

THE HIGH COURT OF TRIPURA

A_G_A_R_T_A_L_A

RFA.2 of 2009

1. The Principal Chief Conservator of Forest,
Government of Tripura, Agartala, West Tripura.
2. Divisional Forest Officer, (D.F.O),
Kailashahar Division, Kailashahar Town,
West Market, P.S. Kailashahar, North Tripura.
3. Forest Ranger, Kumarghat Forest Range,
P.S. Kumarghat, North Tripura.
4. Block Development Officer,
Kumarghat R.D Block, North Tripura.
5. Sub-Divisional Magistrate, Kailashahar,
P.S. - Kailashahar, North Tripura.
6. District Magistrate & Collector,
North Tripura, Kailashahar.
7. The State of Tripura,
represented by the Chief Secretary,
Government of Tripura.
8. The State of Tripura,
represented by Special Secretary
to the Govt. of Tripura and Director, Higher Education
Department, Agartala, West Tripura.

..... *Appellants.*

- Vs -

1. Sri Durga Shankar Roy,
S/o Late Debendra Mohan Roy,
Resident of Sayedabari, Kumarghat, P.S. - Kumarghat
(the then name of Fatikroy), P.O - Sayedabari, North Tripura.
- 2(a) Smt. Chameli Roy,
W/o Lt. Dwijendra Lal Roy.
- (b) Sri Dipankar Roy,
S/o Lt. Dwijendra Lal Roy.

(c) Smt. Sonali Roy,
D/o Lt. Dwijendra Lal Roy.

All are residents of Pabiacherra, near Rose Valley Building,
P.O. Kumarghat, P.S Kumarghat, North Tripura.

3. Sri Dipak Lal Roy,
S/o Late Debendra Mohan Roy.

4. Sri Damodar Roy,
S/o Late Debendra Mohan Roy,
Both are residents of Sayedabari, Kumarghat, P.S. - Kumarghat
(the then name of Fatikroy), P.O - Sayedabari, North Tripura.

5. Sri Prabir Das,
S/o Lt. Kritish Das, Vill - Sayedabari,
P.S. - Kumarghat, North Tripura.

6. Sri Tulan Malakar alias Prantosh Malakar,
S/o Lt. Promode Malakar,
Vill - Sayedabari, P.S. - Kumarghat, North Tripura.

7. Sri Dilip Dey,
S/o Lt. Gopal Dey,
Resident of near S.E. Office Complex, Kumarghat,
P.S. Kumarghat, North Tripura.

8. Smt. Binapani Roy,
W/o. Ramesh Ch. Roy,
Resident of Industrial Area,
Kumarghat Town, P.S. - Kumarghat, North Tripura.

9. Smt. Sandhya Roy,
W/o Sri Bhula Saha,
resident of Math Chowmuhani (Near Pagla Debata Bari)
Agartala, P.S. - East Agartala, West Tripura.

10. Smt. Krishna Roy,
W/o Sri Tapan Paul,
Resident of Dhaleswar, near Joyguru Medical Hall,
P.O - Dhaleswar, P.S. East Agartala, Tripura West.

11. Smt. Anju Bala Roy,
W/o Lt. Digendra Lal Roy,
Resident of College Road, Shib nagar, P.S. East Agartala.

12. Smt. Dikpati Roy,
S/o Lt. Digendra Lal Roy,
Asstt. Professor K.V.S.R.,
Siddhartha College of Pharmaceutical Science,
P.S. - Siddharthanagar, Bijayawada - 520010, A.P.

13. Smt. Dhiti Roy,
D/o Lt. Digendra Roy,
C/o. Dr. Nirmal Roy, Kataseola, Ramkrishna Road,
P.S. East Agartala, Jogendra nagar, Agartala.

14. Smt. Bithi Roy,
D/o Lt. Digendra Lal Roy,
C/o Lt. Indreswar Saha, College Road,
P.S. East Agartala, P.O - Agartala College,
Agartala, Tripura West.

15. Smt. Iti Roy,
D/o Lt. Digendra Lal Roy,
C/o Smt. Anju Roy,
Resident of Lt. D.L. Roy College Road, Shibnagar,
Agartala, P.S. East Agartala.

16. Smt. Smriti Roy,
D/o Lt. Digendra Lal Roy,
W/o Sri Biswajit Saha, Dhaleswar, Road No.6,
P.S. - East Agartala, Tripura West.

