

IN THE HIGH COURT OF TRIPURA
AGARTALA

RSA 21 OF 2008

1. Sri Tarani Kr. Das,
son of late Satish Ch. Das @ Satish Das,
resident of Santipally, Udaipur, P.S. R.K. Pur,
District : Tripura South
2. Sri Chandra Sekhar Das,
son of late Satish Ch. Das @ Satish Das,
resident of Jogendranagar, Agartala,
P.S. East Agartala, District : Tripura West
3. Sri Umesh Chandra Das,
son of late Satish Ch. Das @ Satish Das,
resident of West Jalefa, P.S. Sabroom,
District : Tripura South
4. Sri Janardhan Das,
son of late Satish Ch. Das @ Satish Das,
resident of West Jalefa, P.S. Sabroom,
District : Tripura South
5. Smt Kshematara Das,
daughter of late Satish Ch. Das @ Satish Das,
wife of Sri Santi Kr. Das,
resident of Damdama, P.S. Sabroom,
District : Tripura South

..... Plaintiff-Appellants

- Vs -

1. The State of Tripura,
represented by the Commissioner-cum-Secretary,
Revenue Dept., Govt. of Tripura, Agartala, Tripura West
2. The Commissioner-cum-Secretary
Relief & Rehabilitation Department,
Govt. of Tripura, Agartala, Tripura West
3. The D.M. & Collector, South Tripura
4. The Sub-Divisional Magistrate, Sabroom, South Tripura

.....Defendant-respondents

5. Sri Santosh Das,
son of late Satish Ch. Das @ Satish Das,
resident of West Jalefa,
P.S. Sabroom, District : South Tripura
6. Sri Sukanta Das,
son of Sri Santosh Das,
resident of West Jalefa, P.S. Sabroom,
District : South Tripura.
7. Sri Gopal Das,
son of late Biswambar Das
- 8(a) Smt. Shuamala Das,
wife of late Lal Mohan Das
- 8(b) Smt. Sanju Das (Dhar),
wife of Sri Bikash Dhar,
daughter of late Lal Mohan Das,
- both are residents of Vill. West Jalefa,
P.S. Sabroom, District : South Tripura
- 8(c) Smt. Manju Das (Roy),
wife of Sri Khagendra Roy,
daughter of late Lal Mohan Das,
resident of P.H.C. Quarter, Bankul,
P.O. Sabroom, P.S. Manu, District : South Tripura
9. Smt Surabala Das(Roy),
daughter of late Biswambar Das,
wife of late Karuna Roy,
resident of Ludhua, P.S. Sabroom,
District : South Tripura
10. Smt Bhanu mati Das,
daughter of late Biswambar Das,
wife of late Ramani Mohan Das,
resident of Ludhua, P.S. Sabroom,
District : South Tripura
11. Smt Basanti Das,
daughter of late Kshitish Das,
wife of Sri Binode Das (Roy),
resident of West Jalefa, P.S. Sabroom,
District : South Tripura, at present,
Village : 2 No. Papal pukuri,
P.O. No.1 Pipalpukuri, P.S. Lanka,
District : Noagaon, Assam
12. Smt. Chhaya Rani,

wife of late Chitta Ranjan,
(daughter-in-law of late Akshoy Roy)

- 13. Sri Swapan,
son of late Chitta Ranjan,
(grandson of late Akshoy Kr. Roy)
- 14. Smt. Shyamala Das,
wife of Sri Lal Mohan Das
(grand-daughter of late Akshoy Kr. Roy)

Sl. Nos. 12-14 are residents of West Jalefa,
P.S. Sabroom, District : South Tripura.

- 15. Sri Madhusudan Chowdhury
son of late Manindra Chowdhury
resident of Dolbari, P.S. Sabroom,
District : Tripura South.

.....Proforma-Defendant-Respondents.

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

For the appellants : Mr. D.R. Chowdhury, Advocate

For the respondents : Mr. S. Chakraborty, Add. G.A.

Date of hearing,
judgment & order : 17.08.2015

Whether fit for reporting :

Yes	No
	✓

JUDGMENT & ORDER (Oral)

Heard Mr. D.R. Chowdhury, learned counsel appearing for
the appellants as well as Mr. S. Chakraborty, learned Addl. Govt.

Advocate appearing for the respondent Nos. 1,2,3 & 4. None appears for the other respondents despite due notice from this court.

[2] Against the concurrent finding of fact, this appeal has been filed under Section 100 of the CPC against the judgment dated 28.01.2008 delivered in Title Appeal No.07 of 2007.

