

IN THE HIGH COURT OF TRIPURA
AGARTALA

RSA NO. 46 OF 2009

1. Smt. Fatikpriya Saha
 wife of late Jogesh Chandra Saha

2. Shri Narayan Saha

3. Shri Kajal Saha

4. Shri Chanchal Saha

5. Shri Bikash Saha

6. Shri Biswajit Saha

- Sl. Nos. 2 to 6 are all sons of late Jogesh Chandra Saha and the residents of Vill. & P.O. Old Agartala (Champamura), P.S. East Agartala, District : West Tripura.

..... Plaintiff-appellants

-Vs-

1. The state of Tripura
 represented by the District Magistrate & Collector,
 West Tripura, Agartala

2. The Sub-Divisional Magistrate,
 Sadar, Agartala, West Tripura

3. The Estate Officer,
 Govt. of Tripura,
 The Deputy Collector & Magistrate,
 Jirania Revenue Circle, Jirania, West Tripura

4. The Deputy Collector & Magistrate,
 Jirania Revenue Circle, Jirania, West Tripura

..... Defendant-respondents

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

For the plaintiff-appellants : Mr.S.M. Chakraborty,
Sr. Advocate
Ms. D. Das, Advocate

For the defendant-respondents : Mr. N. Majumder, Advocate

Date of hearing & judgment & order : 28.04.2015

Whether fit for reporting :

Yes	No
√	

JUDGMENT & ORDER

Heard Mr. S.M. Chakraborty, learned senior counsel, assisted by Ms. D. Das, learned counsel vice Mr. S. Bhattacharjee, learned counsel for the plaintiff-appellants as well as Mr. N. Majumder, learned counsel appearing for the defendant-respondents.

2. This is an appeal under Section 100 of the CPC, questioning the legality of the judgment dated 20.06.2009, delivered in Title Appeal No.39/2006 by the Addl. District Judge, West Tripura, Agartala, Court No.2.

3. By the said judgment, the judgment and decree respectively dated 25.03.2006 and 06.05.2006, delivered in Title

Suit No.150/2004, decreeing the suit by the Civil Judge, Junior Division, Court No.1, Agartala West Tripura, has been reversed.

4. While admitting this appeal, by the order dated 07.11.2009, the following substantial questions of law have been formulated :

- “(i) Whether mentioning of a particular year for counting the starting point of possession is sufficient to calculate the period of adverse possession in terms of years as per the law of limitation?**
- (ii) Whether submission of application by a co-possessor of any khas land negates the claim of adverse possession over that land by the other co-possessors?**
- (iii) Whether recording of adverse/un-lawful possession by the State Authorities in the record of right of any private individual implies sufficient knowledge of the State Authorities of such possession confirming his claim for adverse title on any particular khas land?**
- (iv) Any other substantial questions of law which may be required for effective decision of the present appeal.”**

5. At the outset, it is to be noted that, Mr. S.M. Chakraborty, learned senior counsel appearing for the appellants has not pressed for framing of any new substantial question of law. As such, for purpose of appreciating the substantial questions of law as framed by this court, the essential fact may be laid at the outset.

6. There is no dispute that the appellants herein, filed a suit for declaration of title on adverse possession and injunction,

being Title Suit 150 of 2004. In the plaint, they have asserted that the predecessors of the plaintiff-appellants, namely Jogesh Chandra Saha had forcibly occupied a tract of land measuring 0.17 acres of bastu class before 1964 and his possession of that nature was duly recorded in the khatian No.1 of Mouja Uttar Champamura against the C.S. plot No.2193. Over the said land, Jogesh Chandra Saha constructed a shop with dwelling house and he made necessary repairs whenever required. Jogesh Chandra Saha, the predecessor of the plaintiffs lived over that land with his family including the plaintiffs. This forcible occupation completed 30 years in the year 1994 and thus, the right to recover by the respondents herein had extinguished in the year 1994. Jogesh Chandra Saha died on 12.11.1995 leaving the plaintiffs as his legal heirs. It has been further asserted that the plaintiffs transferred a part of the said C.S. plot No.2193 and presently a piece of land measuring 0.08 acres is under the occupation of the plaintiffs. The plaintiffs have pointed out that though they are occupying the land which is part of C.S. plot No.2193, but the said plot has been wrongly included in the new plot No.4949. When the plaintiffs received the notice dated 15.10.2004 under Section 4(1) of the Tripura Public Premises (Eviction of Unauthorised Occupants) Act,1982, for short, 'the TPP Act', they instituted the suit.