..... Respondents.

_B_E_F_O_R_E_
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA
HON'BLE JUSTICE MR. S TALAPATRA

For the appellants : Mr. G S Bhattacharjee, Advocate.
For the respondents : Mr. D K Biswas, Advocate.
Date of hearing : 09.3.2015.
Date of judgment : 27.4.2015.
Whether fit for reporting : Yes.

JUDGMENT & ORDER

This appeal by the Principal Chief Conservator of Forest is directed against the judgment, dated 7th November, 2008 passed by the learned Civil Judge(Senior Division), Kailashar, North Tripura in Case No.T.S.3 of 2008, whereby he decreed the suit of the

plaintiff-respondents holding that they are entitled to get recovery of possession of the suit land and further held that the plaintiff-respondents are entitled to get money decree against the defendants for the loss sustained by the defendants which will be decided after issuing commission.

2. It would be pertinent to mention that the plaintiff-respondents herein had earlier filed Civil Suit No.33 of 1994 in the Court of Civil Judge(Junior Division), Kailahsar, North Tripura against the State of Tripura in which they claimed right, title and confirmation of possession in respect of the suit land. In the said suit the following issues were framed.

“1. Is the suit maintainable in its present form and nature?

2. Have the plaintiffs right, title and interest over the suit land and by way of adverse possession or otherwise?

3. Have the plaintiff's possession over the suit land?

4. Are the plaintiffs entitled to the decree as prayed for?

5. To what other reliefs the parties are entitled?”

The learned trial Court vide its judgment dated 26.02.1998 held that the plaintiffs were in possession of the suit land, but dismissed the suit holding that the plaintiffs have no right, title and interest over the same. The plaintiff-respondents then filed Title Appeal No.11 of 1998 in the Court of District Judge, North Tripura, Kailashahar and the said appeal was also dismissed on merits on 25.8.1999.

3. Aggrieved by the judgment of the District Court the plaintiff-respondents filed a regular second appeal in this Court being RSA.38 of 1999. The appeal was admitted on 07.01.2000. On 20.5.2009 Sri B Das, learned senior counsel appearing for the plaintiff-respondents, submitted that the issues involved in the second appeal do not survive any longer and he did not press the appeal and the same was dismissed as not pressed on 20.5.2009. Thereafter the plaintiff-respondents filed Review Petition No.17 of 2010 which was dismissed by this Court on 16.01.2014. Therefore, the findings given in the earlier suit between the parties are binding which means that the plaintiffs had no right, title and interest over the suit land.

4. In the second suit, which was filed on 12.02.2008 the plaintiffs made reference of RSA.38 of 1999 filed by them and stated that the defendants 1 to 6 i.e. (1) *The Principal Chief Conservator of Forest*, (2) *Divisional Forest Officer, Kailashahar* (3) *Forest Ranger, Kumarghat Forest Range*, (4) *Block Development Officer, Kumarghat R. D. Block* (5) *Sub-Divisional Magistrate, kailashahar, District Magistrate & Collector, North Tripura*-all government officials and the State of Tripura with the help of some private persons had forcibly started dispossessing the plaintiffs from the suit land in the first part of June, 2006.

The relevant portion of the plaint reads as follows:

“At the aforesaid R.S.A.38/1999 recently from the Govt. side a copy of aforesaid fabricated & manipulated R.S. Khatian was produced & plaintiffs got alarmed. Be it mentioned here that meanwhile the defendants nos.1 to 6 with the physical help of some local persons figured herein after defendant Nos.7, 8 & 9 (who were/are enemies of plaintiff), most illegally and forcibly started to dispossess plaintiffs from the schedule land during the first part of the month of June 2006 despite all protests lodged on their behalf. Before that no proceeding for eviction of plaintiffs from the scheduled land was taken by the authority nor any way plaintiffs were given opportunity to be heard and they gradually dispossessed plaintiffs most illegally & unlawfully from the scheduled land during June 2006 & thereafter, by applying sheer force, and have since cut earth therein, planted pucca pillars, raised pucca drains and set up path etc. Plaintiff Sri Deepak Lal Roy raised protest by so many written representations dtd.17.02.2007, 23.03.2007 & Advocate’s notice dtd. 5.06.2006 etc. but to no effect. Thus, plaintiffs had been illegally dispossessed from the Scheduled land without any right or locustandi on the part of defendant nos.1 to 6 of whom defendantnos.5/6 during earlier T.S.33/1994 clearly admitted possession of plaintiffs at this Scheduled land i.e. the suit land of that suit stamping them as ‘Rank trespassers’. Defendants’ such act of forceful dispossession is hit by Art.300A of the Constitution.”

