

IN THE HIGH COURT OF TRIPURA
AGARTALA

RSA 59 OF 2008

1.

Smti. Lipika Nandi(Pal),
daughter of Shri Narendra Chandra Nandi,
wife of Shri Nirmal Chandra Pal

2.

Shri Nirmal Chandra Pal,
son of late Jaladhar Pal
- both are the residents of 2, Hospital Lane, Agartala,
P.S. West Agartala, District : West Tripura
- Appellants

- Vs -

1.

The State of Tripura,
represented by the Secretary,
Urban Development Department,
Agartala, West Tripura

2.

The Chairperson
Agartala Municipal Council,
Agartala, West Tripura
-Respondents

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

For the appellants

:

Mr. S.M. Chakraborty, Advocate
Ms. D. Das, Advocate

For the respondents

:

Mr. A. Ghosh, Advocate
Mr. N. Majumder, Advocate

Date of hearing,
judgment & order

:

15.09.2015

Whether fit for reporting :

Yes	No
	✓

JUDGMENT & ORDER (Oral)

Heard Mr. S.M. Chakraborty, learned senior counsel
assisted by Ms. D. Das, learned counsel appearing for the
appellants as well as Mr. A. Ghosh, learned counsel appearing for

the respondent No.2 whereas Mr. N. Majumder, learned counsel appearing for the respondent No.1.

[2] The land described in the Schedule-E is admittedly under possession of the appellant, even though the true owner of that land is Agartala Municipal Council, now Agartala Municipal Corporation. The appellants, by filing a suit for declaration of title, confirmation of possession and perpetual injunction, being T.S. No.126 of 2005, prayed for the reliefs *inter alia* :

“pass a decree declaring that the plaintiffs have right, title, interest and possession over the E Schedule land measuring 1 kara by way of adverse possession which is part and parcel of the A schedule land”.

[3] It is to be further noted that the plaintiff purchased the Schedule A land from one Anukul Bhattacharjee by the Sale Deed, which is the Exhibit 2. The Schedule E land is comprised in Khatian No.2268 of Mouza Agartala Sheet No.7 (Exhibit 5), C.S. Plot No. 6242/23439.

[4] From the evidence it has further appeared that, in connection with Revenue case No. 273 of 2005 under section 95 of the TLR and LR Act, 1960, the Settlement Officer had personally visited the land, in presence of the representatives of Agartala Municipal Council (now Agartala Municipal Corporation) and it was found at the time of physical verification that the said Schedule E land is situated within the fencing created by the plaintiff No.1,

namely Smti. Lipika Nandi (Paul). This fact has been recorded in the order dated 15.06.2006 delivered in Revenue Case No.273 of 2005 .

[5] Mr. S.M. Chakraborty, learned senior counsel has emphatically submitted that from the Exhibit-5 it would appear that the plaintiffs are in possession over the schedule E land since 1968, showing hostility and by acting adversely against the true owner, the respondent No.2, inasmuch as, the plaintiffs had constructed fencing to show their hostility to the true owner. Mr. Chakraborty, learned senior counsel has further submitted that even in the Revenue case No.273 of 2005, exclusive possession of the plaintiff No.1 over the schedule E land has been established. Mr. Chakraborty, learned counsel appearing for the petitioner has continued to submit that this fact as to the possession has not been disputed by the respondent No.2.

[6] On the face of such evidence as recorded, the Civil Judge, Junior Division, Court No.2, Agartala, West Tripura in Case No. T.S. 126 of 2005, has observed by his judgment dated 16.04.2007 that the plaintiff No.1 has acquired title over the Schedule E land by way of adverse possession. Accordingly, the consequential relief of perpetual injunction against the respondent has been ordered for protecting the plaintiff No.1 from dispossession from the Schedule E land.

[7] Being aggrieved, the respondent No.2 filed an appeal under section 96 of the C.P.C. against the said judgment dated

16.04.2007, being Title Appeal No.07 of 2007 in the court of the District Judge, West Tripura, Agartala. In the course of the proceeding the said appeal was transferred to the Court of the Additional District Judge, West Tripura, Agartala, Court No.2 who by the impugned judgment dated 29.08.2008 allowed the appeal partly holding that the trial court has mis-conceived the meaning and purport of the adverse possession.

