessing the suit land since 1980. It was further submitted that later on the appellant-defendant could know that the suit land was allotted in the name of respondent-plaintiffs behind his back and being requested by the respondent-plaintiffs, he allowed the respondent-plaintiffs to reside in some portion of the land measuring 0.10 acres and the remaining portion of land remained under the possession of the appellant-defendant. It was further submitted that

knowing the fact of allotment of land in favour of the respondent-plaintiffs, the appellant-defendant made a prayer before SDM, Belonia for cancellation of allotment granted in favour of the respondent-plaintiffs and on the basis of his prayer, RI of Rajnagar circle and DCM, Rajnagar verified the land and submitted report to the SDM, Belonia. The appellant-defendant also took the plea that the suit land was all along under his possession and in the year 2004 he planted cashew nuts and rubber plants therein. Hence by the written statement, the appellant-defendant has prayed for dismissal of the suit with cost.

5. Upon the pleading of the parties, following issues were framed by the Learned Trial Court below:

ISSUES

- i) **Whether the suit is maintainable in its present form?**
- ii) **Whether the plaintiffs are entitled to a decree declaring their right, title and interest over the suit land as specified in the schedule of the plaint?**
- iii) **Whether the plaintiffs are entitled to a decree of recovery of vacant possession over the suit land as specified in the schedule of the plaint?**
- iv) **Whether the plaintiffs are entitled to cost or any other relief or reliefs and if so up to what extend?**

To prove the issues, both the parties have adduced their oral/documentary evidence on record. For the sake of convenience, the name of the witness of the parties and their exhibited documents are mentioned herein below:

Plaintiff's witness:

- i) **PW-1: Nabadweep Das**
- ii) **PW-2: Dulal Das**
- iii) **PW-3: Nepal Das**

Defendant's witness:

- i) **DW-1: Gopal Debnath**

ii) DW-2: Krishnadhan Debnath

iii) DW-3: Jaharlal Debnath

Plaintiff's Exhibits:

- i) Exbt.-1: Certified copy of khatian bearing no.838 of Mouja Srirampur
- ii) Exbt.-2: Memorandum sent to the DM for protection of persons and property of the Senior Citizen
- iii) Exbt.-3: Memorandum sent to the SDM, Belonia
- iv) Exbt.-4: Acknowledgment receipt of the memorandum
- v) Exbt.-5: Certified copy of map relating to the suit land

Defendant Exhibits:

- i) Exbt.-A: Certified copy of inquiry report of DCM in connection with Revenue Case no.04/13
- ii) Exbt.B: Certified copy of RI dated 27.08.12
- iii) Exbt.C: Copy of notice in connection with Revenue Case no.04/13

Finally, on conclusion of trial, Learned Trial Court by the judgment dated 31.07.2019 decreed the suit in favour of the respondent-plaintiffs. The operative portion of the judgment and order of Learned Trial Court below runs as follows:

ORDER

11. In the result the case of the plaintiffs it is decreed that the plaintiffs are entitled to right, title and interest over the suit land measuring 2.63 acres specifically mentioned in the schedule of the land and Exbt.1(Khatian no.838, C/S Plot no.2559).

12. It is also decreed that the plaintiffs are entitled to get recovery of possession of the suit land described in schedule of the plaint from the defendant namely Gopal Debnath. In case the defendant is not handing over the vacant possession to the plaintiffs, then the plaintiffs can pray for taking legal measures of getting the vacant possession of the land.

13. The case is disposed of on contest.

Challenging that judgment, the present appellant herein preferred appeal under Section 96 of CPC before the Court of Learned District Judge, South Tripura, Belonia and after hearing both the sides, Learned 1st Appellate Court by the judgment dated 31.03.2023

dated decree dated 01.04.2023 has dismissed the appeal filed by the present appellant herein. For the sake of convenience, I would like to refer herein below the operative portion of the judgment of the Learned 1st Appellate Court:

15. In the circumstances above and considering the evidences discussed so far, this court comes to the conclusion that learned trial Court has rightly decided these issues. So, I find no infirmity in the judgment of learned trial Court.

