

THE HIGH COURT OF TRIPURA
AGARTALA

RSA No.60 of 2009

1. Sri Jaladhar Debnath,
son of late Chandra Kumar Debnath,
 2. Sri Goutam Debnath,
son of Nityananda Debnath,
 3. Sri Someswar Debnath,
son of late Manmohan Debnath,
 4. Smt. Rashubala Debnath,
wife of Sri Jaladhar Debnath,
- all are residents of Village-Kumariakucha,
P.S. Melaghar, Sonamura,
District - West Tripura

..... **Defendant-appellants**

- Vs -

Sri Hiran Das Baishnab,
son of Sri Rakhal Das Baishnab,
resident of Kumariakucha,
P.S. Melaghar, Sonamura,
District - West Tripura

..... **Plaintiff-Respondent**

B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the Defendant-appellants : Mr. A. K. Bhowmik, Sr. Advocate
Mr. R. Datta, Advocate

For the Plaintiff-respondent : Mr. K. N. Bhattacharjee, Sr. Advocate
Mr. S. Acharjee, Advocate

Date of hearing : **25.02.2015**

Date of delivery of judgment & order : **30.04.2015**

Whether fit for reporting : **NO**

JUDGMENT & ORDER

On the following substantial questions of law, this appeal under Section 100 of the CPC against the judgment and decree dated 09.11.2009 delivered by the first appellate court, the Addl. District

Judge, West Tripura, Sonamura in Title Appeal No.05 of 2009 was admitted by the order dated 14.12.2009:

- "(1) Whether the learned judge of the first appellate court committed illegality by passing a provisional decree holding that the decree will be subject to the decision of the Revenue Authority (SDM) to be made in respect of the allotment of the land.**
- (2) Whether the judgment and decree of the first appellate Court was perverse for non-consideration of the evidence on record, more particularly, oral evidence and Exhibit D-2?"**

02. By the said judgment and decree dated 09.11.2009, the judgment and decree dated 25.04.2009 delivered in Title Suit No.06 of 2007 by the Civil Judge, Junior Division, Sonamura, West Tripura, hereinafter referred to as the trial court was set aside. The trial court dismissed the suit holding that:

"Exbt.2 speaks that the allotment order was cancelled and accordingly the suit land was recorded in khas khatian. It was further observed in the order dated 19/11/07 passed by the S.D.M. Sonamura in Revenue case No.206/06 (Exbt.D-2) that the suit land has been under the possession of the defendant No.1 who possessed the suit land for last 40 years by growing Rubber plantation and the predecessor of the plaintiff was never in possession of the suit land.

In view of the aforesaid order the khatian No.1379 in the name of the Gopal Das Baishnab is no longer in existence. So far the possession of the plaintiff over the suit land is concerned, let us see what the witnesses of the plaintiff (P.W.-2) said.

P.W.2 clearly stated during his cross examination that he could not say who grew rubber plantation over the suit land. In addition he stated that he could not say the contents of the Affidavit sworn in by him.

Hence there is no corroborative evidence in support of the plaintiff to the statement as to possession over the suit land."

03. As the essential fact, it is to be noted that the suit was instituted by the respondent herein being Title Suit No.06 of 2007

seeking a decree for declaration of his right, title and possession over the suit land, as described in the plaint, which measures 0.80 acres appertaining to the new plot No.2138 corresponding to CS Plot No.1362 under khatian No.1379 of Mouja-Chowmuhani, P.S. Melaghar, District-West Tripura. The respondent as the plaintiff has stated that the suit land originally belonged to Gopal Das Baishnab, his grandfather. He owned the entire land of old plot No.670 and 1362(P). He died intestate leaving behind his daughter namely Hari Bala Das Baishnab, the mother of the plaintiff. Thus, she became the successor of all the properties of Gopal Das Baishnab. The plaintiff is the only son of said Hari Bala Das Baishnab. Hari Bala Das Baishnab sold her inherited land to the plaintiff by a registered deed of sale dated 22.02.2007 on valuable consideration and delivered the exclusive possession to the plaintiff on the same day.