[8] According to the first appellate court, coming stealthily in the possession and continuance thereof will not confer any title by prescription. In this case, the appellant, according to the respondent No.2, has stealthily come into the possession and there was no public hostility which element is required for declaring the possession by prescription. It has been observed in Para 16 of the impugned judgment as under :

“The law with regard to perfecting title by adverse possession is well settled. A person claiming title by adverse possession has to prove three “ nec” - nec vi nec clam and nec precario. In other words, he must show that his possession is adequate in continuity in publicity and in extent. Adverse possession must be adequate in continuity, in publicity and extent and a plea is required at the least to show when possession becomes adverse so that the starting point of limitation against the party affected can be found”

[9] Thereafter it has been held by the first appellate court that the plaintiffs have claimed that they are the lawful and real owner of the Schedules D and E by purchase and raised alternative plea of perfection of title over the Schedules D and E land by way of adverse possession. The alternative plea of adverse possession

set up by the plaintiff is not acceptable and this aspect of the case has escaped the attention of the trial court. Finally, it has been observed that the plaintiff has been able to prove its title over the possession of the land as described in the schedules A and B, but has not been able to prove their title by prescription or otherwise over the land as described in the Schedules D and E of the plaint.

[10] Mr. Chakraborty, learned senior counsel appearing for the appellant has succinctly argued that the Schedule E land is the part and parcel of the Schedule A land and the land described in the Schedule A has been purchased by the plaintiffs by means of the said sale deed. Therefore, this inference as done by the first appellate court indicates to the non-appreciation of the relevant records inasmuch as the status of the Schedule E land being part and parcel of the Schedule A land, cannot be differently held, when it has been held by the first appellate court that the plaintiff has been able to prove the title and possession over the schedule A land.

[11] This court has nothing but to accept the submission of Mr. Chakraborty, learned senior counsel appearing for the appellant with some qualified observations. However, from another angle the finding of the first appellate court is required to be examined.

[12] It is admitted that the land covered by the Schedule E in the plaint is possessed by the plaintiff No.1 denying the right, title and interest of the true owner, the respondent No.2 herein, inasmuch as the Exhibit 5 has revealed that the true owner is

Agartala Municipal Corporation. However, in the said Exhibit 5, the Khatian for the Schedule E land, it is recorded that the possession is with one Anukul Bhattacharjee and it is not disputed that from Anukul Bhattacharjee the plaintiffs have purchased their entire land with all its appurtenants.

[13] In terms of Article 112 of the Limitation Act read with section 27 of the said Act, there cannot be any difficulty to hold that the possession over the Schedule E land which was with the predecessor of the plaintiff No.1 and the plaintiff No.2 has exceeded the limitation and if it can be shown that the land has been possessed showing hostility, there cannot be any amount of doubt that the right of the true owner to recover the said land has extinguished. This aspect of the matter, while deciding the first appeal has not been considered in its proper perspective. There cannot be any amount of doubt that the principle as laid down in Para 16 of the impugned judgment is the principle which lists down the fundamental requirements for holding a particular piece of land or a tract of land under someone's hostile possession and such hostile possession extinguishes the title of the true owner by its operation as the true owner's right to recover would extinguish on expiry the limitation period for recovery.

[14] This area of law has always been visited by light and shade together. It depends on the particular set of facts whether a court should declare that the true owner's right to recover is

extinguished, leaving the land to be eternally enjoyed by the person who is in possession which is hostile in nature.

[15] In this case, after considering the evidence placed on the records by the plaintiffs, this court has no hesitation to hold that the true owner, the respondent No.2 has lost its right to recover the possession as more than 30 years has expired after the entry has been put in the Khatian (Exhibit 5). No prudent man would believe that such Khatian was not known to the respondent No.2 and as such the finding of the appellate court that the plaintiffs have failed to prove its right based on the possession over the Schedule E land cannot be sustained.

Accordingly the said finding is interfered with by restoring the finding of the trial court in this respect.

[16] As regards the possession over the Schedule D land, Mr. Chakraborty, learned senior counsel, at the outset, has made a very categorical statement that the Schedule D land being a pathway, the plaintiffs do not have any claim except that of easement.

[17] Having due regard to the statements made by Mr. S.M. Chakraborty, learned senior counsel for the appellants, the finding returned by the trial court is also interfered with. The possession over the Schedule D land by the plaintiffs has not been proved and hence the plaintiffs are not entitled to declaration in respect of the Schedule D land. However, the plaintiff shall have the right to use that pathway eternally without having been disturbed by the respondent No.2 in any manner.

[18] Hence, this appeal stands allowed in part, to the extent as indicated above. Accordingly, the substantial question of law No.2 as formulated by the order dated 07.11.2008 is answered. However, no response is required to be made in respect of the substantial question of law No.1 as formulated by the order dated 07.11.2008 in as much as that cannot be treated as a relevant question or as an element having any impact on merit.

Prepare the decree accordingly and send down the LCRs thereafter.

JUDGE

Sabyasachi B