16. In the result, I find no merit in the appeal to interfere with the judgment and decree passed by the learned trial Court in case No.T.S. 44 of 2015. Therefore, the appeal merits rejection which I hereby do.

17. Prepare appellate decree accordingly.

18. Send back the L.C. record with a copy of this judgment and decree.

19. The case is thus disposed of on contest.

Challenging that judgment, the appellant has preferred this appeal before this Court. At the time of admission of appeal by order dated 03.07.2023, the following substantial questions of law were formulated by this Court:

- 1. Whether a civil suit is maintainable when a revenue proceeding is pending for cancellation of the allotment order grated in favour of the respondents?**
- 2. Whether the findings and decisions of learned Courts below suffer from any perversity?**
- 3. Any other substantial question of law as may be formulated during hearing?**

6. In course of hearing of argument, Learned Counsel for the appellant, Mr. D. K. Daschowdhury submitted that in view of Section 188 of Tripura Land Revenue & Land Reforms Act, 1960, the suit filed by the respondent-plaintiffs was not maintainable. Secondly, the respondent-plaintiffs did never possess the suit land at any point of time. Rather the appellant has been possessing the suit land since 1980 by growing cashew nuts and rubber plantation therein and on the request of the respondent-plaintiffs, permission was given to

utilize 0.10 acres of land by the appellant and in the year 2012 for the first time, the present appellant could know that the suit land was given allotment behind the back of the appellant in favour of the respondent-plaintiffs. So, he approached to the SDM, Belonia for cancellation of allotment granted in favour of the respondent-plaintiffs and on the basis of his petition, the matter was enquired by Revenue Inspector, Belonia and DC, Belonia who also found the possession of the appellant over the suit land. It was further submitted by Learned Counsel that the respondent-plaintiffs did never possess the suit land at any point of time and the entire allotment was made behind the back of the appellant-defendant and the matter of cancellation of allotment is still pending before the revenue forum. Alternatively, Learned Counsel further submitted that although as alleged by the respondent-plaintiffs the suit land was allotted to them by the authority, but they did not take any effort to utilize the suit land at any point of time. Thus, the respondent-plaintiffs have violated the Rule 12 of the Tripura Land Revenue & Land Reforms (Allotment of Land) Rules, 1980. Finally, Learned Counsel for the appellant submitted that since there was no scope on the part of the Civil Court to entertain the suit in view of the bar provided under Section 188 of TLR and LR Act, 1960 and as such, he urged before this Court to allow this appeal and also to set aside the judgments and decrees delivered by Learned Courts below.

7. On the other hand, Learned Counsel, Mr. Ashutosh De along with Learned Counsel, Mr. Alik Das appearing on behalf of the respondent-plaintiffs fairly submitted that both the Courts below gave

concurrent findings on the subject matter and there is no bar on the part of the Civil Court to entertain any suit for declaration of title and recovery of possession, even if it is found that any revenue matter is pending as because the revenue forum has got no authority to decide and declare right, title, interest and to ensure recovery/restoration of possession. Learned Counsel further submitted that settlement operation passes through different stages. According to the appellant herein, he took the plea that he was possessing the suit land since 1980 but surprisingly since 1980 to till 2012 he did not approach to the revenue authority either for allotment of land or for cancellation of allotment, if any. This story is not at all acceptable and believable. Further, Learned Counsel for the respondent-plaintiffs again submitted that had the appellant be in possession of the suit land, in that case, the possession of the appellant-defendant definitely could reflect in the relevant column no.24 of the respective khatians. There is no such evidence like that. More so, during survey operation he could approach to the settlement authority showing his possession and claim over the alleged suit land but there is no such evidence on record like that he made any attempt in this regard. Further it was also submitted that as alleged the appellant started producing cashew nuts and other plants over the suit land but in this regard, no such documentary evidence is proved by the appellant-defendant before the Learned Trial Court. Even there is no evidence on record from the side of the appellant that he procured the seeds from any Government Department or store. Learned Counsel further submitted that Learned Counsel for the appellant at the time of hearing relied

