

**THE HIGH COURT OF TRIPURA
AGARTALA**

RSA NO.22 OF 2011

Sri Nani Gopal Debnath,
S/O Harendra Ch. Debnath,
R/O North Charilam,
P.S. Bishalgarh,
District-West Tripura.

..... Appellant

- *Vs* -

Sri Golak Behari Das,
S/O Late Gurudas Das,
R/O North Charilam,
P.S. Bishalgarh,
District-West Tripura.

..... Respondent

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

For the appellant : Mr. D.R. Choudhury, Advocate
Mr. D. Deb, Advocate

For the respondent : Mr. P. K. Dhar, Advocate
Mr. R.G. Chakraborty, Advocate

Date of hearing and delivery
of judgment & order : **01.10.2015.**

Whether Fit for Reporting :

Yes	No
	✓

JUDGMENT & ORDER(ORDER)

This second appeal under Section 100 of the Code of Civil Procedure, 1908 is directed against the judgment and decree dated 20.01.2011 passed by learned Addl. District Judge, Court No.3, Agartala, West Tripura in Title Appeal No.23 of 2010,

whereunder the judgment and decree dated 08.06.2010 passed by learned Civil Judge, Junior Division, Bishalgarh, in Title Suit No.37 of 2008 has been set aside and the suit was decreed by the appellate judgment.

2. The second appeal has been admitted for hearing on the following substantial question of law:-

Whether the judgment passed by the first appellate Court in TA.23/2010 suffers from perversity?

3. Heard learned counsel, Mr. D.R. Choudhury for the appellant and learned counsel, Mr. P. K. Dhar for the respondent.

4. The respondent as plaintiff(hereinafter mentioned as plaintiff) instituted Title Suit No.37 of 2008 seeking declaration of right, title, interest in the suit land described in the schedule of the plaint and also for recovery of possession and perpetual injunction. It is, *inter alia*, contended by the plaintiff that he purchased the suit land along with other land from one Basanti Bhattacharjee by a registered deed of purchase dated 12.02.1974 and got possession of the suit land. The purchased land of the plaintiff was recorded in his name in khatian No.503 and he alleged that the defendant dispossessed him from the suit land on 17.12.2006 at 8.00 am. He therefore prayed for declaration of right, title, interest and for recovery of possession.

5. The defendant, *i.e.* the appellant herein (hereinafter mentioned as defendant) contested the suit by filing written statement, *inter alia*, contending that he entered into forceful occupation of the suit land on 20.12.1993 and has been peacefully possessing the suit land exercising all right title and interest and denying the right title of the true owner and thereby acquired title by adverse possession. He therefore prayed for dismissal of the suit.

6. The trial Court considering the pleadings of the parties framed four issues, namely—

- 1. Whether the suit is maintainable in its present form and nature?*
- ii. Whether the Plaintiff has got right, title and interest over the suit land?*
- iii. Whether the Plaintiff is entitled to get recovery of possession over the suit land?*
- iv. What other relief the Plaintiff is entitled?*

7. The plaintiff examined himself as PW1 and also examined another witness, namely Uttam Das as PW2 but PW2 Uttam Das was not ultimately produced for cross-examination and so the evidence of PW2 was not taken to consideration. The plaintiff also relied on the following documents which are marked as *Exbts.1, 2 and 3:*

Exbt.1: Sale deed bearing No.1-1476 dated 12-02-1974.

Exbt.2: Khatian No.503 of Mouja North Charilam.

Exbt.3. Survey settlement map of Mouja North Charilam, Sheet No.9.

8. The defendant examined himself as DW2 and also examined two more witnesses, namely DW2 Amulya Ch. Debnath and DW3 Santi Debnath.

9. The trial Court after considering the pleadings and evidence on record decided the issue against the plaintiff and dismissed the suit.

10. Aggrieved, the plaintiff preferred Title Appeal No.23 of 2010 in the Court of District Judge and the learned Addl. District Judge by judgment and decree dated 20.01.2011 allowed the appeal, set aside the judgment passed by the trial Court and decreed the suit.

Hence this second appeal.

11. Appearing for the appellant Mr. D.R. Choudhury, learned counsel fairly submitted that the defendant could not prove his claim of title by adverse possession but it is an admitted position that the defendant is in possession of the suit land. Whether the defendant has been able to prove his claim of adverse possession or not is of no consequence since the burden lies on the plaintiff to prove his own case that he got possession of the suit land on the alleged date of purchase and thereafter he was dispossessed by the defendant on 17.12.2006 and that he is

entitled to get recovery of possession. The plaintiff simply examined himself as witness and there is no other corroborating evidence and so the plaintiff has failed to prove his case that he was dispossessed from the suit land on 17.06.2006 and so the trial Court rightly dismissed the suit of the plaintiff and the plaintiff is not entitled to get any decree.

