

THE HIGH COURT OF TRIPURA
AGARTALA

RSA No.09 of 2008

1. The State of Tripura,
represented by the Chief Secretary to the
Government of Tripura, Agartala, Tripura West
2. The Secretary,
Department of Land Revenues,
Government of Tripura, Agartala, West Tripura.
3. The District Magistrate & Collector,
South Tripura, Udaipur,
P.S. RK Pur, South Tripura

..... appellants

- Vs -

1. Sri Dilip Kumar Majumder,
son of late Suresh Chandra Majumder,
resident of Vill. Bankar, PO & PS – Belonia,
District – South Tripura
2. Sri Mihir Kanti Das,
son of Sri Nagendra Kumar Das,
resident of Village-Sacdhidananda Palli,
PO & PS – Belonia, District-South Tripura
3. Smt. Lilabati Majumder, (daughter of late Suresh Chandra
Majumder), wife of Sri Phani Bhushan Majumder,
resident of Village-No.1 Tilla, PO & PS-Belonia,
District-South Tripura
4. Smt. Dali Dhar nee Majumder, (daughter of late Suresh Chandra
Majumder), wife of late Himadri Ranjan Majumder,
Bhati Abhoynagar, PO-Agartala, PS-West Agartala,
District-West Tripura
5. Smt. Bela Dey nee Majumder, (daughter of late Suresh Chandra
Majumder), wife of Sri Raiharan Dey,
resident of Village-Netaji Palli, PO & PS-Belonia,
District-South Tripura
6. Sri Dulal Majumder,
son of late Suresh Chandra Majumder,
resident of Village-Bankar, PO & PS-Belonia,
District-South Tripura
7. Sri Chandan Majumder,
son of late Suresh Chandra Majumder,
resident of Village-Bankar, PO & PS-Belonia,
District-South Tripura
8. Sri Shyamal Majumder,
son of late Suresh Chandra Majumder,
resident of Village-Bankar, PO & PS-Belonia,

..... Plaintiff-Respondent

District-South Tripura

9. The Executive Officer,
Nagar Panchayat, Belonia,
Belonia, South Tripura

..... **Defendant-Respondents**

**B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA**

For the appellants	: Mr. S. Deb, Sr. Advocate Mr. D. C. Nath, Advocate
For the respondents	: Mr. S. M. Chakraborty, Sr. Advocate Ms. B. Chakraborty, Advocate
Date of hearing	: 02.07.2015 & 09.10.2015
Date of delivery of judgment & order.	: 08.12.2015
Whether fit for reporting	: YES

JUDGMENT & ORDER

This is an appeal under Section 100 of the CPC against the concurrent finding of fact returned by the judgment dated 12.09.2007 delivered in Title Appeal No.13 of 2006 by the Addl. District Judge, South Tripura, Udaipur.

02. The respondent No.1 instituted the suit for declaration of title by adverse possession, the permanent injunction and recovery of possession of the suit land, being Title Suit No.29 of 1996 in the Court of the Civil Judge, Jr. Divn., Belonia, South Tripura. For the purpose of limited necessity the pleadings are introduced at the outset.

According to the respondent No.1, hereinafter referred to as the plaintiff, his father namely Suresh Chandra Majumder since deceased had started a liquor shop in the year 1953 on the suit land and during the first survey operation the said land was surveyed and under the column No.24 of the relevant khatian No.3558, his father's

name was recorded as the forcible occupier. The said khatian was later on finally published. His father continued the possession till the year 1997 when he expired and thereafter the plaintiff and other proforma defendants, the legal heirs of Suresh Chandra Majumder continued that possession adversely on the said plot No.4033 comprised in the khatian No.3558 in Mouja-Belonia, details of the said land has been detailed in the schedule appended to the plaint. Even in the year 1988 during the revisional survey operation name of the father was recorded as the unauthorised occupier in the register of unauthorised occupiers. Since that register is not designated as the public records, the issuance of certified copy of it or any part of it is not allowed. According to the plaintiff his father constructed a permanent structure over the suit land and after his death the plaintiff entered into that premises. Such possession was within the knowledge of the State and they raised no objection. Thus, on expiry of 30 years, the title matured in favour of the plaintiff by prescription in terms of Section 27 read with Article 112 of the schedule of the Limitation Act. The plaintiff has asserted that the defendants No.4 and 5 tried to dispossess him without having any legal authority. On 08.11.1996 those defendants made a desperate attempt to illegally dispossess the plaintiff from the suit land but their bid did not succeed. On 13.11.1996, the defendants No.4, 5 and 6 succeeded in dispossessing the plaintiff from the suit land during pendency of the suit. As a result, the plaintiff following the due process made an application for amendment of the plaint on 18.12.1996 on the premises that the suit was filed on 11.11.1996 and thereafter on 13.11.1996 the defendants No.4, 5 and 6 dispossessed the plaintiff from the suit land and hence he prayed for necessary amendment in the suit in terms of the