upon report of RI and DCM. In this regard, Learned Counsel for the respondent-plaintiffs submitted that those enquiry reports have got no basis because since it is the case of the respondent-plaintiffs that the appellant-defendant forcefully evicted the respondent-plaintiffs from the suit land during the year 2015 so it is quite natural that while they visited the suit land, that time, definitely they might have seen the possession of the appellant-defendant over the suit land. Furthermore, their reports are also not supported by any oral evidence, as such, according to Learned Counsel for the respondent-plaintiffs that the Learned Trial Court after considering the oral/documentary evidence on record rightly delivered the judgment and decree in favour of the respondent-plaintiffs which has been confirmed by the Learned Appellate Court and there is no substantial question of law to be decided in favour of the present appellant herein. So, Learned Counsel for the respondent-plaintiffs submitted that no substantial question of law lies in favour of the appellant-defendant and as such, he prayed for dismissal of this appeal with costs. In support of his contention, Learned Counsel for the respondent-plaintiffs referred one citation reported in **(2015) 2 TLR 661** [titled as **Dhaneswar Debbarma v. State of Tripura and Anr.** dated **15.06.2015**] wherein in para Nos.5 and 6 this High Court observed as under:

"5. At the outset, we may notice that the land was allotted in favour of the writ petitioner in the year 1988. Assuming that there was any error in the allotment, such allotment should have been challenged within a reasonable time. Allotments cannot be set aside after expiry of reasonable period. What is a reasonable period may depend on the facts of a particular case but normally the reasonable period will not exceed 3 years at the most. It is only in cases where fraud is proved that the period of

limitation will start from the date of discovery of the fraud. Otherwise within a reasonable period, proceedings to cancel allotment must start. A person who is allotted land develops the land by dint of his hand work. He invests money and time on the land. After he has developed the land the allotment cannot be set aside after two decades on the ground that the objector had a better claim to the land.

6. The finding of possession recorded by the civil court, in our view, could not be set to be naught by the revenue court. To this effect, the learned Single Judge is absolutely correct. The civil court after hearing both the parties has decided the matter. Both the parties were given opportunity to lead evidence and after recording evidence, the civil court came to the conclusion that the writ petitioner was in possession of the suit land. This decree of the civil court has to be challenged by filing an appeal before the District Judge and cannot be nullified by a revenue officer."

Referring the same, Learned Counsel for the respondent-plaintiffs submitted that in view of the principle of the said citation, the present appellant could pray for cancellation of allotment within a reasonable period of 3(three) years but no step was taken. More so according to the appellant, he started possessing the suit land since 1980 and as per the case of the respondent-plaintiffs, they got allotment of the suit land in the year 1990 but during this stage, revisional survey and settlement operation was completed but surprisingly no step was taken by the appellant-defendant in any stage of the settlement operation. So, the plea taken by the appellant that he was possessing the suit land since 1980 is totally false, concocted and manufactured story just to strengthen his case.

Learned Counsel also referred another citation of this High Court reported in **(2016) 1 TLR 166** [titled as **State of Tripura and Ors. v. Dilip Kumar Majumder and Ors.** dated **08.12.2015**] wherein in para No.20, the co-ordinate bench of this High Court further observed as under:

"20. The question that has been raised that whether the civil court has got the jurisdiction to determine

the dispute which may fall within the ambit of Section 15 of the TLR & LR Act, 1960. Proviso to Section 188 of the TLR & LR Act which has not been printed in some of the subsequent editions even though that was not deleted by any amendment, clearly provides that when the dispute is relatable to the question of title or determination of the title then the bar as created under Section 188 of the TLR & LR Act would not be applicable. Apart that, it is well settled that when it is a question of title, the revenue court does not have any jurisdiction, it is the civil court and the civil court alone is to determine the question of the title. If there arises a situation of co-terminus jurisdiction then the option remains with the person who would take the action at law to opt the forum. As such the argument that has been advanced by Mr. Deb, learned senior counsel cannot be sustained. Apart that, another latent issue has been made part of the substantial question of law is that whether would extinguishment of the title of the true owner when the true owner is the Government and the land is the Government land be under Section 27 read with Article 112 of the Limitation Act 1963 or can such prescription eclipse the provisions of Section 15 of the TLR & LR Act, 1960? Section 15 of the TLR & LR Act, 1960 confers powers to evict the illegal or unauthorised possessor from the Government land. Section 27 or Article 112 if read together clearly, it makes out a special provision. The special provision always derogates the general provision. If the law is not interpreted in that way, the provisions of Section 27 or Article 112 of the Limitation Act would be rendered otiose and no court can interpret law to make it otiose. It must be made workable. It has to be stated clearly that provisions of Section 15 of the TLR & LR Act, 1960 is subject to provisions of Section 27 read with Article 112 of the Limitation Act, 1963 and thus the first substantial question is answered in the negative.