It was again re-asserted that the plaintiffs were in possession of the suit land from 08.7.1964 without objection and therefore, they had acquired adverse possession of the land.

5. In Title Suit 3 of 2008 out of which the present appeal arises, the trial Court held as follows :

“But the defendants’ side produced no oral or documentary evidence to satisfy that plaintiffs though admittedly were un-authorised occupier of the suit land were at all heard and were at all noticed before correcting the record of right during Revisional Survey. Giving due honour to the aforesaid two case laws cited by advocate S. P. Datta Purkayastha on behalf of the plaintiffs and perusing depositions of PWs and DWs and perusing all the exhibited documents adduced by both sides, I am of the opinion that the plaintiffs are entitled to get decree by evicting the defendants from the suit land.

Hence, issue No.3 is decided in favour of plaintiffs, with the decision that the plaintiffs are entitled to get decree of possession in the suit land by evicting the defendants from the suit land.”

In our view, these findings are wholly incorrect. As rightly held by Mr. G S Bhattacharjee that the second suit is not maintainable.

6. Admittedly, both the Courts have held that the plaintiff-respondents had no right, title or interest in the suit land. The claim of the plaintiff-respondents that they were in adverse possession of the suit land and their adverse possession had matured into title was negated in the first suit which finding has become final. In the second suit, the learned trial Court only granted the decree in favour of the plaintiffs relying upon the fact that entries in the revenue record were made at the back of the plaintiff-respondents. Assuming this fact to be correct, then also entries in the revenue record do not confer any right, title or interest. They

are only fiscal entries and in a civil suit the parties have to prove their right, title or interest over the property for claiming possession. If a party fails to show his right, title or possession, he is not entitled to file a suit for possession.

7. The only exception to this rule is that a person dispossessed of immovable property even if not the true owner can file a suit for recovery of the property from which he has been dispossessed under Section 6 of the Specific Relief Act, 1963 which reads as follows :

“6. Suit by person dispossessed of immovable property –

(1) If any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person claiming through him may, by suit, recover possession thereof, notwithstanding any other title that may be set up in such suit.

(2) No suit under this section shall be brought —

(a) after the expiry of six months from the date of dispossession; or

(b) against the Government.

(3) No appeal shall lie from any order or decree passed in any suit instituted under this section, nor shall any review of any such order or decree be allowed.

(4) Nothing in this section shall bar any person from suing to establish his title to such property and to recover possession thereof.”

A bare reading of the Section shows that under sub-section (1) if any person is dispossessed without his consent, otherwise than in due course of law is entitled to recover possession of the immovable property. However, sub-section (2) postulates two

conditions (i) that no suit under Section 6 can be brought after the expiry of six months from the date of dispossession and (ii) no suit under Section 6 lies against the Government. In the present case both the conditions are applicable and as such the suit is not maintainable.

8. As per the averments made in the suit and quoted hereinabove the plaintiffs were dispossessed sometime in June, 2006. The suit was filed much later on 12.02.2008 after the expiry of 6 months and, therefore, the suit was not only barred but also not maintainable in terms of Section 6(2). Furthermore, no suit under Section 6 can be filed against the government. Therefore, even if it is assumed that the plaintiff-respondents were wrongfully dispossessed, no suit on their behalf lie against the Government because they are not the true owners of land. It is settled law that where the plaintiff brings an action to recover possession after 6 months of dispossession then he can only succeed if he shows better title than the defendant. Otherwise the suit must fail. Further, as is apparent from the bare reading of clause(b) of sub-section (2) of Section 6 no suit can be instituted against the government under this Section for recovery of possession.

9. In this view of the matter, we are clearly of the view that the impugned judgment and decree of the learned trial Court

has to be set aside. The same is, accordingly, set aside. The suit of plaintiff-respondents is dismissed with costs assessed at Rs.5,000/-.

10. The appeal is, accordingly, allowed. Send down the LCRs forthwith.

JUDGE

CHIEF JUSTICE

Sukhendu