7. The defendants, by filing a written statement, have contended that the leave as was granted under Section 80(2) of the

CPC is not tenable and as such the suit must be dismissed. In para 9 of the said written statement, the defendants, the respondents herein have asserted that at no point of time, the plaintiff denied the right, title and interest of the defendants and as such, there is no question of adverse possession over the suit land. It has been further asserted that since the suit land is a Government khash land, the defendants have rightly initiated the proceeding under Section 4 of the TPP Act and there is no illegality. They have further submitted that, one application for the plaintiffs was submitted on 27.10.2004 for allotment and as such, the plaintiff cannot claim title by prescription. In para 15, the defendants have asserted as under:

“That in reply to the averments made in paragraph 2 of the petition for temporary injunction of the plaintiff-petitioners, it is submitted that Late Jogesh Chandra Saha was an illegal unauthorised occupier in C.S.plot No.2193 which is revealed from the Khatian.”

This is nothing short of admission by the defendants that the predecessor of the plaintiffs was on illegal and unauthorised occupation over the suit land, being C.S. plot No.2193.

8. The issues as under-noted were framed by the trial court on the basis of the pleadings :

(1) Whether the suit is maintainable in its present form?

- (2) Whether the plaintiffs have been possessing the suit land since the time prior to 1964 denying the right, title interest of the defendants?
- (3) Whether the plaintiffs have acquired right, title, interest over the suit land by way of adverse possession?
- (4) Whether the plaintiffs are entitled to get a decree of perpetual injunction restraining the defendants from interfering with their possessing over the suit land?
- (5) Whether the plaintiffs are entitled to get any other relief or reliefs?

9. The concurrent finding has been returned in respect of the issue No.1 and there is no challenge against that concurrent finding by the appellants for obvious reasons.

10. The controversy hinges on the issues No. 2 and 3 and how the issue No.4 will be decided, entirely depends on the results or the finding of the issues No. 2 and 3.

11. It is no denying fact that the trial court decided the issue Nos. 2 and 3 in favour of the plaintiffs and as consequence thereof it has been also decided that the plaintiffs are entitled to get the decree of perpetual injunction, restraining the defendants from interfering with their possession over the suit land. While discussing the finding as returned by the trial court in respect of the issues No.

2 and 3, the first appellate court, by the impugned judgment has observed as under :

7. The learned court below decided the Issue Nos. 2 and 3 taking together for the sake of convenience. Issue No.2 is in respect of the possession of the suit land by the predecessor-in-interest of the respondent-plaintiffs prior to 1964 denying the right, title and interest of the defendant-appellants and the Issue No.3 is in respect of whether the respondent-plaintiffs has acquired the title over the suit land extinguishing the right of the defendant-appellants. The learned trial court after detailed discussions decided both the Issues in favour of the respondent-plaintiffs and against the defendant-appellants. The learned trial court also discussed the principle laid down in the Apex Court in support of its decision and has come to the conclusion that the predecessor of the respondent-plaintiffs Jogesh Ch. Saha had been in possession of the suit land prior to 1964 and as such his possession became adverse to the defendant-appellants since 1994 and also held that the defendant-appellants (plaintiff) could not prove the necessary ingredients which are required for acquiring the title over the suit land by way of adverse possession but decreed the suit. The observation of the learned court below at page 4 and at para 6 as follows :- "on perusal of the plaint it appears that Jogesh Ch. Saha the predecessor of the plaintiff had been in possession of the suit land prior to 1964 and the predecessor of the plaintiff had been in adverse possession thereof since 1994 and the plaintiffs could not prove necessary ingredients which are required for acquiring title over the suit land by adverse possession. But instead of holding that the plaintiffs could not prove the necessary ingredients for acquiring title over the suit land by way of adverse possession, decided the Issue in favour of the plaintiff-respondents that they have acquired title by way of adverse possession over the suit land and decreed the suit. Now it is well settled that the period of adverse possession is 30 years for acquiring title against the true owner and the same is reported in the Apex court in the case of the State of Rajasthan vs. Harphool Singh reported in (2000) 5 SCC 652. In respect of claiming of title by way of adverse possession the person

who claims the title by way of adverse possession declaring the hostile title against the true owner of the immovable property within his knowledge and against his interest for a continuous period of limitation, without any interference or obstruction from the true full owner. As such plaint should contained the starting point of limitation of adverse possession and also the point of successful completion of the said hostile and notorious possession against the true owner. In this respect the Apex Court in the case of Karnataka Board of Wakf... vrs. Government of India and others. reported in (2004) 10 SCC 779 at para 11 held as follows :-