schedule. The said amendment was allowed by the order dated 25.12.1996 and the pleadings were amended incorporating that dispossession, changing the cause title, converting the suit to a suit also for recovery, showing the schedule 'C' as the land wherefrom the plaintiff has been dispossessed by the defendants No.4, 5 and 6 and adding an additional prayer for decree of recovery of the schedule 'C' land. The requisite incorporation has been made in the suit. The defendants No.4 and 5 filed the written statements separately by denying the claim of the plaintiff and stating that the plaintiffs' father was never in possession over the suit land since 1953. According to them, the plaintiffs were never in possession of the land mentioned in the schedule "C". Those defendants therefore denied that they ever attempted to dispossess the plaintiff. According to those plaintiffs there is no hostile assertion or adverse possession. They admitted that it is only in the khatian published in 1968 the name of the plaintiffs' father was shown in the column No.23 for the first time, but the khatian published in the year 1989 does not show the name of the plaintiff or other legal heirs of their father. However, they did not state whether that khatian was corrected or not. The suit land was delivered to the nagar panchayat by the Sub-Divisional Officer, Belonia after formation of nagar panchayat and the nagar panchayat took possession of the vacant land and completed the construction of 15 shops over the said land. Thereafter, the nagar panchayat distributed those shops to the unemployed educated youths for running several types of business in the said shops. The plaintiff and his predecessor is mere trespasser and according to them, those sheds were constructed over a land measuring 0.054 acre (2 ganda and odd) long before filing of the suit. The defendant Nos.1, 2 and 3,

the present appellants filed a separate written statement denying the right of the plaintiffs to have the declaration of title. The plaintiffs, according to them, were never in possession of the schedule "C" land of the plaint and thus there was no question of dispossession at all. They have denied that the plaintiffs' father ever constructed any hut on the suit land. They have further stated in their written statement as under:

"That the instant suit is not at all maintainable on the sole ground that the plaintiffs have miserably failed to show any hostile and adverse possession against the answering defendants before 1967. Therefore, till filing of the suit there is no evidence of any hostile or adverse possession by the plaintiffs against the answering defendants prior to 1967. Not only that by the revision of land settlement in 1982 answering defendants 1, 2 and 3 deleted his name from column No.23 of khatian. Therefore it shows that alleged possession of the plaintiffs in the land in question well below 30 years and as such the claim of the plaintiffs having adverse possession against right, title and interest of the answering defendants does not stand at all."

They have also asserted that after formation of the nagar panchayat the suit land was delivered to the nagar panchayat and they have constructed 15 shops over the suit land and those have been distributed to the educated unemployed for carrying on their business.

03. Based on those pleadings, the trial court framed the issues as under:

- (i) Is the suit maintainable in its present form?
- (ii) Have the plaintiffs required title by adverse possession?
- (iii) Whether the plaintiffs are entitled to a decree as prayed for.
- (iv) What other relief or reliefs the plaintiffs are entitled under the law and equity?

04. Several documents have been brought in the evidence by the plaintiffs. (It is to be noted at this juncture that though initially the plaintiff Dilip Kr. Majumder instituted the suit but subsequently by the order dated 07.02.1997, the defendant No.13 Sri Shyamal Majumder was transposed as the plaintiff No.2.) Those documents are:

- (a) Khatian No.1/62 of Mouja Belonia - Exbt.1,
- (b) Khatian No.3558 of Mouja Belonia - Exbt.2,
- (c) Extract of unauthorized occupiers Register of Govt. khash land of Mouja Belonia page-8 issued from Belonia Tahashil Kachari - Exbt.3,
- (d) Certified copy of map of CS plot No.4033 of Mouja Belonia, Exbt.4,
- (e) Certified copy of map of RS Plot No.3579 of Mouja Belonia - Exbt.5.
- (f) Licence No.EX-799/DM/54, dated 6-4-54 in the name of Shri Suresh Majumder - Exbt.6,
- (g) Memo No.F.1(I)REV/(EX)/81 of Excise Department of Tripura - Exbt.7,
- (h) Licence No.1-3/F.5(9)-EX/83, dated 22-4-83 in the name of Dilip Majumder-Exbt.8,
- (i) Attested Xerox copy of Trade Licence vide No.1, dated 28-1-92 renewed up to 1997 in the name of Shri Dilip Kr. Majumder issued from Nagar Panchayet, Belonia - Exbt.9.
- (j) The letter No.F.5(20-1)/SDO/BLN/REV/TS 1999.673, dated the 8th August, 2001 issued by the Sub-Divisional Officer, Belonia including its annexure i.e. Unauthorised Occupiers Registers Page-8 of Mouja Belonia in RS Khatian No.1/62-Exbt.10.