12. Learned counsel, Mr. P.K. Dhar appearing for the respondent submitted that the plaintiff instituted the suit for declaration of right, title, interest and for recovery of possession of the suit land described in the schedule of the plaint. The plaintiff proved the purchased deed, the khatian in his name and the survey map of the mouja in respect of the relevant plots of land and it is clearly proved that the plaintiff has got the title over the suit land and while the plaintiff has proved his title and proved the fact that he has been dispossessed by the defendant he is entitled to get declaration as well as recovery of possession.

13. Since it is alleged on behalf of the defendant appellant that the judgment suffers from perversity, I have gone through the pleadings of the parties as well as the evidence on record.

14. The plaintiff instituted the suit for the suit land described in the schedule of the plaint which reads as follows:

Schedule of the Land

Within the *District West Tripura, Revenue Circle
Bishalgarh, Mouja + Tehsil North Charilam comprised in*

Khatian No.503, Touji No.347(Part), CS Plot No.3443(Part) RS Plot No.3578 land measuring 0.22 acres i.e. 11 Gandas of Nul classes land by local measure butted and bounded by—

On the North - Kamini Sarkar

On the South - Plaintiff

On the East - Kamini Sarkar

On the West - Sunil Debnath

Within this boundary land measuring 0.22 Acres of nul classes land.

15. Besides oral evidence the plaintiff exhibited the purchased deed of the suit land which is marked as *Exbt.1* and the document clearly shows that the plaintiff purchased the land of plot No.3443 measuring 0.38 acres including the land of other plots. The purchased land has been recorded in khatian No.503 and a copy of the khatian has been proved by the plaintiff marked as *Exbt.2*, which shows that hal plot No.3578 is a part old plot No.3443 and land measuring 0.22 acres has been recorded in the name of the plaintiff. Here learned counsel, Mr. Choudhury has submitted that in khatian No.503, *i.e.* *Exbt.2* column No.16 the plaintiff has been shown as forceful occupier from the year 1978 which means the plaintiff was not in possession of that plot of land at the time when he alleged to have purchased the suit land in the year 1974. I cannot agree with the submission of learned counsel, Mr. Choudhury that for such entry in the remark column of the khatian the claim of the plaintiff should be suspected that he did not get possession of the suit land at the time of purchase, *i.e.* on 12.02.1974. The recitals of *Exbt.1* clearly shows that the seller

handed over the possession of the suit land to the plaintiff-purchaser on the date of purchase and the khatian subsequently was prepared in the name of the plaintiff. So, the plaintiff proved his title over the suit land.

16. The defendant while accepting the title of the plaintiff in the suit land claimed adverse possession. The appellate Court correctly held that the burden lies on the defendant to prove his adverse possession. The defendant claimed that he entered into possession of the suit land on 20.12.1993. Except his oral evidence there is no other item of evidence to support his claim. Even DWs 2 and 3 cannot be said to have supported the defendant since in their cross-examination they made clear statement that they cannot say what is written in examination-in-chief. In their examination-in-chief it is stated that the defendant is in forceful possession of the suit land from 20.12.1993 but that evidence has been completely shaken because of the statement made by those two witnesses in their cross-examination that they cannot say what is written in the affidavit in examination-in-chief. The defendant therefore failed to prove his claim of adverse possession and learned counsel, Mr. Chowdhury very fairly submitted that the defendant has failed to prove his claim of adverse possession.

17. It is a settled position of law that possession follows title. A person having title over a property has to be ordinarily presumed to be in possession of that property unless contrary is

proved. The purchase deed of the plaintiff shows that he was given possession of the suit land on the date of his purchase in the year 1974. The khatian has been prepared in his name after purchase but in the remarks column of the khatian, *i.e.* column No.16 he has been shown as a forceful occupier and that has not been deleted. Such entry cannot totally shake the title of the plaintiff over the suit land which he acquired by purchase. The entries in the khatian does not show that the defendant is in possession of the suit land from the year 1993 as claimed by him. Therefore, in the given facts and circumstances of the case, while the title of the suit land has been established over the suit land, and while the defendant has failed to prove his claim of adverse possession, the appellate Court rightly decreed the suit in favour of the plaintiff. I therefore find no merit in the appeal and hence the appeal stands dismissed.

18. Costs should be borne by the parties of their own.

19. Send back the L.C. records along with a copy of the judgment.

JUDGE