[3] It is not in dispute that the plaintiffs instituted the suit on admitting that the proforma-respondent Nos. 5 & 6 have interest over the suit land. The proforma-defendant No.5, namely Sri Santosh Das is one of the sons of late Satish Ch. Das @ Satish Das whereas proforma defendant No.6, namely Sri Sukanta Das is the son of Sri Santosh Das. The suit has been filed in respect of the property described in the Schedule appended below the plaint, attracting the old plot Nos. 1711, 1712 and 1713 comprised in Khatian No.635(old) corresponding to new Khatian No.2/8 with the corresponding plot Nos. 5130, 5131 & 5134 as renumbered, measuring 7.5 acre.

[4] It appears from the records that the cause for filing the suit arose when the plaintiffs or one of the plaintiffs, namely Santosh Ch. Das had received the notice under No.1/Evic/05 dated 07.07.2005 asking him to vacate the Government land, else he would be evicted in the proceeding under section 15(1) of the Tripura Land Revenue and Land Reforms Act, 1960, hereinafter for short, 'TLR & LR Act'.

[5] The plaintiffs have stated that they alongwith the defendant Nos. 5 & 6 were possessing the suit land continuously as the said land is situated alongwith their jote land which was allotted in favour of their predecessor, namely Satish Ch. Das @ Satish Das in the year 1956.

[6] It is the further case of the plaintiffs that their father in his lifetime and thereafter the plaintiffs and those proforma defendants tilled that tilla land for growing mesta etc. They have also stated that in the old khatian No.635 under Column 23, the names of the illegal occupiers are recorded and the said khatian was attested on 25.07.1966. The same was later on finally published on 19.01.1967. It is to be noted that the plaintiffs' never endeavoured to implead the legal heirs of Akshoy Kr. Roy, Biswambar Das and Kshitish Chandra Das, the recorded illegal occupiers even though they have stated in the plaint that they have got the possession by way of transaction.

[7] It cannot be denied that if these entries are believed, then the legal heirs of Akshoy Kr. Roy, legal heirs of Biswambar Das or legal heirs of Kshitish Ch. Das have subsisting interest over those pieces of land, comprised in Dag No. 1711, 1712 and 1713 corresponding respectively to plot Nos. 5130, 5131 and 5134. They have further submitted that from the notice itself (Exhibit.1) it would be abundantly clear that the legal heirs of Satish Ch. Das @ Satish Das were in possession over the entire suit land.

[8] It is not also in dispute that by adducing 5(five) witnesses from the locality, the plaintiffs have made an attempt to prove that by way of handing over the possession to the plaintiffs and the proforma-defendants, those illegal occupiers, namely Akshoy Kr. Roy, Biswambar Das and Satish Ch. Das left the said place.

[9] Mr. D.R. Chowdhury, learned counsel appearing for the appellants, has strenuously argued that both the courts below have failed to properly appreciate the documentary evidence vis-a-vis the oral evidence as adduced by the plaintiffs. Mr. Chowdhury, learned counsel, has further pointed out that the defendant Nos. 1 to 4, the respondent Nos. 1 to 4 herein, did not adduce any evidence. However, they filed a written statement contesting the claim of the plaintiffs. The issues framed are as to the maintainability of the suit and determine whether the title in favour of the plaintiffs and the proforma defendants has matured by prescription as provided under Article 112 read with section 27 of the Limitation Act.

[10] Mr. Chowdhury, learned counsel has candidly submitted that the trial court and thereafter the first appellate court by way of the judgment of affirmation held that the plaintiffs have failed to prove their case and they have unsuccessfully tried to prove their claim by evidence. Now by this appeal, the plaintiffs have challenged the judgment passed by the first appellate court.

[11] While admitting this appeal filed under section 100 of the C.P.C., the following substantial question of law has been framed by this court :

“Whether the plaintiffs-appellants acquired right, title and interest in respect of the suit property on the basis of their possession for 30 years?”

[12] Mr. Choudhury, learned counsel has further submitted that when there is no cross-examination in respect of the unambiguous statement as to the open and hostile possession and when there is documentary evidence in the form of the finally published khatian, being khatian No.635 containing entries as to their illegal possession and the notice dated 07.07.2005, the trial court as well as the first appellate court ought to have returned the finding that the plaintiffs have proved their case. But, the courts below followed the opposite direction. Now it has to be held that they have read the evidence perversely so far the adverse possession over 30 years for acquiring the prescriptive title is concerned.