05. The defendants did not submit any document. Even though the defendants No.1, 2 and 3 had filed their examination in chief but they never appeared for cross examination by the plaintiffs. On the other hand, the plaintiffs not only introduced those documents (Exbt.1 to Exbt.10) but they adduced 5 witnesses and except PWs3

and 4 all the witnesses were duly cross examined by the defendants. The defendants No.4, 5 and 6 adduced 3 witnesses and they were duly cross examined by the plaintiffs.

06. After the appreciation, the trial court returned the finding that on appreciation of the cross examination of the defendants' witness namely Premananda Choudhury, it is found that since 1953 Suresh Ch. Majumder was dealing in the liquor and the present shop of the plaintiff was in existence from that year. The finally published khatian in respect of the suit land had shown the father of the plaintiff as the forceful occupier under the column No.23. It is to be noted that the said khatian was issued in the year 1967. Even in the register of unauthorized occupiers of the Government land, name of the plaintiffs' father is shown as the possessor over the suit land. Thus, the trial court came to the finding that it is apparent that the plaintiffs are in possession of the suit land for more than 30 years continuously. The trial court has observed as under:

"After completion of survey operation in the year 1968, the finally published khatian was issued. So there is no hesitation to decide it that in between 1960 to 1968 the plaintiffs were in possession over the suit land. Moreover, the witness of the defendant also admit it in his cross examination that since 1953 the father of plaintiffs was dealing with his business over the suit land."

07. As corollary to that finding the trial court has passed the following decree:

"(i) Plaintiffs right, title and interest is hereby declared over the suit land measuring '150 acres of land appertaining to RS Khatian No.3558 and stated in RS Plot No.4033.

(ii) The Defendants and their men and agents are hereby permanently restrained from entering into the

suit land appertaining to RS Khatian No.3558 and stated in RS Plot No.4033.

(iii) Defendants No.4, 5 and 6 are hereby directed to hand over the vacant possession of the land mentioned in schedule 'C' of the amended plaint within one month."

08. It is to be pointed out that no issue as to the dispossession and recovery of the schedule 'C' land was framed by the trial court and even there is no discussion over that aspect of the matter in the judgment dated 02.12.2004 delivered in Title Suit No.29 of 1996. However, that judgment was challenged by the present appellants in the Court of the District Judge, South Tripura, Udaipur being Title Appeal No.13 of 2006. The said appeal was however decided by the Addl. District Judge, South Tripura, Udaipur by the impugned judgment dated 12.09.2009. By the said judgment the appeal was dismissed on returning the finding as under:

"In view of what is stated above I have no hesitation to hold that the plaintiff-respondents acquired title over the suit land (Schedule-A land of the plaint) by adverse possession before they were dispossessed from a portion of suit land (Schedule 'C' land of the plaint) on 13.11.96 and therefore, the learned Trial Court committed no wrong in deciding the Issue Nos.(i), (ii) and (iii) in favour of the plaintiff-respondents. In my opinion, the finding of the trial court declaring the right, title and interest of the plaintiff-respondents over the suit land by adverse possession, granting permanent injunction thereof and allowing recovery of khash possession of Schedule-C land of the plaint does not suffer from perversity in the sense that the same is supported by evidence on record and hence, it does not call for any interference."

Thus, the judgment of the trial court was affirmed.

09. The said judgment dated 12.09.2007 by the first appellate court has been questioned in this appeal. At the time of admitting the said appeal the following substantial questions of law were formulated by the order dated 12.05.2008.

"Whether the plaintiff-respondents could claim any right by prescription on the teeth of Section 15 of the Tripura Land Revenue and Land Reforms Act, 1960 and as to whether by filing a suit for declaration of title by prescription could the plaintiffs evade the statutory right of the appellants for invoking the provision of Section 15 of the Tripura Land Revenue and Land Reforms Act, 1960?"

