

THE HIGH COURT OF TRIPURA
AGARTALA

RSA No.36 of 2009

Sri Anil Chandra Das,
son of late Akhil Chandra Das,
resident of Village – Belabar,
P.S. Amtali,
District - West Tripura

..... **Plaintiff-appellant**

- Vs -

1. Smti. Renu Bala Sarkar,
wife of late Tarani Sarkar,
 2. Sri Tapan Sarkar,
son of late Tarani Sarkar,
 3. Smti. Chandana Sarkar,
wife of Sri Ranjit Sarkar,
daughter of late Tarani Sarkar,
- all are residents of–Belabar,
P.S. Amtali, District - West Tripura

..... **Defendant-Respondents**

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

For the Plaintiff-appellant : Mr. S. M. Chakraborty, Sr. Advocate
Ms. D. Das, Advocate

For the Defendant-respondents : Mr. D. R. Choudhury, Advocate.
Mr. D. Deb, Advocate

Date of hearing : **12.02.2015**

Date of delivery of judgment & order. : **27.05.2015**

Whether fit for reporting : **NO**

JUDGMENT & ORDER

This is an appeal under Section 100 of the CPC against the judgment dated 12.06.2009 delivered in Title Appeal No.01 of 2008 by the District Judge, West Tripura, Agartala. By the said judgment dated 12.06.2009, judgment dated 18.02.2008 delivered in Title Suit No.50

of 2005 by the Civil Judge, Sr. Divn., Court No.2, Agartala, West Tripura dismissing the suit has been affirmed.

02. Against the concurrent finding of facts, this appeal has been admitted by the order dated 26.04.2010 on the following substantial question of law.

"Whether the suit of the plaintiff can be dismissed on the ground that the defendant's right has been ripened by adverse possession without recording any finding as to whether the defendant is possessing the land for more than 12 years uninterruptedly, openly and denouncing the title of the plaintiff?"

03. The essential fact that would require for appreciating the said substantial question of law is required to be introduced at the outset.

The appellant instituted the suit for declaration of right, title and interest over the suit land and for recovery of the possession by evicting the respondents, the defendants in the suit, who are admittedly the legal heirs of one Tarini Sarkar, since deceased.

There is no dispute that the appellant is the true owner of the suit land measuring 0.23 acre, corresponding to 11 gandas 2 karas 1 krantas 3 dhurs according to the local measurement, more elaborately described in the schedule appended to the plaint. The appellant on stating that by virtue of an oral agreement, pursuant to the resolution of the panchayat dated 15.10.2003, the consideration for sale of the suit land was settled at Rs.50,000/- and Rs.20,000/- was paid by the respondent No.1 as the earnest money on condition of paying the remainder of the consideration amount within 3 months. On such payment, the appellant would be obliged to register the sale

deed in favour of the defendant No.1 but in the event of her failure to make payment of the remainder of the consideration amount, the earnest money should stand forfeited. It is again the appellant's case that on entering the said oral agreement, he caused delivery of possession in favour of the defendant No.1. But when within the stipulated date the remainder of the consideration amount was not paid, the appellant asked the defendants to redeliver possession, but the defendants refused to do so. Hence, the appellant has instituted the suit.

04. It has been stated in the plaint that in collusion with some of the settlement officers in the khatian No.840 published on 12.04.2000 an entry has been caused to be recorded in column No.25 that husband of the defendant No.1, the respondent No.1 herein, has been possessing the part of the suit land corresponding to plot No.1256 (new plot No.2344/7845) whereas in the previous khatian No.379 published on 23.05.1968 there was no such entry.

05. While disputing the averments made in the plaint, the defendants have stated that their predecessor, Tarini Sarkar had been possessing the suit land forcibly denying the title of the true owner since 1370 BS corresponding to 1963 AD. They have categorically denied existence of any oral agreement or delivery of possession in pursuant thereto. According to them, the suit has been designed to recover the said land by abusing the process of law on serious suppression of the material facts.

06. The trial court by the judgment dated 18.02.2008 has returned the finding that the appellant, the plaintiff in the suit, failed to prove the oral agreement or the delivery of the possession of the

suit land on the alleged date as claimed by him. Even the appellant, the plaintiff, has failed to prove the resolution of the meeting of Belabar Gaon Panchayat held on 15.10.2003 or the fact of receiving the earnest money from the defendant No.1. The trial court has observed in the para 17 of the judgment as under:

"It appears from column NO.24 of Exbt. No.1 that a part of Sabek Dag No.1256 (Hal Dag No.2344/7845) till-bastu land has been forcefully possessing by Tarani Sarkar since 1370 B.S., with two huts and it was finally published in the name of Rayat Anil Ch. Das on 12-04-2000."