Having held so, this appeal is allowed partly in terms of the above.

Prepare the decree accordingly and thereafter send down the records."

Referring the same, Learned Counsel for the respondent drawn the attention of the Court that there is no bar on the part of the Civil Court to entertain any suit and to decide right, title, interest and possession even if any revenue proceeding is pending also.

He also referred another citation of this Court reported in **(2017) 2 TLR 89 [titled as *Jyotirmoy Ghosh and Anr. v. Sudhangshu Das and Ors.* dated 12.05.2017]** wherein in para No.10 this Court observed as under:

"10. On careful examination of the averments made in the plaint as well as the reliefs claimed therein, it

is abundantly clear that the suit does not even remotely have anything to do with, or about alteration of any entry in the record of rights finally published, revised, corrected or modified under any of the provisions of Chapter V or Chapter VIII of TLR & LR Act consequent upon the notification issued under section 26 after the enforcement of the TLR & LR Act. The suit so instituted is, as reproduced above, is for declaration of title to, and recovery of khas possession of, the suit land and has nothing to do with settlement of land revenue or preparation of records of rights or any entry therein, etc., for which a suit or application is barred by Section 44 or Section 188 of TLR & LR Act. Thus, I can, without fear of contradiction, hold that the reliefs claimed by the plaintiff are not the reliefs which can be granted by a revenue court constituted under Section 81 of TLR & LR Act. In other words, no revenue court can conceivably grant the reliefs for a decree of declaration of title to, or recovery of possession, of the suit land; such a decree can be granted only by a Civil Court. Moreover, I have perused the application 31-1-2007 filed by the defendant Nos. 3 and 4 under Order 14, Rule (2(2) of the Code for trying an issue relating the jurisdiction of the trial court to entertain the suit, but on examination of the application, it is not possible to ascertain as to under what circumstances the suit is not maintainable except that they merely make a bold statement that the suit is barred under Section 188 of the TLR and LR Act. Something more, I think, is necessary for urging the plea of non-maintainability of the suit. In this view of the matter, I hold that the learned District Judge, West Tripura did not err in interfering with the judgment of the trial court and in holding that the jurisdiction of the trial court to entertain the suit is not ousted. Therefore, the substantial question of law is answered accordingly."

Referring the same, Learned Counsel submitted that there is no bar for the Civil Court to decide and declare any title.

8. I have heard both the sides at length. Perused the records of the Learned Court below. Admittedly in this case, there is no dispute on record that the alleged suit land measuring 2.63 acres under Mouja North Srirampur T.K. Sidhinagar Revenue Circle Rajnagar is recorded in Khatian No.838 in the name of respondent-plaintiffs and there is no dispute on record that the same was allotted in favour of the respondent-plaintiffs in the year 1990 by the respective allotment authority and the said land measuring 2.63 was surveyed in plot No.1104 part old and at present 2559. But as alleged by the appellant

herein that the appellant has been possessing the suit land since 1980 is totally a concocted and manufactured story because settlement passes through different stages. Had the appellant be in possession of the suit land definitely his name could have reflected in the respective column of possessive either as permissive or forceful occupier, etc. There is no evidence on record that the appellant as alleged by him is possessing the suit land since 1980 and he filed any prayer to the revenue authority either for allotment of the said land in his favour or for cancellation of allotment of land granted in favour of the respondent-plaintiffs. So, the plea taken by the appellant that during the year 2012 it came to his knowledge that the suit land was allotted in favour of the respondent-plaintiffs cannot be accepted as a genuine one. In this regard, I would like to refer herein below, the relevant provision of Chapter 5 of TLR & LR Act, 1960 wherein from provision Nos.42 to 46, the different stages regarding preparation of record of right has been discussed which provides as under:

