

THE HIGH COURT OF TRIPURA
AGARTALA

RSA NO.47 OF 2006

1. Sri Matilal Bhowmik,
S/O. Late Chandra Sagar Bhowmik,
Resident of Indranagar Colony,
P.S.-East Agartala, P.O. Abhoynagar,
District:-West Tripura,
PIN-799006.
2. Smt. Chandrani Bhowmik (Mitra),
W/O. Sri Ranjan Mitra,
D/O. Late Chandi Rani Bhowmik,
Resident of Indranagar, Banglarmat,
P.O. Indranagar, P.S.-East Agartala,
District:-West Tripura,
PIN-799006.
3. Smt. Indrani Bhowmik,
W/O. Sri Partha Bhowmik,
D/O. Chandi Rani Bhowmik,
Resident of Chandrapur (Madhyapara),
P.O. Reshambagan,
District-West Tripura,
PIN-799005.
4. Debjani Bhowmik (Debnath),
W/O. Sri Rajesh Debnath,
D/O. Lt. Chandi Rani Bhowmik,
Resident of Ananganagar,
P.O. Bimangarh, P.S.-Airport,
District-West Tripura,
PIN-799015.

..... Appellants.

- V e r s u s -

1. Sri Uttam Goswami,
S/O. Late Madhusudan Goswami,
2. Smti. Sumitra Goswami (Chakraborty),
W/O. Sri Sushen Chakraborty,
3. Sri Khokan Goswami,
Son of Late Madhusudan Goswami,
All are residents of—
Indranagar Colony,
P.S. East Agartala,
P.O. Abhoynagar,
Dist. West Tripura.

..... Respondents.

(Originally Smti. Champabati Goswami, W/o. Late Madhusudan Goswami was the defendant and after her death, the above respondents have been substituted in her place).

**BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA**

For the appellants	: Mr. K.N. Bhattacharji, Sr. Advocate, Mr. S. Acharji, Advocate.
For the respondents	: Mr. D. Chakraborty, Sr. Advocate, Mr. H. Laskar, Advocate.
Date of hearing and delivery of judgment and order.	: 12.01.2015.
Whether fit for reporting	: NO.

JUDGMENT & ORDER (ORAL)

This regular second appeal was admitted on the following substantial question of law:-

"Whether the learned court of appeal erred in denying the relief of recovery of possession of the suit land to the plaintiff-appellant while declaring his title thereto by taking of and acting on unexhibited khatian of 1997 and disregarding the khatian of 1968, Ext.-3 proved by him?"

2. Briefly stated, the facts of the case are that on 18-03-1974 the original plaintiff Smti. Charu Bala Devi filed a suit against the original defendant Smti. Champabati Goswami and one Khokan Goswami. In the plaint, it was alleged that the plaintiff had purchased C.S. Plot No.1758 from Rani Jugal Kishori Devi and that this area of the land was purchased by the plaintiff of 1 kani & 2 ½ gandas. According to the plaintiff, the original owner Rani Jugal Kishori Devi was in possession of the aforesaid area but the defendants, when the land was owned by Rani Jugal Kishori had

forcibly and without any right, title or interest trespassed into a portion of this land, erected two thatched huts and this land was described as Schedule 'B' land of the plaint. According to the plaintiff, the original owner had already issued a notice to the defendants to vacate the suit land but the defendants did not vacate the same and finally, Jugal Kishori Devi sold the entire land belonging to her to the plaintiff for a consideration of Rs.6,000/- vide registered sale deed executed on 07-12-1970. It is also the admitted case of the plaintiffs that at the time of execution of the sale deed, they got the possession of the entire suit land except the land which was under the huts constructed by the defendants. The defendants thereafter started raising pucca construction to construct houses in place of the huts. Therefore, the plaintiff filed a suit praying for a decree of declaration that she was the owner of the Schedule 'A' land and that the respondents-defendants be restrained by injunction from making any sort of construction or from proceeding with the construction work on any portion of the suit land.

3. This case was contested by the defendants who raised various pleas but for the purpose of this appeal reference may be made to only one plea that the defendants were in adverse possession of the entire suit land since the year 1961 and their adverse possession had matured into ownership and, therefore, they were the owners of this portion of the land.

