

THE HIGH COURT OF TRIPURA

A G A R T A L A

RSA No. 21 of 2006

Plaintiff-Appellants:

1. Shri Sukumar Shil,

S/o. Late. Sudhir Chandra Shil.

2. Smti. Ayua Rani Shil,

W/o. Late Sudhir Ch. Shil.

Both are residents of village-Amlighat,
Manubazar, P.O-Manubazar, Pin-799143,
P.S- Manubazar, District-South Tripura.

3. Smti. Basanti Das,

W/o. Shri Sadhan Chandra Das,

D/o. Late Sudhir Chandra Shil,

Resident of village-Harinarayanpur, P.O-
Sabroom, Pin-799145, P.S- Sabroom, Dist.
South Tripura.

4. Shri Jadunath Shil,

S/o. Late Bidhu Bhusan Shil.

5. Shri Nandan Shil

6. Shri Raju Shil,

Both are sons of Shri Jadunath Shil.

All are residents of village-Thakur Pally,
Sabroom, Post office-Sabroom, Pin-
799145, Police Station-Sabroom, District-
South Tripura.

7. Smti Supriya Shil.

W/o. Shri Subrata Shil, Resident of Village
vidyapith corner, Belonia. P.O-Belonia,
Pin-799154, P.S-Belonia, District-South
Tripura.

As per Hon'ble Court's Order dated
5.5.2014 passed in C. M. Appl. 67 of 14 in
RSA 21 of 2006 the above persons are
being substituted in place of deceased
appellant- Sudhir Chandra Shil.

By Advocates :

Mr. D. Chakraborty, Sr. Adv.

Mr. H. Laskar, Adv.

Ms. S. Gupta, Adv.

Defendant-Respondents :**1. Tripura Forest Development Plantation Corporation Ltd.**

Represented by its Managing Director,
Having its registered office at Kunjaban,
Gurkhabasti, Agartala-799006, West Tripura.

2. The Divisional Manager,

Tripura Forest Development Plantation
Corporation Ltd., Sabroom, South Tripura

By Advocate :

Mr. S. Saha, Adv.

B E F O R E
THE HON'BLE CHIEF JUSTICE MR. DEEPAK GUPTA

Date of hearing &
Judgment and Order : **18th March, 2015.**

Whether fit for reporting :

Yes	No
	√

JUDGMENT & ORDER(oral)

This regular second appeal is directed against the judgment and decree dated 31.03.2006 passed by the learned District Judge, South Tripura, Udaipur in Title Appeal No. 13 of 2005 whereby he allowed the appeal of the defendants(TFDPC) and set aside the judgment and decree dated 30.09.2005 and 06.10,2005 respectively passed by the learned Civil Judge, Sr. Division, Udaipur, South Tripura in Title Suit No.20 of 2004 decreeing the suit in favour of the plaintiff.

[2] Briefly stated, the facts of the case are that the plaintiff filed a suit praying for a decree of declaration that he is owner in possession of the suit land and further prayed that the defendants (respondents herein) be restrained from interfering in the peaceful possession of the plaintiff over the suit land.

[3] The undisputed facts are that the suit land measures 6.20 acres. It is also not disputed that the suit land was originally owned by the Government and was khas land. It is the admitted case of the parties that the plaintiff was allotted 6.2 acres of land by the Government vide an allotment made in the year 1975. Mutation in favour of the plaintiff was entered in the Khatian No.798 of mouza-Srinagar in respect of CS Plot no. 1714/2430. In the latest revenue record that is Khatian No.798 published on 31.12.1993 plot no.3692 is shown to be owned by the plaintiff.

[4] The plaintiff alleges that after he was allotted the suit land he remained in exclusive possession of the suit land and had planted various types of crops and fruits on the same. According to the plaintiff in the year 1996 he went to Jalpaiguri in connection with earning his livelihood and remained there till 2002. When he returned home he found that the entire land was covered by rubber plantation. According to the plaintiff taking advantage of his absence the defendants had planted rubber plants on the suit land. The plaintiff also alleged that he thereafter took over possession of the suit land in April-2002, but the defendants through their employees and servants are interfering in his possession. He thereafter applied to the Tehsildar, Srinagar Tehsil office for demarcation of the suit land. As per the report of the Amin who carried out the demarcation, the land was found to be part of the land originally allotted to the plaintiff but the same Amin found that the plaintiff was not in possession of the suit land but in fact the defendants-TFDPC was in possession of the suit land and had planted a rubber plantation on the same.

[5] The stand of the defendants was that the plaintiff was never in possession of the suit land and that in the year 1975 the suit land along with some other lands was handed over by the Government to the TFDPC for raising rubber plantation. The further case of the defendants was that a rubber plantation was raised without any objection from the plaintiff and this rubber plantation matured and latex was being extracted from the rubber trees. However, in the year 1996 the said rubber plantation was totally burnt in a fire and thereafter fresh plantation was done. According to the TFDPC it continues to be in possession of the suit land and there is a rubber plantation on the same.