Whether admittedly after dispossession by the appellants, the plaintiff-respondents can claim any adverse possession over the land consequent thereto the declaration of title?"

The appellants were given liberty to raise any other substantial questions of law at the time of hearing the appeal.

10. Mr. S. Deb, learned senior counsel assisted by Mr. D. C. Nath, learned counsel appearing for the appellants though initially raised an objection that the amendment that has been carried out having not been incorporated in the plaint in terms of Order 6, Rule 18 of the CPC cannot be read as a part of the pleading. Order 6, Rule 18 provides that "If a party who has obtained an order to amend does not amend accordingly within the time limited for that purpose by the order, or if no time is thereby limited, then within fourteen days from the date of the order, he shall not be permitted to amend after the expiration of such limited time as aforesaid or of such fourteen days, as the case may be, unless the time is extended by the Court."

11. On scrutiny of the records, this Court did not find any substance in such objection as the trial court itself has incorporated the amended part of the pleading in the plaint. Mr. Deb, learned senior counsel has further submitted that eviction in exercise of the powers under Section 15 of the Tripura Land Revenue & Land Reforms Act, 1960 is not circumvented. The said power can be exercised whenever it is found by the authority that some Government land is

being illegally possessed by any person. He has therefore contended that Section 188 of the TLR & LR Act has created a bar on the jurisdiction of the civil courts on the dispute which falls within the jurisdiction of the revenue authorities or from the dispute which is amenable to such jurisdiction and hence the suit ought to have been determined as barred under Section 9 of the CPC which provides that the court shall have jurisdiction to try all suit of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. According to Mr. Deb, learned senior counsel that exercise by the civil court is wholly illegal and hence the impugned judgment has to be treated as the nullity. In addition thereto, Mr. Deb, learned senior counsel raised another objection that when by way of amendment recovery of the schedule 'C' land was sought, no additional court fee was deposited nor the suit was revalued. Mr. Deb, learned senior counsel has further submitted that no attempt has been taken by the courts below to enquire into the fact of the alleged dispossession and as such the decree of recovery as passed is without any foundation of the fact finding enquiry, is wholly illegal and cannot be sustained in law.

12. From the other side, Mr. S. M. Chakraborty, learned senior counsel assisted by Ms. B. Chakraborty, learned counsel appearing for the respondents has submitted that the appellants in their written statement did not raise that objection as to the jurisdiction of the court in view of the provisions of Section 15 of the TLR & LR Act, 1960 and as such no issue was framed in that regard. Mr. Chakraborty, learned senior counsel has further submitted that in the first appellate court the appellants raised that issue for the first time by way of

submission, as would be evident from para-15 of the impugned judgment. The first appellate court after due consideration has rejected such objection. Mr. Chakraborty, learned senior counsel appearing for the plaintiff-respondents has further contended that any objection as to the competence of the court has to be taken in the court of the first instance and unless there is failure of justice, the appellate or the revisional court shall not interfere the judgment. It appears that Mr. Chakraborty, learned senior counsel has raised this opposition in terms of Section 21 of the CPC which deals with the objection to jurisdiction but those provisions are limited to the objection as to the place of suing and to the competence of court with reference to pecuniary limits. However, the principle as provided in that Section can always be appreciated by the appellate court. There is no dispute and it also evinces from the records that such objection as to the jurisdiction was not taken by the appellants in the court of the first instance.

13. Mr. Deb, learned senior counsel in the course of his submission has relied ***Dhannalal vs. Kalawatibai and others*** reported in **(2002) 6 SCC 16** to have some nourishment of his submission from the passage as extracted hereunder:

"20. Both the learned senior counsel for the parties stated that there is no specific statutory provision nor abiding precedent available providing resolution to the problem posed. Procedural law cannot betray the substantive law by submitting to subordination of complexity. Courts equipped with power to interpret law are often posed with queries which may be ultimate. The judicial steps of judge then do stir to solve novel problems by neat innovations. When the statute does not provide the path and precedents abstain to lead, then they are the sound logic, rational reasoning, common sense and urge for public good which play as guides of those who decide. Wrong must not be left unredeemed and right not left unenforced. Forum out to be revealed

when it does not clearly exist or when it is doubted where it exists. When the law - procedural or substantive - does not debar any two seekers of justice from joining hands and moving together, they must have a common path. Multiplicity of proceedings should be avoided and same cause of action available to two at a time must not be forced to split and tried in two different for as far as practicable and permissible.”