CHAPTER V.- LAND RECORDS

42. Preparation of record of rights.- It shall be the duty of the survey officer to prepare a record of rights for each village showing the area of each survey number and other particulars and any other record or register, in accordance with the rules made under this Act:

[Provided that where for any reason a record of rights cannot be prepared in respect of the entire village it shall be lawful for the survey officer to prepare separate records of rights for different areas of such village and notwithstanding anything contained in this Act or any rule made there under, a record of rights, when finally published shall not be called in question in any court on the ground that it was not prepared in respect of the entire village.]

43. Publication of the record of rights.- (1) When a record of rights has been prepared, the survey officer shall publish a draft of the record in such manner and for such period as may be prescribed and shall receive and consider any objections which may be made during the period of such publication, to any entry therein or to any omission therefrom.

(2) When all objections have been considered and disposed of in accordance with the rules made in this behalf, the survey officer shall cause the record to be finally published in the prescribed manner.

(3) Every entry in the record of rights as finally published shall, until the contrary is proved, be presumed to be correct.

44. Jurisdiction of civil courts to decide disputes.- (1) When a notification under section 26 directing the revenue survey of any local area with a view to settlement of the land revenue and to the preparation of a record of rights connected therewith or the revision of any existing settlement or record of rights in any local area has been published after the enforcement of the Tripura Land Revenue and Land Reforms (Fifth Amendment) Act, 1979, no civil court shall entertain any suit or application for the settlement or determination of land revenue or the incidence of any tenancy to which the record of rights relates, and if any suit or application, in which any of the aforesaid matters is in issue, is pending before a civil court on the date of publication of the notification in the Official Gazette, it shall be stayed and it shall, on the expiry of the period for filing application for revision under section 45, or when such application has been filed within time on expiry of the period prescribed under section 94 for filing an appeal under section 93 against the order disposing of such application or when an appeal has been filed under the section within time, as the case may be, on disposal of such appeal, abate so far as it relates to any of the aforesaid matters.

(2) No civil court shall entertain any suit or application concerning any land if it relates to alteration of any entry in the record of rights finally published, revised corrected or modified under any of the provisions of this Chapter or Chapter VIII of this Act consequent upon the notification issued under section 26 after the enforcement of the Tripura Land Revenue and Land Reforms (Fifth Amendment) Act, 1979.

45. Revision of entries in finally published record of rights.- Any Revenue Officer specially empowered by the State Government may, on application made to him in this behalf or on his own motion, within one year from the date of the final publication of the record of rights, correct any entry in such record which he is satisfied has been made owing to a bona fide mistake:

Provided that no such entry shall be corrected without giving the persons interested an opportunity of being heard.

Explanation.- Every order under this section shall be deemed to be an original order.

45A. Preparation of field index (khasra).- (1) As soon as may be after the enforcement of the Tripura Land Revenue and Land Reforms (Second Amendment) Ordinance, 1974, the Revenue Officer shall prepare and publish in the prescribed manner a draft field index (khasra) in respect of every plot in a village recording the status of the actual possessor and the conditions on which he holds the land and shall fix a date not less than fifteen days from the

date of such publication, for filing claims and objections.

(2) The revenue officer shall, after giving the persons who have filed claims and objections and also the persons whose interests are likely to be affected, an opportunity of being heard, prepare the field index (khasra) and publish it in the prescribed manner.

45B. Decision as to conflict in any case.- Notwithstanding anything hereinbefore contained an entry regarding the status of the actual possessor of a plot and the conditions on which he holds the land in the field index (khasra) as finally published shall, in case of conflict with an entry in the record of rights, prevail and be transferred to the record of rights for correction of such record under certificate of such officer as may be prescribed in this behalf.

46. Register of mutations.- (1) There shall be maintained for every village a register of mutations in such form as may be prescribed.

