

**THE HIGH COURT OF TRIPURA
AGARTALA**

RSA NO. 46 OF 2011

APPELLANTS :

1. Smti. Rita Das,
D/O. Late Gopendra Kumar Das,

2. Smti. Suparna Das,
D/O. Late Gopendra Kumar Das,

- All are resident of Kazirgaon, Kailashahar Town,
P.O. & P.S. Kailashahar, District-North Tripura,

BY ADVOCATES :

Mr. D. Bhattacharji,

- *V/s* -

RESPONDENTS :

1. Smti. Pushpa Das
W/O. Late Girindra Kumar Das
alias Katan Das.

2. Shri Asit Kumar Das
S/O. Late Girindra Kumar Das
alias Katan Das.

3. Shri Ashim Kumar Das
S/O. Late Girindra Kumar Das,
alias Katan Das.

4. Shri Anjan Kumar Das
S/O. Late Girindra Kumar Das
alias Katan Das.

5. Shri Alak Kumar Das
S/O. Late Girindra Kumar Das
alias Katan Das.

- All are resident of Kazirgaon, Kailashahar Town,
P.O. & P.S. Kailashahar, District-North Tripura.

BY ADVOCATES :

None.

RSA NO. 54 OF 2011

APPELLANTS :

1. Smti. Rita Das,
D/O. Late Gopendra Kumar Das,

2. Smti. Suparna Das,
D/O. Late Gopendra Kumar Das,

- All are resident of Kazirgaon, Kailashahar Town,
P.O. & P.S. Kailashahar, District-North Tripura,

BY ADVOCATES :

Mr. D. Bhattacharji,

- *Vs* -

RESPONDENTS :

1. Smti. Pushpa Das
W/O. Late Girindra Kumar Das
alias Katan Das.

2. Shri Asit Kumar Das
S/O. Late Girindra Kumar Das
alias Katan Das.

3. Shri Ashim Kumar Das
S/O. Late Girindra Kumar Das,
@ Katan Das.

4. Shri Anjan Kumar Das
S/O. Late Girindra Kumar Das
alias Katan Das.

5. Shri Alak Kumar Das
S/O. Late Girindra Kumar Das
alias Katan Das.

- All are resident of Kazirgaon, Kailashahar Town,
P.O. & P.S. Kailashahar, District-North Tripura.

BY ADVOCATES :

None.

**BEFORE
THE HON'BLE MR. JUSTICE S.C. DAS**

Date of hearing & date
Delivery of Judgment & order : **01.07.2015.**

Whether Fit for Reporting :

Yes	No
	√

JUDGMENT & ORDER.(ORAL)

Both the appeals are taken up together for hearing on admission.

2. Heard learned counsel, Mr.D. Bhattacharji and learned counsel, Mr. S. Das for the appellants. No representation on behalf of the respondents.

3. The second appeal No. 46 of 2011 is proposed for admission on the following substantial questions of law:

"a) Whether the recovery of possession on the basis of a Gift Deed which itself loses its operation can be taken into consideration solely in the case of a right, title, interest and recovery of possession?"

b) Whether the Learned Appellate Court misread the evidences while confirming the findings of the Learned Trial Court?"

c) Whether the Learned Appellate Court below acted illegally while holding the title of the suit land when a prayer of adverse possession has been claimed?"

d) Whether the record of right can be the basis of the evidence and in absence of any challenge to such recording permit the Courts to a case of recovery of possession?"

e) Whether the Learned Court below which has been confirmed by the Learned Appellate Court that the Defendant Appellants did not adduce no documentary evidence except the oral evidence and showed their adverse claim only by their conduct is the basis of ownership of the possession of the land and the same is perverse in nature or not?"

f) Whether by not taking into consideration of the evidences of the Appellants side, the Learned Court below acted perversely and illegally any other substantial question of law relating to Appeal".