04. In the year 2004, the plaintiff had planted rubber plants on the suit land and those are now grown up. The plaintiff has also put up the boundary fencing around the said plantation for their protection. The defendants having no right, title and interest have been trying to grab the suit land and they have instituted a criminal case falsely. On 21.02.2007 the defendants tried to dispossess the plaintiff by removing the bamboo fencing but for resistance of the plaintiff they could not succeed in their attempt and hence by filing the suit, the plaintiff has sought for a declaration of right, title, interest and possession over the suit land along with the decree of perpetual injunction restraining the defendants from entering into the suit land or dispossessing the plaintiff. The appellants as the defendants filed the joint written statement disputing the facts

narrated by the petitioner. According to them, the suit land is an allotted land and the said land has been recorded in the name of the Government, meaning as the khas land. As per Rule 15 of the Allotment Rules of 1962, there had been a bar of transfer of the allotted land. As per khatian No.1379, the suit land is an allotted land and the plaintiff by suppressing that fact claimed the suit land to be the jote land of one Gopal Das Baishnab and he became the owner of the suit land by purchasing the same from the sole legal heir of Gopal Das Baishnab. The suit land is under possession of the defendant No.1. The said land is on the boundary of his private land on three sides and that can be gathered from the schedule of the land as appended to the plaint.

05. The defendant No.1 has been possessing the suit land since 1972. They have denied that there was any attempt of dispossessing the plaintiff. Moreover, it would be apparent from the permit No.PDS/ARO/A/2004/130 that the Rubber Board permitted Jaladhar Debnath, the defendant No.1 to raise the rubber plantation but no such document or permission has been disclosed by the plaintiff. Without permission from the Rubber Board, rubber plantation according to the defendants cannot be raised. The defendant has stated that Gopal Das Baishnab had been living at Garuarband, whereas the suit land is situated at Kumariakucha under Mouja and Tahasil-Chowmuhan. The distance between the place of abode of Gopal Das Baishnab and the suit land is about 15/16 kms. There is no proof that Gopal Das Baishnab had any possession over the said khas land. According to the defendants the entire transaction between the plaintiff and his mother is sham and illegal.

06. It has been categorically stated by the defendant that defendant No.1 and 4 had been possessing the suit land since long and they have raised the rubber plantation over the suit land by virtue of the permit dated 28.04.2006. Following the due procedure the said suit being Title Suit No.06 of 2007 has been dismissed holding as stated. It has been further found that by the order dated 27.03.2009 delivered in W.P.(C) No.303 of 2008 filed by the plaintiff, the Gauhati High Court has directed as under:

"Considering the fact that the impugned order has been passed without affording any opportunity to the petitioner, whereby cancellation of land allotment made in favour of the petitioner has been ordered, it is apparent that the said order has been passed by the SDM, Sonamura in breach of the Principles of Natural Justice. This certainly was not a fair and legitimate procedure."

07. The referred order is the order dated 19.11.2007 is in respect of the suit land and in this regard there is no dispute but the plaintiff has entirely suppressed this aspect of the matter. As a result, on consideration of the evidence led by the plaintiff and the defendants issues framed in the suit were all decided against the plaintiff and the suit was dismissed by the trial court by the judgment and decree dated 25.04.2009.

08. Being aggrieved, the plaintiff, the respondent herein, filed an appeal under Section 96 read with Order 41 of the CPC, for setting aside the judgment and decree dated 25.04.2009 being Title Suit No.05 of 2009. By the impugned order dated 09.11.2009, the appellate court has observed that:

"After scanning the evidence on record as well as upon hearing the both sides, it appears to me that the suit land originally belonged to Gopal Das"

Baishnab who died leaving behind his only daughter namely-Smti. Hari Bala Das Baishnab as his only legal heir (Exbt.P-1), and after the death of the father (Gopal Das Baishnab) Smti. Hari Bala Baishnab acquired the suit land as only legal heir. It further appears from the case record that said Hari Bala Das Baishnab sold her entire suit land to her only son Hiran Das Baishnab (the appellant) on the strength of registered sale deed (Exbt.p-5).

On careful scrutiny of the case record, it appears that the predecessor-in-interest of the appellant late Gopal Das Baishnab also got finally published record of right (Exbt.P-4) in his name for the suit land. So, unerringly inference can easily be drawn that the appellant was/is in possession of the suit land.

On the other hand, the respondent asserted that they had purchased the suit land from one Sudhir Debnath on the strength of registered sale deed (Exbt.D-1) but I do not find any record of right for the suit land either in the name of Sudhir Ch. Debnath or in the name of the respondents. So, it cannot be inferred that the respondents were/are in possession of the suit land in any occasion."