07. In the judgment, it has been categorically observed that the appellant has failed to place on record any materials to establish his allegation that the said khatian was a product of collusion. Even the appellant did not approach the revenue authority for correction of such entry in the record. It has been further observed that there is no proof of delivery of possession, rather Exbt.1, khatian No.840 stands to prove contrary that the respondents were in the possession prior to the alleged date of entering in the purported oral agreement. Finally it has been observed that even though the appellant has title over the suit land but it was out of his possession since 1370 BS corresponding to 1963 AD and accordingly the suit was dismissed on extinguishment of the right to recover in view of Article 65 of the Limitation Act.

08. Being aggrieved by the said judgment dated 18.02.2008, the appellant filed an appeal under Section 96 of the CPC in the Court of the District Judge, West Tripura Agartala. By the impugned judgment dated 12.06.2009, the said appeal being Title Appeal No.01 of 2008 has been dismissed. While dismissing the appeal by the impugned judgment, the first appellate court has observed as under:

"Thus, it necessarily follows that since the case of the plaintiff-appellant rests on the resolution dated 15.10.2003 adopted by Belabar Gaon Panchayet, the plaintiff-appellant is barred in proving any oral admissions as to the contents of the resolution adopted by Belabar Gaon Panchayet because the plaintiff has not fulfilled the condition that he is entitled to give secondary evidence as contemplated in Section 63(5) of the Evidence Act fulfilling the condition of Section 65 Evidence Act. Thus, even if the defendant No.1 in cross-examination admitted to have entered into any oral agreement with the plaintiff-appellant in pursuance of the resolution adopted by the Belabar Gaon Panchayet, such oral admissions as to the contents of resolution dated 15.10.2003 adopted by the Belabar Gaon Panchayet are not admissible."

It has been further held that the plaintiff has failed to prove that the defendants, the respondents herein, came into possession over the suit land in terms of the oral agreement or in terms of the resolution dated 15.10.2003, adopted by Bela Bar Gaon Panchayat.

09. Being aggrieved by the said judgment dated 12.06.2009, the plaintiff has filed this appeal and restricted the ground of challenge, as reflected in the substantial questions of law whether without returning a finding that the defendant's right has been ripened by adverse possession for their possession more than 12 years uninterruptedly, openly and denouncing the title of the plaintiff the suit can be dismissed or not.

10. Mr. S. M. Chakraborty, learned senior counsel has submitted that from the written statement filed by the respondents herein, it would be apparent that they have claimed adverse possession over the suit land from 10th of Aswin, 1370 BS. For purpose of reference, para-6 of the written statement is extracted hereunder:

"That, the suit land is not owned and possessed by the Plaintiff. Neither the Plaintiff nor his father namely, Lt. Akhil Ch. Das possessed the suit land since 1370 B.S. i.e. since 1963 A.D. where the predecessor of the Defendants i.e. the husband of the Defendant No.1 and the father of the Defendant Nos.2 and 3 namely, Lt. Tarini Sarkar getting the suit land vacant and being adjacent to East of the other khas land under possession of the predecessor of the Defendants as named above started possessing the suit land by constructing huts thereon from 10th of Aswin 1370 B.S. forcibly within the knowledge of the Plaintiff as well as his father namely, Lt. Akhil Ch. Das."

11. Mr. Chakraborty, learned senior counsel has strenuously urged this Court to make a comparative study of khatian No.840, Exbt.1 and khatian No.379, Exbt.2. According to Mr. Chakraborty, learned senior counsel that in the old khatian No.379 (Exbt.2), there is no entry of forceful occupier under column No.23 against the plot No.1256 but in the subsequent khatian being No.840, Exbt.1, the entry under column No.24 has been made as under:

"Hut/2,

Forcible possessor: Tarini Sarkar, S/o. Krishnadhan Sarkar, Village – own from 1370 B.S. against the plot No.1256 (portion)".

12. Thus, it is obvious that the predecessor of the defendants, the respondents herein, was not in possession when the khatian No.379 was opened on 28.12.1967 or before that and in this regard the respondents have failed to produce any cogent evidence. Mr. Chakraborty, learned senior counsel has further submitted that the finding in this regard by the trial court is entirely perverse and misreading of Exbt.1 and Exbt.2. Apart that, Mr. Chakraborty, learned senior counsel has submitted that the defendant No.1 has admitted in her cross-examination that she had entered in the agreement with the plaintiff and she made dwelling huts on the western boundary of the said land for which the said agreement stands for. On the basis of that

admission, the finding returned by the first appellate court, cannot be accepted. In furtherance, Mr. Chakraborty, learned senior counsel appearing for the appellant has submitted that since the respondent No.1 did not pay the remainder of the consideration amount, she along with the other defendants are liable to be evicted at the instance of the true owner.