[13] From the other side, Mr. S. Chakraborty, learned Addl. Govt. Advocate has submitted that whether or not the defendant Nos. 1 to 4 have adduced any evidence or not, it is the primary duty of the plaintiffs to prove their case by adducing distinct evidence as to the point of starting the adverse possession in respect of a particular plot of land and its maturity for purpose of drawing an inference in respect of the prescriptive title on the basis of such possession. Mr. Chakraborty, learned Addl. Govt. Advocate has further submitted that

when the persons who were recorded to be in the possession, if they, or their legal representatives are not brought on record, no court of law should ever arrive to a finding touching interest, if any, which existed by virtue of any entry in the record of rights. Mr. Chakraborty, learned Addl. Govt. Advocate has pointed out that after the Revisional Survey Settlement when the khatian No. 2/8 (Exhibit.3) was published, in column 16 there is no reference of the illegal occupation of the plaintiffs or their predecessor. As such, this court cannot arrive at a finding on interfering the impugned concurrent finding that the illegal possession continued beyond 30 years. Further Mr. Chakraborty, learned Addl. Govt. Advocate has submitted that a person against whom the notice for eviction was given, he has not come as the plaintiff but has been shown as the proforma-defendant. According to the record, one Sontosh Das, the proforma defendant No.5 was found in possession of the land as described in the Schedule of that notice dated 07.07.2005 (Exhibit 1). As such, it cannot be stated with certainty that the plaintiffs were in possession. Further, no record has been produced to show that said Santosh Das is the son of Satish Das, who was in possession over the land in terms of the previous khatian, being khatian No.635 (Exhibit-2). Moreover, the proforma-defendant did not file any written statement admitting that the common interest with the plaintiffs.

[14] Now the question that is of paramount importance is that, whether the finding of facts as returned by the trial court or by the

first appellate court is perverse for non-reading the evidence as placed on record.

[15] It cannot be denied that in the proceeding the trial court has committed certain serious irregularity, particularly in respect of bringing the documentary evidence, namely Exhibits 1, 2 and 3 on record. It appears that those documents were not admitted in the record of evidence. An application in that regard was filed by the plaintiffs for admitting the documentary evidence, but that application was rejected. However, this court finds that somehow those documents in the evidence have been received and marked as Exhibits 1, 2 and 3. Since those documents were within the colour of the documents covered by Section 74 of the Evidence Act, this court has not taken serious exception.

[16] It is true that one Satish Ch. Das was recorded to be illegally possessing a part of the plot No.1712 (old), corresponding to 5131 with another Biswambar Das. The legal representatives of Biswambar Das, as Biswambar Das is reportedly dead, are not impleaded in the suit.

[17] What Mr. Chowdhury, learned counsel has stated that the plaintiffs and the defendants No. 5 and 6 have raised rubber plantation over the suit land, but from the statement of PW.3, it appears that the rubber plantation was raised in the year 2004 and in that year itself some officers of the Sub-Divisional Office, Subroom entered into the suit land and tried to take possession of that suit

land. They had felled down some rubber plants. In connection therewith, the proforma-defendant No.5 and his wife were arrested. Neither the proforma defendant No.5 nor his wife testified in the trial and none of the independent witnesses have stated who had raised that rubber plantation. But, PW.6 Jagabandhu Nath has stated that the suit land was under possession of the plaintiffs and proforma-defendant No.5 through their father and other persons, namely Satish Ch. Das, Akshoy Kr. Roy, Madhusudan Choudhury and Kshitish Ch. Das. If those statements are believed, this court has to come to a conclusion that the plaintiffs and the proforma-defendant No.5 were never in possession. They were possessing the said suit land through their father and other persons namely Satish Ch. Das, Akshoy Kr. Roy, Madhusudan Choudhury and Kshitish Ch. Das. He has further stated that he had seen those persons possessing the entire suit land by cultivating mesta and other crops since 1966. Later on, this witness has stated that proforma-defendant No.5, brother of the plaintiff Nos. 2 to 6 are not residing with their family members in the original house of the plaintiffs near the suit land and the proforma-defendant No.5 has been looking after the suit land for self and for and on behalf of the other plaintiffs. But the proforma-defendant No.5 has not come to the court to testify about this possession.

[18] Even though this court was initially under the impression that in view of the entry made in khatian No.635 against plot No.1712 in favour of Satish Ch. Das as the illegal occupier it might be so that the legal heirs of Satish Ch. Das @ Satish

Das is in continuous possession for more than the statutory period. But, from reading of the notice dated 07.07.2005, this court has to arrive at a finding that at the relevant point of time, Sri Santosh Ch. Das was in possession over the suit land measuring 7.50 acre. But whether that possession is a continuity of possession of Satish Ch. Das, or not, this has not been proved. For purpose of showing that the suit land was under the hostile or adverse possession of the plaintiffs or defendant No.5, the plaintiffs have tried to fill in that gap but the best witness, the defendant No.5, has not come before this court to prove that part of the possession as admitted by the defendants, however, not beyond the period of limitation. In such circumstances, this court cannot grant any declaration of the title by prescription in favour of the appellants. As this court does not find any infirmity in the impugned judgment, this appeal is devoid of merit.

[19] In the result, the appeal is dismissed. Draw the decree accordingly.

Send down the LCRs forthwith.

JUDGE

Sabyasachi B