It has been further observed that:

"On careful examination of the document of the rubber board it appears to me that there was no mention dag and khatian number of the land of the respondents where they would erect the rubber plantation. It is admitted that the respondent no.1 has rubber plantation elsewhere. The respondent did not file the permit of the rubber board but they filed a carbon copy of letter of rubber board by which it is seen that the concerned board had given some subsidy to the respondent no.1. It was not exhibited document as the Ld. Counsel for the respondent hammering on it I took the judicial notice of the same. Accordingly, I can come to a conclusion that the rubber board did not release the subsidy for the rubber plantation over the suit land as claimed by the respondents. So, it is ignored."

More surprisingly thereafter the first appellate court has recorded the following finding:

"The Ld. Counsel appearing for the respondents further submitted before this Court that the original owner of the suit land namely Gopal Das Baishnab

got the same from the Government of Tripura on the strength of allotment order and the said allotment order of the authority was challenged in the Revenue Court and the Revenue Court Vide his order dated 19.11.2007 (Exbt.D-2) cancelled the said allotment order after hearing the respondent. Moreover, the predecessor-in-interest of the appellant has no right to transfer the allotted land to any one and if she did so it would in violation of allotment rules of the government.

On further perusal of the document it appears to me that the appellant challenged before the Hon'ble Gauhati High Court, Agartala Bench, Agartala, against the decision of the cancellation of the order of the Revenue Court dated 19.11.2007 in Revenue Case No.206 of 2006 (Exbt.D-2). The Hon'ble Gauhati High Court, Agartala Bench in WP(C) No.303/08 (Exhibited on admission) after hearing the parties passed an order dated 27.3.09. The operative portion of the decision passed by the Hon'ble High Court runs as follows-

"Considering the fact that the impugned order has been passed without affording any opportunities to the petitioner whereby cancellation of land allotment made in favour of the petitioner has been ordered, it is apparent that the said order has been passed by the SDM, Sonamura, in breach of the principles of natural justice. This certainly was not a fair and legitimate procedure.

Accordingly, the order dated 19.11.07 (Annexure 2) of the SDM, Sonamura, is interfered with, with liberty to the SDM to pass a afresh order, by giving opportunities to the writ petitioner and the respondent no.3 to present their respective cases before the SDM."

In view of the above, it is clear that the Hon'ble High Court on hearing the parties set aside/quashed the order of the Revenue Authority (SDM) as it violated the very principle of natural justice. The Hon'ble High Court directed the Revenue Court (SDM) to adjudicate the matter afresh after asking both the parties to present their respective cases before him."

09. The first appellate court has also recorded that no fresh order has been passed by the SDM, Sonamura after affording

opportunity to the plaintiff-petitioner. According to the first appellate court the appellant herein as the defendant had failed to show their any right, title, interest and possession over the suit land and accordingly the suit has been decreed in a most surprising manner which is reproduced hereunder:

"In view of the findings and decision arrived at in the preceding paragraphs of this judgment I do hereby allow the present appeal preferred by the appellant on contest without cost. Therefore, the judgment and decree of the Ld. Court below dated 25.4.09 are set aside and reversed. Accordingly, the suit of the appellant/plaintiff stands decreed without cost.

The appellant is entitled to get the following relief/reliefs subject to the decision of Revenue Authority (SDM) Sonamura, in respect of the allotment of the suit land:

- (i) The right, title, interest and possession over the suit land as described in the schedule of the plaint in title suit No.06/07 is declared.***
- (ii) The respondents are perpetually restrained from entering into the land and disturbing the peaceful possession of the appellant over the suit land."***

The judgment of the trial court was thus reversed.

10. Mr. A. K. Bhowmik, learned senior counsel has submitted that such finding is entirely whimsical and uncalled for, inasmuch as in the cross-examination, the plaintiff himself has stated that he did not get any permission from the Rubber Board for growing the rubber plantation over the suit land. That apart, the appellate court has completely ignored the document, Exbt.P/2, the order of the Sub-Divisional Magistrate, Sonamura dated 19.11.2007, which reads as under:

"Sri Jaladhar Debnath has submitted a petition for cancellation of the allotment order as per U/S 14(1) of the TLR & LR Act.

