

**THE HIGH COURT OF TRIPURA
AGARTALA**

RSA 14 of 2004

Sri Rakhal Chandra Paul
S/o Sri Krishna Chandra Paul
Melaghar, P.S. Sonamura
At present Melaghar,
Dist. West Tripura Plaintiff-appellant

-vs.-

1. Sri Sankar Saha
S/o late Nagendra Chandra Saha
Melaghar, P.S. Sonamura
At present Melaghar,
West Tripura district

2. Smt. Shefali Devi
Wife of Sri Anil Acharjee

- Krishnanagar
(Lake Chowmuhani)
P.S. West Agartala
Dist. West Tripura ...defendant- respondents

**BEFORE
HON'BLE MR JUSTICE U.B. SAHA**

Advocate for the appellant : Mr. A. K. Bhowmik
Sr. Advocate
Mr. R. Datta,
Advocate

Advocate for the respondents : Mr. B. Das
Sr. Advocate
Mr. D. Chakraborty
Advocate

Date of hearing : 21.01.2015

Date of delivery
of the judgment : 4.6.2015

Whether fit for reporting : No

JUDGEMENT AND ORDER

This second appeal is preferred against the judgment and decree dated 27.2.2004 passed by the learned Additional District Judge, Sonamura, West Tripura in Title Appeal No. 1 of 2001 whereby and whereunder the learned Addl. District Judge dismissed the appeal and affirmed the judgment and decree dated 31.7.2000 passed by the learned Civil Judge, Junior Division, Sonamura in Title Suit No. 25 of 1986 dismissing the suit.

2. Heard Mr. A. K. Bhowmik, learned senior counsel assisted by Mr. R. Datta, learned counsel appearing for the appellant as well as Mr. B. Das, learned senior counsel assisted by Mr. D. Chakraborty, learned counsel appearing for the respondents.

3. At the time of admission of the appeal, the following substantial questions of law were framed:

(i) Whether the findings of the learned appellate Court to the effect that the possession of the plaintiff over the suit land was not adverse to the original owner can be sustained?

(ii) Whether the findings of the appellate court relating to acquisition of the title by adverse possession by misreading para 3, 4 & 5 of the plaint and the evidence on record are sustainable in law?

4. The appellant plaintiff being an unemployed was searching for a land at Melaghar market and found a piece of land lying vacant wherein he took over the possession and also constructed a kutcha hut and started medicine shop business. In course of time, after dismantling the said kutcha hut, he had constructed a pucca building and was doing his medicine business.

5. During the revisional survey, the land in question was recorded in the Khatian of the defendant No. 2, Nagarbashi Devi wife of late Satish Chandra Chakraborty, who was the respondent No. 2 in the memo of appeal, showing the plaintiff-appellant as an illegal occupant since 1973. Her name was subsequently struck off as per order of the Lowazima court dated 12.08.2004. It is also stated by the plaintiff appellant in his plaint that by virtue of continuous and uninterrupted possession he acquired a right by prescription. The defendant No. 1, respondent No.1 herein, Sri Sankar Saha obtained purported sale deed from the defendant No. 3, respondent No. 2 herein, Smt. Shefali Devi on the basis of a purported deed of gift earlier executed by the defendant No.2 in favour of the defendant No.3 in respect of the suit land and tried to forcibly dispossess the plaintiff appellant from the suit land on 19.9.1986 whereupon the plaintiff filed a suit for declaration of title, confirmation of possession and perpetual injunction.

6. The defendant No.1 filed the written statement separately and the defendant No. 2 and 3 filed their written statement jointly. The main contention in the written statement of the defendant No.2 is that she was the original owner and allowed the plaintiff-appellant to run his shop as a tenant and subsequently at her expenses, the kutchha thatched hut was converted into a pucca building. The plaintiff appellant was never in adverse possession of the suit land, but was mere tenant. The defendant No.3 is the only daughter of the defendant No.2 and as the defendant No.3 and her husband used to look after the defendant No.2 regularly with due affection and care, she gifted the land by registered gift deed to her daughter, the defendant No.3 and subsequently, the defendant No 3 transferred the land by way of registered sale deed to the defendant respondent No.1. The defendant No.1 in his written statement stated that he had purchased the land from the defendant No.3 and had rightly claimed delivery of the vacant possession of the suit land from the plaintiff-appellant.

7. All the defendants in their written statements clearly stated that the plaintiff appellant has no title over the suit land and as such, the suit is liable to be dismissed.

8. The learned trial Court i.e. the learned Civil Judge, Junior Division, Sonamura taking note of the pleadings of the parties framed issues which are as follows:

1. Whether the suit is maintainable in law?
2. Whether the plaintiff entered as a tenant under Smt. Nagar Bashi Chakraborty by executing an agreement dated 1.1.1385 B.S.?
3. Whether the plaintiff paid from his own the entire expenses for the construction of the building in the suit land?
4. Whether the plaintiff has been possessing the suit land adversely against the defendants for more than 12 years openly & uninterruptedly upto the institution of this suit?
5. Whether the suit is barred by estoppels, waiver and acquiescence?
6. Whether the plaintiff is entitled to a decree of declaration that he has acquired title over the suit property by adverse possession?

Additional issue:

6(a). Whether the plaintiff is entitled to get a decree of perpetual injunction for restraining the defendant No. 1 to 3 for entering into the suit land?

9. The Trial court has also taken evidence both oral and documentary and after hearing the learned counsel on both sides dismissed the suit holding that the plaintiff-appellant has failed to establish his right by way of adverse possession.