4. After a long and protracted trial lasting almost three decades, the learned trial Court finally disposed of the suit on 16-

09-2002, more than 28 years after the suit had been filed. The learned trial Court found the defendants to be in possession of the land in question. He also found that as per the evidence on record Smt. Jugal Kishori Devi was only in possession of 12 ½ gandas of land and, therefore, she could not have transferred 1 kani and 2 gandas of land. He found no merit in the claim of the plaintiff but applying the principle of equity and natural justice held that the plaintiff was entitled to get Rs.65,000/- as price of the land.

5. It would be pertinent to mention that in the year 2000, the plaintiff filed an application for amendment of the plaint praying that he be delivered possession of the land which was occupied by the defendants. This application was dismissed. No revision was filed against the said order.

6. Aggrieved by the judgment and decree of the learned trial Court, both the sides filed appeal and counter appeal before the learned District Judge. The plaintiff challenged the findings of the trial Court on all grounds and the defendants urged that the trial Court had no jurisdiction to award compensation or monetary relief to the plaintiff. The learned lower appellate Court rejected both the Title Appeal No.02 of 2003 and T.A. (Cross appeal) No. 13 of 2004. Now, the plaintiff alone has filed the appeal challenging the findings of both the Courts below.

7. I have heard Sri K.N. Bhattacharjee, learned Sr. Counsel for the plaintiff-appellants, and Sri D. Chakraborty, learned Sr. Counsel for the defendants-respondents.

8. At the outset, it may be noticed that the learned trial Court held that the defendants had failed to prove that they were in possession since 1961 but found that even as per the plaintiff, the predecessor of the plaintiff was dispossessed in the year 1974 and he held that the original plaintiff never took possession of the suit land and filed the case for declaration of title and recovery of possession against the defendants who had already lived there for more than 14 years. The learned trial Court also found that the original landlady had never taken any steps to evict the defendant. Furthermore, it was held that the plaintiff had not properly described the suit land and, therefore, the plaintiff was not entitled to a decree for possession. However, Rs.65,000/- was granted by way of compensation.

9. As far as the appellate Court is concerned, it found on the basis of the revenue record that even the trial Court had held that the huts had been constructed in the year 1961. It was also found that the original plaintiff had purchased the suit land without identification and handing over possession of the land. The learned appellate Court came to the conclusion that the original plaintiff did not get delivery of possession of the suit land and was never in possession of the suit land. He also came to the conclusion that the defendants have been in possession of the suit land since the year 1961 by enjoying the usufruct therefrom without interruption from any corner. He, therefore, came to the conclusion that the plaintiff was not entitled to any decree of eviction and dismissed both the appeals.

10. From the evidence on record, it stands established that when the plaintiff purchased the suit land, he never got possession of the land which was in the possession of the defendants. Even in the plaint, it was stated that some portion of the suit land was in possession of the defendants when the sale deed was executed. The plaintiff should have got the suit land demarcated before taking over possession of the land which she had purchased. In fact, the revenue record clearly indicates that the defendants are in forcible possession of the suit land right from the year 1961. From 1974 onwards till 2000 when the application for amendment was moved, no prayer for possession of the entire suit land was made. The prayer for possession was restricted to the land under the two huts and no other land. Be that as it may, the fact remains that from 1961 the defendants have been found to be in possession of the suit land. This is a finding of fact and no question of law much less a substantial question of law is involved while coming to this finding. Once this finding of fact is accepted, then the legal position which emerges is that at least from 1974 when the defendants filed a written statement claiming that they were in possession of the entire suit land and that they were in adverse possession of the entire suit land, from that date at least the plaintiff knew that the defendants were claiming a right adverse to the plaintiff. Even thereafter, no application for amendment of the plaint was filed within the period of 12 years and the application for amendment was filed only in the year 2000 which was rejected. No revision was filed against that order and even in the appeal filed before the

lower appellate Court, no challenge has been laid against the order rejecting the prayer for amendment of the plaint in the year 2000. The prayer itself is highly belated and has rightly been rejected by the trial Court.

11. Therefore, I find no merit in the appeal which is accordingly dismissed.

12. Send down the lower court records forthwith.

CHIEF JUSTICE