“11. In the eye of the law, as owner would be deemed to be in possession of a property so long as there is no intrusion. Non-use of the property by the owner even for a long time won't affect his title. But the position will be altered when another person takes possession of the property and asserts a right over it. Adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of the true owner. It is a well settled principle that a party claiming adverse possession must prove that his possession is 'nec vi, nec clam, nec precario', that is peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period. (see S.M. Karim v. Bibi Sakina, Parasinni v. Sukhi and D.N. Venkatarayappa v. State of Karnataka) physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature. Plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who claims adverse possession should show: (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open

and undisturbed. A person pleading adverse possession dhas no equities in his favour. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession". Their Lordships in the Apex Court in the case of Annakili ..vrs. Vedanayagam and others. Reported in AIR 2008 SC 346 at para 22 held as follows :-

" Claim by adverse possession has two elements : (1) the possession of the defendant should become adverse to the plaintiff and (2) the defendant must continue to remain in possession for a period of 12 years thereafter. Animus possidendi as is well known is a requisite ingredient of adverse possession. It is now a well settled principle of law that mere possession of the land would not ripen into possessory title for the said ;purpose. Possessor must have animus possidendi and hold the land adverse to the title of the true owner. For the said purpose not only animus possidendi must be shown to exist. But the same must be shown to exist at the commencement of the possession. He must continue in said capacity for the period prescribed under the Limitation Act. Mere long possession, it is trite, for a period of more than 12 years without anything more do not ripen into a title". His Lordships in the case of Uttam Kumar Sen and others vrs. Gita Das Choudhury and others, reported in 198 (3) GLT 299, 299[1998] 1 GLR 145 at para 20 held as follows:- "20. The courts below also dealt with the plea of adverse possession taken by the defendant-appellants. The plea of adverse possession is not always a legal plea. It is always based on facts which must be asserted and proved. A person who claims adverse possession must show on what date he came into possession, what was the nature of his possession, whether the factum of his possession was known to the legal claimants and how long his possession was open and undisturbed. These are all questions of facts and unless they are asserted and proved, a plea of adverse possession cannot be inferred from them". His Lordships in our parent High Court in the case of Haraballav Sarma and others. ..

vrs. Mohodar Sharma reported in AIR 1975 Gauhati 76 at para 8 held as follows :-

" In my opinion when a person openly and continuously possesses land under a claim of right adverse to the title of the true owner for the statutory period, his possession becomes adverse to the rightful owner. His belief that the land did not belongs to the true owner is immaterial. His belief that it belonged to himself is necessary as that will be a claim of right adverse to the title of the true owner."

8. It is well settled that the adverse possession in case of immovable property as per provision of Article 65 of the Limitation Act is an acquisition of title by extinguishing the title of true full owner. To acquire title by way of adverse possession i.e. a person claiming title on the strength of adverse possession is to prove at least the following factors:- "His possession in immovable property started from a certain point of time declaring and ascertaining his hostile title over the immovable property denying right, title and interest of the true full owner openly, publicly and widely and also had successfully retained the said hostile and notorious possession of the immovable property uninterruptedly beyond the period of limitation. Then only a person acquire title by way of adverse possession. So, the person is to assert the starting point of his possession declaring and ascertaining his hostile title against the true owner openly and publicly and also against the interest of the true owner and he is to prove that he has successfully completed the said notorious and hostile possession uninterruptedly without any interference and said disturbance from the true owner during the statutory period of limitation require for ripen the title by way of adverse possession. As such after completion of the period of limitation, the adverse possessor may acquire the title of adverse possession.

8. In the present case the respondent-plaintiffs have not asserted the starting point of adverse possession and also the knowledge of the true owner i.e. the Government that they are possessing the suit land within their knowledge and no interruption is made knowing fully well about their notorious possessions by the Government for a

statutory period of limitation. No evidence also led in this respect. It is well settled in the Civil Case that the plaintiff is to assert the fact and the same is to be well proved for getting relief. But in the present case this is quite absent. Moreover, it is asserted by the respondent-plaintiffs that one of the respondent-plaintiffs has prayed for allotment of the suit land vide Ext.C. That person, though is one of the respondent-plaintiffs i.e. the claimant of the adverse possession, has not come forward as witness at least to face cross-examination or to deny that the Ext.C is not her petition.

12. Having observed thus, it has been held by the first appellate court that the plaintiffs were miserably failed to prove their claim of adverse possession as per requirement of law. Consequently, the issue Nos. 4 and 5 were also decided against the plaintiffs. While deciding those issues, it has been also pointed out as would be evident from the observations as reproduced, that it has been recorded by the trial court at para 6 that :

“The plaintiffs could not prove necessary ingredients which are required for acquiring title over the suit land by adverse possession.”