(2) Any person acquiring by succession, survivorship, inheritance, partition, purchase, gift, mortgage, lease or otherwise any right in land or, where such person acquiring the right is a minor or otherwise disqualified, his guardian or other person having charge of his property, shall report his acquisition of such right to the village accountant within three months from the date of such acquisition and the village accountant shall give at once a written acknowledgement in the prescribed form for such report to the person making it.

(3) The village accountant shall enter the substance of every report made to him under sub-section (2) in the register of mutations and also make an entry therein respecting the acquisition of any right of the kind mentioned in sub-section (2) which he has reason to believe to have taken place and of which a report has not been made under the said sub-section and, at the same time, shall post up a complete copy of the entry in a conspicuous place in the village and shall give written intimation to all persons appearing from the record of rights or the register of mutations to be interested in the mutations and to any other person whom he has reason to believe to be interested therein.

(4) Should any objection to an entry made under sub-section (3) in the register of mutations be made either orally or in writing to the village accountant, he shall enter the particulars of the objection in the register of disputed cases and shall at once give a written acknowledgement in the prescribed form for the objection to the person making it.

(5) The objections made under sub-section (4) shall be decided on the basis of possession by the competent authority and orders disposing of objections entered in the register of disputed cases shall be recorded in the register of mutations by the competent authority.

(6) After the entries in the register of mutations have been tested and found correct, the entries shall be transferred to the record of rights and shall be certified by such officer as may be prescribed in this behalf.

[Explanation.—This sub-section does not apply to lease by which a bargadar acquires any right in land.]

From the aforesaid provisions of the Land Revenue Act, it appears that the present appellant herein did never approach to the revenue authority or settlement authority either for allotment of the suit land in his favour or for cancellation of allotment since from the year 1980 to till the period of granting allotment in favour of the respondent-plaintiffs in any manner. So, the contention of the appellant is that the suit land was under his possession since 1980 is nothing but a dire falsehood.

9. In course of hearing, Learned Counsel for the appellant relied upon Section 188 of the TLR & LR Act, 1960 regarding jurisdiction of the Civil Court. For the sake of convenience, I would like to refer herein below the provision of Section 188 of TLR & LR Act, 1980 which provides as under:

188. Jurisdiction of civil courts excluded.- No suit or other proceeding shall, unless otherwise expressly provided in this Act, lie or be instituted in any civil court with respect to any matter arising under and provided for by this Act.

In this regard, I have gone through the citation of this High Court referred by the respondent-plaintiffs. Those citations are very much relevant for decision of this case as because the appellant-defendant did not take any step for cancellation of allotment of the suit land within reasonable period as discussed in para No.5 of the judgment of this Court reported in **(2015) 2 TLR 661** in ***Dhaneswar Debbarma (supra)***. Furthermore, since the respondent-plaintiffs have filed the suit for declaration of right, title and interest and for recovery of possession of the suit land, so, in my

considered view, the provision of Section 188 as alleged by Learned Counsel for the appellant would not create any bar upon the Civil Court to entertain any suit. The citations in this regard as referred by Learned Counsel for the respondent-plaintiffs as mentioned above are very much relevant and significant for the decision of this case. To rebut the said plea, the appellant-defendant has failed to adduce any rebuttable evidence on record either before the Learned Trial Court or before the Learned 1st Appellate Court in course of hearing of argument.

10. Learned Counsel for the appellant in course of hearing of argument also referred Rule 12 of TLR & LR (Allotment of Land) Rules, 1980 which provides as under:

12. Conditions of allotment.- (1) Any allotment of land under sub-section (1) of section 14 and in accordance with these rules shall be further subject to the following conditions and also the conditions specified in the allotment order which shall be, as nearly as possible, in the form at Appendix 'B':

(i) The land will be heritable but not alienable without the written consent of the Collector granted on the recommendation of the Advisory Committee that may be set up by the Government:

Provided that the land may be mortgaged to the Government, or a co-operative society or a bank or such institution as may be notified in the Official Gazette by the State Government from time to time;

(ii) The allottee may surrender the land in the manner specified in the allotment order;

(iii) The allottee shall bring the whole area under cultivation within the time specified in the allotment order;

(iv) The allottee shall be liable to pay premium, land revenue and taxes as specified in the allotment order;

(v) The allottee shall be entitled to plant trees on his land to enjoy the products thereof and to fell, utilize or dispose of the timber of any trees on his land;

(vi) The allotment will be liable to be cancelled for breach of any of the provisions of the Act, the Rules or any of the conditions of allotment.