13. From the other side, Mr. D. R. Choudhury, learned counsel appearing for the respondents has categorically submitted that the plaintiff has utterly failed to prove the oral agreement or delivery of possession in pursuance to the purported resolution taken by the panchayat. Unless the oral agreement and the incident of delivery of the possession is proved, the trial court or the first appellate court is not expected of decreeing the suit. The defendants, the respondents herein, have proved that they are in possession of the suit land since 1963 denying the right, title and interest of the predecessor of the plaintiff, namely Akhil Ch. Das. Mr. Choudhury, learned counsel has further stated that khatian No.840 (Exbt.1) has been relied by the plaintiff, not by the defendants. The defendants have proved their hostile possession by cogent oral evidence. However, such evidence gets further support from the entry made in the khatian No.840, Exbt.1 and as such there cannot be any amount of doubt that the predecessor of the defendants had been in hostile possession over the suit land for more than 12 years and by prescription the title of the plaintiff or his predecessor has been extinguished. Mr. Choudhury, learned counsel has submitted categorically that the trial court has returned the finding in the unambiguous term that the suit land has been under forceful possession of Tarini Sarkar since 1370 BS and hence no substantial question as formulated by this court is involved

in this appeal inasmuch as a specific finding has been returned as to the adverse possession of the defendants.

14. While refuting the contention of Mr. S. M. Chakraborty, learned senior counsel that there had been admission of the defendant No.1, the respondent No.1 herein, Mr. Choudhury, learned counsel has categorically stated that the cross-examination cannot be read in isolation. It has to be read with the examination-in-chief. The defendant No.1, the respondent No.1 herein, in her cross-examination has categorically stated and explained that she entered in an oral agreement in respect of a different land which is the portion of the homestead land of the plaintiff, but not relating to the suit land. But when it came to her knowledge that the plaintiff has been claiming possession over the suit land by dint of that agreement, she refused to pay the remainder of the consideration amount in respect of the other land. If this statement in the examination-in-chief is read together with the cross-examination, it would surface unambiguously that the description of the land as given in the cross-examination is not in respect of the suit land. Hence, there is no question of admission. For that purpose Mr. Choudhury, learned counsel has also referred to the statement of DW-6, Shri Tapan Sarkar, where he has categorically stated that the suit land is in their possession since 10th of Aswin, 1370 BS adversely and within the knowledge of the plaintiff and his predecessor. He has categorically denied in the cross-examination that there had been any agreement relating to the suit land. In the examination-in-chief, he has stated categorically as under:

"The so called oral agreement and the resolution is not related to the sale of the suit land by the plaintiff to me,

hence the Plaintiff is not entitled to get any decree in the present suit”.

15. The finding as returned by the courts below, over the other issues has not been questioned in the appeal. Thus, those aspects do not require further re-appreciation. Moreover, the purported admission made by the defendant No.1, the respondent No.1 herein, vis-a-vis the entry under column No.24 of khatian No.840, Exbt.1, has been quite elaborately dealt by the first appellate court and the analogy by way of reasoning as has been drawn by the first appellate court does not suffer, according to the considered opinion of this court, from any infirmity. This court finds that the plaintiff has stated that the entire suit land measuring 0.23 acre is under possession of the defendants and he did not make any distinction among the entries available under khatian No.840, Exbt.1. In khatian No.840, only a portion of plot No.1256 corresponding to new plot No.2344/7845 has been shown under forcible possession of Tarini Sarkar but regarding the other portion, this court does not find any such entry but it is the plaintiff who has stated the entire suit land is under possession of the defendants. However, it has been contended for the plaintiff that by virtue of the oral agreement, the defendants came to the possession. But the plaintiff has failed to prove the existence of the oral agreement as well as the delivery of possession and as such, it has to be presumed the entire suit land is under forceful possession of the respondents. Moreover, there is no reason to disbelieve the oral evidence adduced by the defendants.

16. Having regard to the records of evidence, this court is satisfied that the defendants have proved their adverse possession with cogent evidence and as such the findings are not only based on

khatian No.840 (Exbt.1) as introduced by the plaintiff, but substantially on the oral evidence as stated.

In the result, the appeal must fail and accordingly, it is dismissed.

Draw the decree accordingly.

Send down the LCRs thereafter.

JUDGE

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