Having laid emphasis on the said statement, the first appellate court has held that, while the plaintiff could not prove the necessary ingredients for acquiring title over the suit land by way of adverse possession, how the trial court can pass a decree in their favour holding that the title in their favour has matured by prescription .

13. Mr. S.M. Chakraborty, learned senior counsel has urged this court at the outset to read the judgment of the trial court in its entirety. Thus, it would appear that the word “not” in the line, “the plaintiffs could not prove necessary ingredients which are required for acquiring title over the suit land by adverse possession”, is a typographical mistake. Mr. Chakraborty, learned senior counsel has acknowledged the lapse that it escaped their notice till the judgment by the first appellate court has been passed, else they could have moved the trial court for its correction. Mr. Chakraborty, learned senior counsel has further submitted that from a joint reading of Section 27 read with Article 112 of the Limitation Act, 1963, it would be apparent that the period of limitation that has been prescribed is 30 years, so far the Government land is concerned, under Article 112 of the Limitation Act. But, no reference of that Article has been made in the impugned judgment, rather reference to Article 65 of the Limitation Act, 1963 has been made, which has no relevance in the context. He has submitted that the principles of law as relied on by the first appellate court are so well settled that no further discussion is required on that matter, but the way those have been applied in the present context, has resulted in the perverse consequence because of misconstruction of the principles as laid down there. Mr. Chakraborty, learned senior counsel has further submitted that from the khatians (Exbts. 1 and 2), it would be apparent without any amount of doubt that the

following entry has been made in the Khatian No.1 of Mouja Uttar Champamura, which has been finally published on 04.10.1965 and prior to that its draft was published on 14.09.1964 :

“Illegal possessor Jogesh Chandra Saha, son of Lalit Mohan Saha, Hut-2”

The said entry has been recorded under the column No.23 of the khatian No.1/22, which was initially published on 04.10.1965.

14. It is well known that, according to the Tripura Land Reforms and Land Revenue Rules 1961, the Directorate of Land Records and Settlement maintains a separate register of the illegal occupiers for the knowledge of the Government so that proper action at the right time can be taken against those occupiers on the public land. Even from Exbt.2 Khatian No.1/23, which was finally published on 31.03.1999, it appears that the said entry has been maintained. Thus, even if the date as appearing in the khatian No.1 is taken as the date of adverse possession as borne in the public record, the prescribed time for limitation under Article 112 of the Limitation Act, 1963 has expired at least on 03.10.1995, whereas the predecessor of the plaintiffs, Jogesh Chandra Saha died on 12.11.1995, meaning, in the life time of Jogesh Chandra Saha, the defendants, the respondents herein, have lost their right to recover and as such, the finding of the first appellate court, reversing the

finding of the trial court cannot be sustained. Moreover, the notice dated 15.10.2004 (Exbt.3), issued under Section 4(1) of the Tripura Public Premises (Eviction of Unauthorised) Act, 1982 cannot be also sustained in view of what has been held here.

15. Mr. N. Majumder, learned counsel appearing for the respondents has raised a serious objection referring to one application filed by one of the plaintiffs, namely Chanchal Saha alongwith another, on 27.05.2004, contending that they have acknowledged the title of the respondents. The said application (Exbt.C) has been considered by this court. From a reading of the said application, it transpires that the said plaintiff has asserted that since 1960 they started living on the said land and after the death of his father, all his legal heirs are living on the same land.

16. This court has failed to understand how this document can be used against the claim of the plaintiffs, inasmuch as the basic ingredients is that the persons who are claiming adverse possession, must know the true owner and his rights.

17. Having held so, this court is constrained to observe that the decisions rendered by the apex court in **Karnataka Board of Wakf Vs. Government of India and Ors.**, reported in **(2004) 10 SCC 779** and **Annakali Vs. Vedanayagam & Ors.**, reported in **AIR 2008 SC 346**, have been applied without marshalling the fact

in the case, else those decisions would have supported the plaintiffs.

18. As consequence of what has been observed hereinbefore, this court is inclined to allow this appeal by decreeing the suit, meaning and declaring that the right of the defendants to recover their suit land as described in the plaint has been extinguished by prescription and the plaintiffs are entitled to get declaration of title on adverse possession. Accordingly, it is decreed. By a further decree of perpetual injunction, the defendants, the respondents herein, are restrained from disturbing the possession of plaintiff-appellants over the suit land as described in the plaint.

19. Accordingly this appeal is allowed.

Prepare the decree and thereafter, send down the LCRs.

JUDGE

ROY