10. Being aggrieved by the judgment and decree passed by the learned trial court, the plaintiff appellant preferred the first appeal before the Additional District Judge, Sonamura, West Tripura.

11. The learned Additional District Judge, after hearing the learned counsel for the parties and considering the pleadings

of the respective parties as well as the evidence adduced by them dismissed the appeal. Hence, the second appeal.

12. Mr. Bhowmik learned Sr. counsel while urging for setting aside the judgment and decree passed by the learned trial court and affirmed by the first appellate court would contend that the plaintiff has proved his case adducing evidence that he was in peaceful possession over the suit land for more than 13 years against the defendant No. 2 and 3. He has also stated that before the defendant No.1 purchased the suit land, the plaintiff appellant adversely possessed the land. He has further contended that the finding of the court below that the plaintiff-appellant did not possess the land adversely is wholly perverse. He has finally contended that both the learned trial Court as well as appellate Court misread para 3, 4 and 5 of the plaint and evidence on record. Thus, both the judgments of the learned trial Court as well as appellate Court are liable to be set aside.

13. On the other hand, Mr. Das learned senior counsel while supporting the judgment of both the courts below would contend that substantial questions of law formulated by this court at the time of admission at best can be the questions of law, but not substantial questions of law. He has further submitted that whether a person adversely possessing a land is a question of fact which can be proved by way of evidence. But in the instant case, the appellant plaintiff in his plaint

specifically stated that the defendant No.2 was the owner of the suit land along with her homestead lying contiguous to west of the suit land and the defendant No.3 is her married daughter. He has also stated that the plaintiff appellant has executed an agreement for tenancy in favour of the defendant No.2 and before that; the plaintiff appellant had never possessed the suit land in any capacity whatsoever. He has also contended that the plaintiff appellant himself by his correspondence with the Deputy Drug Controller admitted that he was a tenant in the land in question and in support of his aforesaid contention, he has referred to the Exhibit –T to the plaint. He finally contended that both the learned trial Court as well as the appellate Court had correctly appreciated the material evidence on record and there is no perversity in the finding of facts.

14. I have given my thoughtful consideration to the rival submission of the learned counsel for the parties and also meticulously perused the impugned judgment and decrees of the courts below. The learned District Judge while dismissing the appeal mainly dealt with the question as to whether the plaintiff appellant has been able to establish his title over the suit property by way of an adverse possession. He has also discussed as to whether the plaintiff appellant was actually in physical possession of the suit land for more 12 years and if

so such possession was hostile to the knowledge of the true owner and ultimately held as follows:

"The khatian relied by the plaintiff-appellant side to establish his right by way of adverse possession on the ground that forcible occupation has been recorded by the Settlement Authority in the 23rd column of the khatian. By such recording of forcible occupation of the Plaintiff-Appellant in the khatian of the defendant No.2 does not by itself constitute the fact of adverse possession in view of the fact that khatian recorded by the Settlement Officer is not the absolute proff which requires strong corroboration from the independent evidences. The plaintiff-Appellant's case of right by way of adverse possession is not built up in the evidence. Some documents which were called from the Drug Inspector, Govt. of Tripura shows that the plaintiff-Appellant himself by his correspondence with the Dy. Drug Controller admitted that he was a tenant in the land in question. In this respect Ext. T may be referred to. This indicates and amply proves that there was no hostile assertion of right by the plaintiff-Appellant neither there is a cogent evidence to show the denial of the ownership of the true owner. The Defendant No. 2 appeared before the court as DW 2 was at the age of 100 years while deposed before the court. This lady was cross-examined thoroughly by the Plaintiff-Appellant. The evidence of this DW 2 could not in any way be shaken by the plaintiff-Appellant side. There is no reason to dis-believe the deposition of the lady, more particularly the day while she was deposing before court she had no interest over the suit property which was already gifted by her to the Defendant No.3 who in turn sold this suit property to the Defendant No.1. This court, therefore, finds it convenient to place full reliance on the testimony of the DW 2 which demolishes the plaintiff-Appellant's plea of right by adverse possession. Since from the plaint as well as from the evidence of the plaintiff-Appellant a clear case of right by adverse possession has not been made out this court find no scope to interfere with the finding and decision of the learned Trial court below."

15. On over all consideration of the rival submission of the learned counsel for the parties, I have come to a conclusion

that findings of the courts below do not raise any such legal question necessitating to formulate those substantial questions of law as already noted in this appeal. Disapproving the contention advanced on behalf of the appellant, I find enough force on the submission of the learned counsel appearing on behalf of the respondents and I am of the clear opinion that the substantial questions of law framed herein are not even the questions of law, not to speak of substantial question of law, rather pure question of facts. Both the courts below have given concurrent findings that it was not proved by the plaintiff appellant that he was adversely possessing the suit land and he himself admitted in a document forwarded by him to the Deputy Drug Controller that he is a tenant.

16. Both the courts below considered the evidence on the question of title as well as adverse possession and arrived at a concurrent finding that the plaintiff has failed to prove his title by way of adverse possession.

17. In a case of concurrent finding of fact, second appellate court jurisdiction is very limited. High Court can only interfere with the concurrent findings given by the courts below when substantial question of law is involved and findings are perverse on account of misreading or wrong reading of evidence. As already stated that in the instant case, no

substantial question of law is involved and findings of the courts below are also not perverse.

18. For the reasons stated above, this appeal is dismissed being devoid of merit. No order as to costs.

Send down the lower court record.

JUDGE

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