[6] Both the sides led evidence. The learned trial Court did not give any clear cut finding that the plaintiff was in possession of the suit land. To the objection of the defendant that the suit was not maintainable because the plaintiff had sought for a declaration of his title but he was not in possession of the suit land. The learned trial Court stated as thus:

"So, at this stage this court can not presume that the suit land is not in the possession of the plaintiff. So, it transpires that it cannot be said at this stage that more declaration of the title with consequential relief of perpetual injunction will not be sufficient for the plaintiff or more declaration will not be effective one. So, for this reason this court cannot say at this stage that the suit is not maintainable in its present form and nature. Further it appears that the suit was filed within the period of limitation. Hence, the issue No.1 and 2 are decided accordingly in favour of the plaintiff"

The trial Court thereafter discussed the evidence and held that from the evidence it is proved that the defendants had planted rubber garden but since they did not claim adverse possession of the suit land it means that the plaintiff is in physical possession of the suit land.

[7] Aggrieved by this findings the TFDPC filed an appeal and the learned appellate Court held that the TFDPC was in possession of the suit land and was never dispossessed of the same and therefore, allowed the appeal and dismissed the suit.

[8] I have heard Sri D. Chakraborty, learned senior counsel for the plaintiff-appellants and Sri S. Saha, learned counsel for the TFDPC.

[9] I have also gone through the entire record and the evidence led by the parties. From the evidence led by the defendants it is apparent that the plaintiff was working in a ration shop of Jiban Riyan PACS Ltd. at Amlighat from 1981 to 2003. Therefore, the allegation of the plaintiff that from 1996 to 2002 he had gone to Jalpaiguri does not appear to be correct. In fact the learned trial Court has found that on perusal of the documents that the plaintiff is owner of the suit land. To this extent I am in agreement with the trial Court and also with Sri D. Chakraborty, learned counsel for the plaintiff-appellants. The learned lower appellate Court has denied the claim of ownership only on the ground that the plaintiff was re-allotted 0.82 acres of land sometime in the year 1985 and, therefore, this means that the earlier allotment stands cancelled. I am not at all in agreement with this finding of the lower appellate Court. Government actions are taken by passing written orders. It is not disputed before me that an allotment of land in favour of the plaintiff is made in the year 1975 whereby he was allotted 6.20 acres of land. Not a single shred of evidence has been placed of record to show that that allotment was ever cancelled or set aside. An allotment made by the Government can only be cancelled

or set aside by a written order made in writing after giving an opportunity to the person affected a hearing of putting forth his case. No material has been placed on record to show that the plaintiff ever made an application that he may be allotted a fresh piece of land in lieu of the land which was originally allotted to him. No amount of oral evidence in this behalf can be relied upon. In fact the revenue record prepared by the Government official itself shows the plaintiff to be owner of the land. Presumption of truth is attached to revenue record and this presumption has not been rebutted by the TFDPC in the present case. Therefore, I uphold the judgment of the learned trial Court to the limited extent that the plaintiff is the owner of the suit land.

[10] Having held so, the next question is whether the plaintiff is in possession of the suit land. As far as this issue is concerned the finding has to go against the plaintiff. As pointed out above, the case of the plaintiff that he had left Tripura is not believable because he was employed in a ration shop till the year 2003. He himself admits that the defendants- the TFDPC had raised a rubber plantation on the land. Rubber plantations do not grow overnight. It takes years to plant and bring the rubber plantation to maturity. On the other hand, DW-1 in his evidence has placed material on record to show that in 1976 the work of raising rubber plantation on the said land was started and that the rubber plantation matured and finally burnt down in the year 1996 and thereafter fresh rubber plantation was planted. The plaintiff has made a bald statement that he took back the possession of the land sometime in the 2002-2003. Other than his bald oral statement there is no other material

to support this allegation of the plaintiff. One fails to understand how a single plaintiff could forcibly recovered possession of 6.20 acres of land from the TFDPC which would have many officials on the rubber plantation. Therefore, I hold that the plaintiff is not in possession of the suit land.

[11] In view of the above discussion, I am clearly of the view that though the plaintiff may have proved his ownership of the suit land he has not proved his possession on the same and the possession is with the defendants, the TFDPC. The plaintiff's suit seeking consequential relief restraining the TFDPC officials from entering into his land was therefore not maintainable. No effective decree could have been passed in favour of the plaintiff because a suit for declaration simpliciter does not lie. The plaintiff unfortunately throughout these proceedings did not deem it fit or proper to amend the pleadings and claimed the relief of possession. Even till date no such prayer has been made.

[12] Therefore, I only allow the appeal to the limited extent to hold that the plaintiff was the original owner of the suit land. Whether he is entitled to get back the possession from the TFDPC and whether his suit for recovery of possession is within limitation and whether the TFDPC is in adverse possession of the suit land are questions which are not to be decided in these proceedings where the plaintiff has not even claimed possession of the suit land. Therefore, any finding given in this regard are not binding and are accordingly set aside.

[13] In this view of the matter, the appeal is dismissed with liberty reserved to the appellant to file appropriate proceedings for

recovery of possession of the suit land if he otherwise entitled to do so in accordance with law. In case any such proceedings are filed the TFDPC shall be at liberty to raise all pleas including the plea of limitation and adverse possession. No order as to costs.

Send down the LCRs forthwith.

CHIEF JUSTICE