

IN THE HIGH COURT OF TRIPURA
AGARTALA

RSA NO.37 OF 2009

- 1(a) Smt. Annapurna Paul,
wife of late Ranjan Kumar Paul,
- 1(b) Smt. Anamika Paul,
wife of Sri Dwijendra Chandra Paul,
- 1(c) Smt. Arpita Paul,
wife of Sri Ashim Paul,
both daughters of late Ranjan Kumar Paul.
- 1(d) Sri Dilip Paul,
son of late Ranjan Kumar Paul,
- All of Panichowki Bazar, Kailasahar Town,
P.O. & P.S. Kailashahar, District North Tripura.

..... Defendant-appellants

– Vs –

1. Sri Ratan Chandra Paul,
son of Late Ganesh Chandra Paul,
Kazirgaon, Kailasahar Town,
P.O. & P.S. Kailasahar,
District North Tripura.
2. Smt. Anjali Roy Choudhury,
daughter of Sri Ashim Kumar Roy Choudhury,
Gobindapur, Kailasahar Town,
being represented by her constituted attorney,
Sri Surendra Chakraborty,
son of late Debendra Chakraborty,
West Gobindapur, Kailasahar Town,
near Forest Office Complex,
P.O. & P.S. Kailasahar, North Tripura.
3. Smt. Anupama Das,
wife of late Ajit Kumar Das
4. Smt. Nilima Roy,
wife of Sri Narayan Roy,
daughter of late Ajit Kumar Das.

..... Plaintiff-respondent

5. Smt. Aruna Mukherjee,
wife of Sri Ashok Mukherjee,
daughter of late Ajit Kumar Das.
 6. Smt. Sumita Sinha,
wife of Sri Subhas Sinha,
daughter of late Ajit Kumar Das.
 7. Smt. Pampa Das,
daughter of late Ajit Kumar Das.
 8. Sri Anjan Kumar Das,
son of late Ajit Kumar Das,
- All having the address at Gobindapur, Kailasahar Town,
P.O. & P.S. Kailasahar, District North Tripura.
Proforma respondent Nos. 3 to 8, being represented by their
constituted attorney No.8 above.

.....Proforma-respondents

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

For the defendant-appellants : Mr. S.M. Chakraborty, Sr. Advocate
Ms. P. Sen, Advocate

For the plaintiff-respondents : Mr. G.K. Nama, Advocate

Date of hearing & order : 19.02.2015

Whether fit for reporting :

Yes	No
	√

JUDGMENT & ORDER (ORAL)

Heard Mr. S.M. Chakraborty, learned senior counsel,
assisted by Ms. P. Sen, learned counsel appearing for the
defendant-appellants as well as Mr. G.K. Nama, learned counsel
appearing for the plaintiff-respondent.

2. This is an appeal under Section 100 of the CPC against the judgment dated 08.07.2009 delivered in Title Appeal No.30/2008, reversing the judgment dated 30.05.2008 delivered in Title Suit No.24/2007 by the Civil Judge, Senior Division, Kailasahar, North Tripura. While reversing the finding of the trial court, the District Judge, North Tripura, Kailasahar, has observed as under :

"In view of the above discussions and from the evidence on record I find that the plaintiff has acquired title over the suit land described in 2nd Schedule of the plaint and the defendant also failed to prove that he is in possession of the suit land adversely since 25.08.92. Accordingly I hold that the learned Civil Judge (Sr. Division), Kailashahar, North Tripura misread and mis-appreciated the evidence on record and thus arrived at a wrong finding which is liable to be set aside."

3. While admitting this appeal, the following substantial question of law was formulated :

"Whether the provision as prescribed in Section 44 of the T.P. Act was properly considered and applied by the Court below in deciding the appeal against the judgment of the trial Court?"

4. Mr. S.M. Chakraborty, learned senior counsel appearing for the defendant-appellants, has submitted that there is no dispute that both the properties mentioned in the 1st and 2nd Schedules appended to the plaint are part of the joint property and that the present appellant, the defendant No.1 in the suit, is a co-persener of that property. As such, the declaration by the first appellate court of the title of the plaintiff-respondent is entirely in

contrast to the concept of the proprietorship as well to the provision of Section 44 of the Transfer of Property Act, 1882. However, Mr. Chakraborty, learned senior counsel, has not questioned the finding that the defendant-appellant has failed to prove his adverse possession on the 2nd schedule land.