(2) The Collector shall have the power to delete any of the conditions specified in Appendix 'B' and/or insert any condition as the circumstance of the case may require.

Referring the same, Learned Counsel for the appellant tried to draw the attention of the Court that the alleged allotment in favour of the respondent-plaintiffs was liable to be cancelled since they failed to utilize the land within two years from the date of allotment for the purpose of which it is allotted.

According to the appellant-defendant, he came to know about the allotment of land in favour of the respondent-plaintiffs in the year 2012 although this fact could not be proved by him. However, in the given case, the allotment was granted in favour of the respondent-plaintiffs in the year 1990 in view of the TLR & LR (Allotment of Land) Rules, 1980. After the survey operation was over had the respondent-plaintiffs did not cultivate or possess the suit land in that case definitely the survey & settlement authority/Revenue authority during their field operation could initiate *suo motu* proceeding against the respondent-plaintiffs but there is no such evidence on record like that. Even if we believe that the appellant-defendant was in possession of the suit land since 1980 but surprisingly since 1980 to till 2012 no step was taken by him for allotment of the suit land in his favour or for cancellation of allotment. So, this story appears to be not convincing and trustworthy and has got no basis and the same cannot be accepted.

11. I have also seen the evidence on record of the parties, it appears that to substantiate the issues before the Learned Trial Court both the parties have adduced oral/documentary evidence on record.

In this regard, I would like refer herein below the relevant provision of Section 92 of Indian Evidence Act which provides as under:

92. Exclusion of evidence of oral agreement.- When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms:

Proviso (1).- Any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, want or failure of consideration, or mistake in fact or law.

Proviso (2).- The existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the Court shall have regard to the degree of formality of the document.

Proviso (3).- The existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property, may be proved.

Proviso (4).- The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property, may be proved, except in cases in which such contract, grant or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents.

Proviso (5).- Any usage or custom by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description, may be proved:

Provided that the annexing of such incident would not be repugnant to, or inconsistent with, the express terms of the contract.

Proviso (6).- Any fact may be proved which shows in what manner the language of a document is related to existing facts.

Since the documentary evidences clearly establishes the right, title, interest of the respondent-plaintiffs over the suit land so by adducing oral evidence there is no scope to discard the title of the respondent-plaintiffs over the suit land until it is rebutted and the present appellant herein could not adduce any other better title than

the respondent-plaintiffs to substantiate his claim over the suit land. Thus, after hearing both the sides, it appears that there is no substantial questions of law made out in this case to be decided in favour of the appellant-defendant, as such, the present appeal is liable to be dismissed with cost.

Furthermore, I have also seen the order of SDM, Belonia, South Tripura in connection with Revenue case No.4 of 2013 dated 06.09.2024. By the said order, Learned SDM, Belonia has dismissed the proceeding and rejected the application for cancellation of allotment filed by the present appellant herein based on the judgment of the Civil Court and in my considered view, Learned SDM also rightly decided and disposed of the matter in favour of the respondent-plaintiffs.

12. In the result, the appeal filed by the present appellant-defendant stands dismissed being devoid of merit with costs. The judgment dated 31.03.2023 and decree dated 01.04.2023 delivered by Learned District Judge, South Tripura, Belonia in connection with case No.TA No.17 of 2019 confirming the judgment dated 31.07.2019 and decree dated 06.08.2019 delivered by Learned Civil Judge (Jr. Division), South Tripura, Belonia in connection with case No.TS No.44 of 2015 is hereby upheld and accordingly, the same is affirmed.

Prepare decree accordingly.

The respondent-plaintiffs are entitled to the decree as granted by the Learned Trial Court.

Send down the LCRs along with a copy of this judgment to the respective Courts.

Since the appeal is dismissed, so the application for adducing evidence filed by the appellant-defendant also accordingly stands dismissed.

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

JUDGE