4. The second appeal No.54 of 2011 is proposed for admission on the following substantial questions of law:

- "a) Whether the learned court below committed wrong In arriving a conclusion of an adverse possession When the aggrieved party of the adverse title disclosed in his pleadings that the adverse claimants are the trespassers in the suit land?**
- b) Whether the Learned Appellate Court misread the evidences while confirming the findings of the Learned Trial Court?**
- c) Whether the Learned Appellate Court below acted illegally while holding the title of the suit land when prayer of adverse possession has been claimed?**
- d) Whether the record of right can be the basis of the evidence and in absence of any challenge to such recording permit the Courts to a case of recovery of possession?**
- e) Whether the Learned Court below which has been confirmed by the Learned Appellate Court that the Defendant Appellants did not adduce no documentary evidence except the oral evidence and showed their adverse claim only by their conduct is the basis of ownership of the possession of the land and the same is perverse in nature or not?**
- f) Whether by not taking into consideration of the evidences of the Appellants side, the Learned Court below acted perversely and illegally any other substantial question of law relating to Appeal".**

5. The brief fact as presented by learned counsel, Mr. Bhattacharji seeking admission of second appeals is that Girindra Kumar Das, since deceased, the father of respondents, instituted Title Suit No.37 of 1997 seeking declaration of right, title and interest in the suit land described in the schedule of the plaint with a consequential relief for recovery of possession against three defendants, namely, Subhashini Das, since deceased, and the present appellants, Rita Das and Smt. Suparana Das, both daughters of Subhashini Das.

5.1. The defendants after appearance submitted their written statement and also setup a counter claim and the counter claim was registered as T.S. No.23 of 2005. It is further submitted by Mr. Bhattacharji, learned counsel that Subhashini Das was step mother of Girindra Kumar Das and Gopendra Kumar Das was the father of Girindra Kumar Das. He has also submitted that during the life time of Gopendra Kumar Das and Subhashini Das, there were matrimonial dispute and, therefore, to deprive Subhashini Das and her children, Gopendra Kumar Das gifted away all his land including the suit land to Girindra Kumar Das.

5.2. Subhashini Das challenged the gift deed by filling a suit and the suit was decided against Subhashini Das. She carried the lis up to the Apex Court and lost. So, the title of Girindra Kumar Das over the suit land has been perfected by judicial pronouncement. During the pendency of that suit the present Title Suit No. 33 of 1997 was instituted by Girendra Kumar Das against the present appellants and their mother, Subhashini Das.

6. In their written statement as well as in the counter claim, Subhashini Das and the present appellants pleaded that they acquired title by adverse possession in the suit land in view of their hostile possession denying right, title and interest of the plaintiffs. The trial court decided the issues framed in the title suit in favour of the plaintiff-respondents and dismissed the counter claim.

7. The defendants filed first appeal challenging the judgment and decree passed in the title suit and in the counter

claim and both the appeals decided against the defendants. Hence, these second appeals.

8. In a second appeal the appellate Court is to formulate substantial question of law and should decide the substantial question of law on the basis of the pleadings and materials already on record. The question of adverse possession as claimed by the appellants in the title suit and the counter claim has been decided against them and except oral evidence there was no documentary evidence adduced by the appellants. The oral evidence has been appreciated by the trial Court as well as first appellant Court. In a second appeal there is no scope of re-appreciation of the oral evidence unless it is alleged and prima facie found that the decision on the basis of oral evidence was suffering from perversity. Perversity means that the decision has been taken on the basis of no such evidence or that the proper appreciation has not been made of the oral evidence.

9. The substantial questions of law which have been suggested in the memorandum of the appeal on behalf of the appellants are not at all substantial questions of law. To be "substantial" a question of law must be debatable, not previously settled by law of the land or a binding precedent, and must have a material bearing on the decision of the case, if answered either way, in so far as the rights of the parties before it are concerned. To be a question of law "involving in the case" there must be first a foundation for it laid in the pleadings and the question should emerge from the sustainable findings of fact arrived at by Courts of

facts and it must be necessary to decide that question of law for a just and proper decision of the case. In a second appeal against concurrent findings of fact, it is the appellants to show that there is a substantial question of law which has not been decided by the Courts below and only in that event a second appeal should be admitted. Otherwise every litigation has to be an end and no litigation can be carried without sufficient cause therefor.

10. Since I find no substantial question of law in these appeals, both the appeals stand dismissed. No costs.

JUDGE