Concerned Tdr., R/I & D.C.M. Melaghar enquired into the matter & furnish details report.

From the enquiry report, it appears that during the period of last revisional settlement, an area measuring 0.80 acres under C.S. Plot No.1362 corresponding R.S. Plot No.2138 & an area measuring 1.95 acres land under C. S. Plot No.670 corresponding R.S. plot No.1441 of Chowmohani mouja was allotted in the name of Gopal Das Baishnab S/O Makhan Das Baishnab of Chowmohani mouja. Accordingly a new allottee Khatian opened Vide No.1379.

From the enquiry report it is also appears that, an area measuring 0.80 acres under C.S. plot No.1362 corresponding R.S. plot No.2138 had been under possession of 1st party Sri Jaladhar Debnath S/O Chandra Kr. Debnath of Kumariakucha by growing rubber plantation since 40 years & 2nd party (allottee) never possessed the said disputed land.

Considering above facts & circumstances it is established that, the said allotment order was not done properly.

To decide, the case field verification report, total area measuring 0.80 acres of land under C. S. Plot No.1362 corresponding R.S. plot No.2138 of Chowmohani mouja may be considered for cancellation from the allottee Khatian No.1379 as per U/S 14(1) of the TLR & LR Act & said land may be entered in the khas khatian."

(Emphasis supplied)

11. It is apparent from the said order dated 19.11.2007 that the defendant No.1 has been in the possession since 40 years and the allottee, the predecessor of the plaintiff, the respondent herein, had never been in possession of the suit land. The land under possession of the defendant No.1 has been recorded with description which is entirely identical to the description of the suit land on the basis of the inquiry report filed by the Revenue Inspector and Deputy Collector and Magistrate deputed for the same purpose. Thus, after being

satisfied, it has been determined that the CS plot No.1362 would be extracted out from the allottee khatian No.1379 in exercise of the power under Section 14(1) of the TLR & LR Act.

12. A reading of the order of the High Court dated 27.03.2009 delivered in WP(C) No.303 of 2008, it appears that only for not affording opportunity to the respondent the order dated 19.11.2007 was cancelled. But the High Court by the said order dated 27.03.2009 has permitted the SDM to pass the appropriate order after hearing the plaintiff.

13. As none has appeared for the respondent, even though Mr. S. Acharjee and Mr. R. C. Deb, learned counsel enter in the appearance for respondent, this Court on scrutiny of the records is of the opinion that no contingent decree can be passed in a suit, as the fate of which is dependent on a decision that would be taken by a revenue authority in the proceeding under Section 14(1) of the TLR & LR Act, 1960. That apart, solely on the basis of the record of rights, the possession cannot be determined. The appellate court has entirely ignored the oral testimonies of PW-1 where he has admitted that the defendant No.1 has a rubber plantation but he has not stated where the said rubber plantation is situated. The defendant No.1, while deposing as DW-1, has relied on the content of Exbt.D/2, where it has been recorded that the defendant No.1 was in possession over the suit land and the said inquiry report has been submitted before the Sub-Divisional Magistrate by a Revenue Inspector and Deputy Collector and hence according to Mr. Bhowmik, learned senior counsel, that will have the precedence over the other oral testimonies. It is admitted that for non-observance of the principles of natural justice, the High

Court has quashed the order in Exbt.D/2 but has not observed anything on its merit. The proceeding in respect of cancellation is yet to be finalized. That aspect of the matter has surprisingly been suppressed in the plaint by the plaintiff. As a result, this Court is inclined to hold that the plaintiff has failed to prove his possession over the suit land.

14. Having held thus, the suit is liable to be dismissed. Hence, the impugned order passed by the first appellate court is interfered with and set aside on restoring the judgment and decree dated 25.04.2009 passed by the trial court. It is clarified that the suit has been dismissed as no consequential relief can be granted in view of the finding that the plaintiff has failed to prove his possession to the satisfaction of the court. Mere declaration cannot be issued in regard the title. In view of the judgment and order dated 27.03.2009 passed by the Gauhati High Court as noticed by the trial court and the appellate court, this Court cannot decide the issue of title. Hence, the appeal stands allowed on restoring the judgment and decree dated 25.04.2009 of the trial court.

Prepare the decree accordingly.

Send down the LCRs forthwith.

JUDGE