14. Thus, Mr. Deb, learned senior counsel has contended that when there is no precedent or unambiguous law, such objection can be raised before the court competent to interpret the law. He has also placed his reliance on a decision of the apex court in ***National Institute of Technology and others vs. Niraj Kumar Singh*** reported in **(2007) 2 SCC 481**. In para 28 of that report apex court has laid down as to the consequence of an act done without jurisdiction. It has been succinctly held by the apex court that *"It is well-known that where an order is passed by an authority which lacks inherent jurisdiction, the principles of res judicata would not apply, the same being nullity."* Thus, Mr. Deb, learned senior counsel has further contended that if it is found that the court of the first instance had no jurisdiction then its decision or decree is a nullity in the eye of law. Finally, he has relied on a decision of ***Kanwar Singh Saini vs. High Court of Delhi*** reported in **(2012) 4 SCC 307**. Jurisdiction cannot be acquired without due conferment by law. In ***Kanwar Singh Saini vs. High Court of Delhi*** the settled legal position has been restated holding that conferment of jurisdiction is a legislative function and it can neither be confirmed with the consent of the parties nor by a superior court and if the court passes order/decreed having no jurisdiction over the matter it would amount to nullity as the matter goes to the root of the cause. Such an issue can be raised at any belated stage of the proceeding including in an appeal or execution.

Finding of a court or a tribunal becomes irrelevant and un-enforceable/unacceptable if it is found that there was no jurisdiction. Acquiescence of a party equally should not be permitted to deter the legislative will. The court cannot but derive jurisdiction from the statute.

15. Having regard to the rival contentions, the substantial questions as raised in this appeal may be addressed. The second substantial question may be taken up first. The said substantial question as it appears has been formulated on the assumption that the plaintiffs have been dispossessed by the appellants or precisely by the defendants No.4, 5 and 6 from the entire suit land as described in the Schedule-A to the plaint. According to the plaint, the plaintiffs have been dispossessed from the Schedule-C land. The said land measuring two and half gandas has been claimed to have been under the adverse possession of the plaintiffs. Both the schedule 'B' and the schedule 'C' make up a land measuring 7 gandas whereas schedule 'A' land which is the suit land is measured at 7 and half gandas of the land. There had been no enquiry either by the trial court or by the first appellate court as to why there is such difference. It would be pertinent to extract the relevant part from the examination in chief of the plaintiff No.1 in this regard. "But during the pendency of the suit on 13-11-1996, the defendants No.4, 5 & 6 with their men and agents dispossessed me from the suit land as stated in schedule below where from the defendants are liable to be evicted. On that date the defendant No.4, 5 & 6 dispossessed me from the land as stated in schedule 'C' by cutting and removing all the valuable trees and hut, fencing standing thereon and constructed stalls."

16. It is to be further mentioned that the suit was filed in the court of the Civil Judge, Jr. Divn., South Tripura, Belonia on 11.11.1996 and the petition for amendment was filed on 18.12.1996 stating that the alleged dispossession by defendants No.4, 5 and 6 occurred on 13.11.1996. It is improbable that within two days the defendants No.4, 5 and 6 could construct the shops on the schedule 'C' land. The plaintiffs have admitted while describing the schedule 'B' land that in the South-stall constructed by the defendants No.4, 5 and 6 with their men and agents during the pendency of the suit. The Eastern boundary has also been described in the similar way. Thus, the entire story of dispossession appears improbable. Rather, the version of the defendants appears credible and trustworthy. As already noted, no issue has been framed to enquire into the fact as to the aspect of the dispossession. The findings so returned by the trial court are on assumption even not on presumption as there is no foundation laid on the evidence to come to a presumption that the appellants was dispossessed by the defendants No.4 and 5 illegally.

PW2 Prabhat Ch. Datta has simply stated about dispossession of the plaintiffs from the schedule 'C' land but he did not state anything about the construction of the shops over the suit land.

The same suit has been followed by PW 3 Gopal Krishna Das, PW 4 Sri Adhir Ch. Shome and PW 5 Sri Hiralal Debnath. None of PWs has described how the stalls were constructed over the 'B' schedule land having the plaintiff in possession inasmuch as it is not probable within one day the stalls were constructed by the defendants No.4 and 5. It is not the case of the plaintiffs that they have permitted construction of such shops over the 'B' schedule land. Both the trial

court and the appellate court have relied on DW 2, Premananda Choudhury and according to them the said witness of the defendants has supported the claim of the plaintiffs as to the possession over the entire suit land. What Mr. Choudhury has stated in the examination in chief is that predecessor of the plaintiff were occupying two gandas out of the 'C' schedule land and in the examination in chief he has further stated that the shop of the predecessor was bound by about 3 gandas of land. But he was unable to describe 'C' schedule land.