5. Mr. G.K. Nama, learned counsel appearing for the plaintiff-respondent, has categorically submitted that the other co-owner were also made the proforma-defendants in the suit and despite the due notice from the court, they did not contest the pleadings. He has further submitted that it has been categorically stated that the proforma-defendants have delivered the hut constructed on the 2nd schedule land to the possession of the plaintiff. Since the plaintiff had very cordial relation with the defendant No.1, the appellant herein, he allowed the defendant No.1 to reside there. But, when the plaintiff requested the defendant No.1 to vacate the said hut for his own use, he turned volta face, which resulted in institution of the suit in question. This particular fact has not been disputed by the proforma-defendants and also it has not been disputed by the defendant No.1, contending that the hut was under his possession when the proforma-defendants were in possession over the 1st and 2nd schedule land. Thus Mr. Nama, learned counsel submits that there is no infirmity in the finding of the first appellate court. He has further submitted that the partition even though has not been carried out formally there is clear demarcation of the land, and as

such subject to formalisation of the partition such finding cannot be held infirm. Mr. Nama, learned counsel has made a robust attempt to urge this court that restitution of the possession vis-a-vis the status at the time when the possession was handed over to him by the proforma-defendants cannot be denied to the plaintiff. However, he has admitted fairly that the entire joint property is yet to be partitioned.

6. Having regard to the essential facts, relevant for the consideration of the substantial question of law as formulated, this court finds that the declaration made by the first appellate court that the plaintiff has acquired title over the suit land described over the 2nd schedule of the plaint cannot be sustained as there is no partition of the joint property, inasmuch as there is no dispute that the defendant No.1 and the other proforma-defendants were the joint owners of the land, but the substantial portion of the joint property has been transferred to the plaintiff-respondent and he has been given possession of the hut on the 2nd schedule land. Thus this court is of the considered opinion that interference is required in the finding as returned by the first appellate court. No title can be declared on a particular piece of land having definite boundaries out of the joint properties, unless the property is lawfully partitioned. While stating so, this court is not oblivious of the fact that the plaintiff has right over the joint property, but his status till the partition of the joint property takes place, shall be

that of a co-owner. In this regard, reference may be made to Section 44 of the Transfer of Property Act, which postulates that:

“Where one of two or more co-owners of immovable property legally competent in that behalf transfers his share of such property or any interest therein, the transferee acquires, as to such share or interest, and so far as is necessary to give effect to the transfer, the transferor’s right to joint possession or other common or part enjoyment of the property, and to enforce a partition of the same, but subject to the conditions and liabilities affecting, at the date of the transfer, the share or interest so transferred.”

7. Therefore, the plaintiff-respondent is entitled to declaration that he has all the rights of the co-owner over the 1st and 2nd schedule of the land, but not the title over any definite part of the suit land. Accordingly, the declaration stands modified.

8. As regards the second limb of submission made by Mr. G.K. Nama, learned counsel that the status as existed when the land was transferred, be restituted with liberty to enjoy possession of the hut standing on the 2nd Schedule land. Section 44 of the Transfer of Property Act, if read keenly, would indicate that the transferor’s right to joint possession or other common or part enjoyment of the property would also be transferred to the transferee subject to exception that where the transferee of a share of a dwelling-house belonging to an undivided family is not a member of the family, nothing in this section shall be deemed to entitle him to joint possession or other common or part enjoyment of the house.

9. We are not confronted with a situation where we had to decide regarding right to a joint possession of a common tenement or hut. There is no dispute that the questioned hut is a separate hut standing on the 2nd schedule appended to the plaint. Thus this court is of the considered view that the plaintiff is entitled to restitution of the possession of that hut as the defendant No.1, the appellant herein, has entirely failed to show his possession. Moreover, the plea of adverse possession as raised desperately, has been dismissed. Therefore, the decree of eviction and recovery of possession of the hut, as directed by the first appellate court stands un-interfered. For the modification in the declaration of the title, this appeal is partly allowed. But, it is made clear that the plaintiff may recover the possession of the building standing on the 2nd schedule land, if the possession of that building is not handed over to the plaintiff-respondent within a period of 2(two) months from today, in accordance with the law.

10. Prepare the decree accordingly. Thereafter, send down the LCRs.

JUDGE

ROY