DW 2 has land adjoining to the suit land. However, it cannot be denied that even DW 4, Dipankar Sen has stated that a liquor shop is situated in the western side of the suit land. He has stated in his cross examination that:

"Haripada Baidya, Premananda Chowdhury, Arjun Shil, Govinda Datta, Swapan Das and Dipak Baidya are the tenants in our constructed kachcha sheds which are within the suit land. The sheds allotted to the above named six persons along with some others are situated within the 'C' schedule land. At the time of construction of these sheds I was Vice Chairman of Belonia Nagar Panchayet and these were constructed in the year 1996. We did not enquire or inspect the records in the Tahashil prior to construct all these sheds in the 'C' schedule land. We constructed those sheds in that area on the request of the persons who were already in possession on those lands. But we did not enquire about their ownership over the said land. I am unable to say whether any permission obtained from S.D.O., Belonia prior to construct of the sheds in the 'C' schedule land. I do not know whether from 1953 Suresh Majumder was in possession over the 'C' Schedule land and after his death his sons namely Dilip Majumder and Shyamal Majumder are in possession over the said land or not."

17. DW 3, Haripada Baidya has stated that the schedule 'C' land was never occupied by the plaintiffs. This land was used for selling bamboo etc. In his cross examination he has categorically stated that on the western side of the 'C' schedule land situate a liquor shop. Usually in the second appeal, this court does not venture

in re-appreciating the evidence but non-appreciation of the relevant fact made the judgment of affirmation susceptible to re-appreciation. It has been already observed that this Court is unable to hold that the plaintiffs were in possession of the schedule 'C' land, when the suit was instituted by them and to conceal that aspect of the matter that they were not in possession of the schedule 'C' land, they have amended the description of the 'B' schedule as under:

"North: Road constructed, by South Stall constructed by the defendants No.4, 5 and 6 with their men and agents during the pendency of the sit. East stall constructed the stall by the defendants No.4 with their agents and men during the pendency of the suit."

18. In the description of the schedule 'C', it has been categorically stated that on the western boundary of the plaintiff, Narayan Roy and others, Anjali Saha. This means on the western side of the 'C' schedule land there situate the 'B' schedule land. As such, it is abundantly clear that the plaintiffs were never in possession of the 'C' schedule land. That was a ploy to implant a story in the plaint in such a manner which may persuade the court to evict the respondents No.4, 5 and 6 who are permissive possessors of the appellants herein i.e. the defendants No.1, 2 and 3 as those defendants No.4, 5 and 6 could not show any records transferring the title of that land in their favour. However, the defendants No.1, 2 and 3 in their written statement have admitted that the land was handed over to the defendants No.4, 5 and 6. When there is no proof that the schedule 'C' land was under possession of the plaintiffs before the institution of the suit as the version extended by the plaintiffs is improbable this Court is not inclined to affirm the finding that the plaintiffs were in possession of the land described in the schedule 'C' and accordingly

the judgment of affirmation in this regard is liable to be interfered with. Moreover, it has even been admitted by DW 4 that a liquor shop was there in the western side of the land. It appears, therefore, that the possession of the plaintiffs over the schedule 'B' land has remained un-rebutted. From a cumulative reading of the documentary evidence and the oral testimonies, it would be apparent that the plaintiffs and their predecessors have been possessing the 'B' schedule land.

19. Mr. Deb, learned senior counsel has also raised a question that there is no evidence as to the hostility. When a Government document shows the predecessor of the plaintiffs as forcible occupier it has to be held that the denial of any right by the occupier was within the knowledge of the true owner. But it did not take any action at law not even any action permissible under Section 15 of the TLR & LR Act 1960 and hence this Court is inclined to declare the title by prescription in favour of the plaintiffs only over the 'B' schedule land and hence it is decreed that the plaintiff has the right, title and interest over the land described in the 'B' schedule appended to the plaint measuring two and half gandas comprised in the khatian No.3558 and RS Plot No.4033 (Part). The respondents and their men and agents are permanently restrained from entering in the land as described in the schedule 'B', appended to the plaint, pertaining to khatian No.3558 and RS Plot No.4033 (Part). The reliefs for the decree of declaration of the right, title and interest of the plaintiffs over the entire schedule 'A' land or on the schedule 'C' land or the decree of recovery of the schedule 'C' land are dismissed.

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.

JUDGE

MB