

THE HIGH COURT OF TRIPURA
AGARTALA

RSA No.35 of 2010

Sri Nihar Ranjan Chowdhury,
son of late Nabaddwip Chowdhury,
resident of Kanchanpur,
P.O. & P.S. Ambassa,
District- Dhalai, Tripura

.....Appellant-plaintiff

- Vs -

1. The Sub-Divisional Magistrate, Ambassa,
Dhalai, Tripura, P.O. Ambassa,
District - Dhalai
2. The District Magistrate & Collector, Ambassa
P.O. Ambassa,
District – Dhalai, Tripura
3. The State of Tripura,
represented by the District Magistrate & Collector,
Dhalai, Ambassa
District – Dhalai, Tripura,

.....Respondent-defendants

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

For the appellant : Mr. B. Choudhury, Advocate

For the respondents : None

Date of hearing and : **19.03.2015**
delivery of judgment & order

Whether fit for reporting : **NO**

JUDGMENT & ORDER (ORAL)

Heard Mr. B. Choudhury, learned counsel appearing for the appellant. None appears for the respondents when the matter was called upon and heard despite due notice from this Court and appearance by an engaged counsel.

02. This is an appeal under Section 100 of the CPC against the judgment and decree dated 09.04.2010 delivered in

Title Appeal No.11 of 2009 by the District Judge, North Tripura, Kailashahar.

03. By the order dated 22.12.2012, this appeal was admitted on the following substantial question of law:

"Whether the finding of the first appellate court is not based on evidence and materials on record and that it is a perverse finding?"

However, the appellant was given leave to raise any other substantial question of law.

04. At the outset, Mr. Choudhury, learned counsel for the appellant has made a very candid submission that while passing the impugned judgment, the appellate court did not consider the fundamental reasoning provided by the trial court towards determining the issue No.5. While deciding the issue No.5 the trial court, the Civil Judge, Sr. Divn., North Tripura, Kailashahar, by the judgment dated 02.05.2009 has observed as under:

"As it is admitted by answering defendants in their written statement as well as in the deposition of D.W.1 that it is the land of Forest Department, so the Collector in deciding the case No.77/Rev/2002 should have considered the registered patta i.e. (Ext.1 and Ext.9) and also should have considered any sort of title or possession of the Forest Department. But he did not do so. Had he considered the aforesaid matters the decision would have gone in favour of plaintiff because Ext.1 and Ext.9 clearly show how the instant plaintiff stepped into the suit land by purchasing jote right from Sambhu Ratan Tewari before enforcement of T.L.R. & L.R. Act, 1960. As such I hereby decide that the order dated 12-9-05 passed by Collector, Dhalai in case No.77/Rev/2002 u/s 11(3) of T.L.R. & L.R. Act is illegal, arbitrary and not binding upon the plaintiff.

As such issue No.5 is decided in favour of the plaintiff."

For purpose of reference, it would be appropriate to extract the issue No.5.

"Whether order dated 12.9.2005 as passed by the District Collector, Dhalai, in Case No.77/Rev/2002 under section 11(3) of T.L.R. & L.R. Act, 1960 is illegal, arbitrary and not binding upon the plaintiff."

05. It may be noted that the suit was filed for declaration of title, right or interest over the suit property and for recovery of possession. There is no dispute that the plaintiff pleaded that one Sambhu Ratan Tewari was the original jotedar of the land. He died issueless. By virtue of the testament, one Aditya Tewari, the proforma defendant No.8 was considered as the testamentary successor. Sambhu Ratan Tewari inducted the plaintiff's predecessor Chandra Kumar Deb Roy permanently as the Korfa Tenant by a registered pattapatra No. 711 of 1960. Chandra Kumar Deb Roy's father, late Raj Mohan Deb Roy, was the maternal uncle of the plaintiff namely Nihar Ranjan Choudhury. Chandra Kumar Deb Roy died issueless leaving behind only Malati Deb Roy, his wife. Before her death Malati Deb Roy inducted the plaintiff into the suit land. After death of Malati Deb Roy, the plaintiff's mother, Subhasini Choudhury who was alive at that time, succeeded the land. Subhasini Choudhury was the father's sister of the husband of Malati Deb Roy and thus she became the absolute owner. After her death the plaintiff along with her brother and sister became the owner of the suit land. By amicable arrangement his brother and sister

had given exclusive possession/ownership of the land to him and thus he claimed the title over the suit land. But the khatian has been opened in the name of the Government of Tripura in the Forest Department being the reserved forest. A proceeding under Section 11(3) of the TLR & LR act, 1960 was drawn up at the instance of the plaintiff.

06. The case of the present respondents as the defendants in the suit is very simple that the plaintiff has been unauthorizedly occupying the said reserved forest land, pertaining to jote No.20 which is absolutely a khas land and such land has been recorded under the khatian No.1/124, Exbt.2. They have also asserted that under the provisions of Tripura Public Premises (Eviction of unauthorized Occupants) Act, 1982 proceedings were drawn up against the plaintiff for evicting him from the suit land. Against the order passed by the designated officer (the Estate Officer) the plaintiff even preferred an appeal before the District Collector, who is the appellate authority under the TPP Act. The appellate authority affirmed the order of eviction passed by the designated officer and thereafter no challenge was carried out by the plaintiff. This fact has not been disputed by the plaintiff anywhere.

07. Mr. B. Choudhury, learned counsel appearing for the appellant has submitted that the District Collector has not considered the registered patta (Exbt.9) and if the registered patta (Exbt.9) was duly considered, the entry made in the khatian No.1/124 (Exbt.2 and Exbt.f) would have been corrected

by the District Collector. But the appellate court while passing the impugned judgment has not taken care of this vital aspect, in relegation to the finding of the trial court, holding that:

"Suit land is described in the plaint. It is under khatian No.1/124, plot 637. Area of the land is 06 acre. As per khatian No.1/124 land belongs to the Govt. of Tripura. Khas khatian is prepared. The plaintiff-respondent claimed ownership over the land by virtue of succession and also on the basis of purchase deed. In the plaint it is stated that originally land belonged to Sambhu Ratan Tewari and Sambhu Ratan Tewari inducted plaintiff's predecessor Chandra Kumar Deb Roy as a korfa tenant in the year 1960. Chandra Kumar Deb Roy's father Raj Mohan Roy was the maternal uncle of the plaintiff. So, relationship between Chandra Kumar Deb Roy and plaintiff was cousin brother. Chandra Kumar Deb Roy left behind his wife Malati Deb Roy, who died 25 years back. On the death of Malati Deb Roy, all property, including the suit land, devolved upon the plaintiff's mother, Subhasini Choudhury as father's sister of the husband of Malati Deb Roy. How a father's sister, i.e., aunt of the husband can inherit the property of Malati Deb Roy, is not explained. Section 15 of the Hindu Succession Act has laid out general rules of succession in case of female Hindus. Aunt of the husband does not come within the preview of succession as per section 15 of the Hindu Succession Act. But, the plaintiff-respondent claimed property by way of that succession and it is also stated that other legal heirs of Subhasini Choudhury, i.e., her three daughters and sons had given the property to the plaintiff-respondent by amicable arrangement by disclaimer certificate. There is no such law by which the property can be transferred by disclaimer certificate."

08. It has been further observed by the first appellate court that:

"A pattapatra deed is produced and exhibited and marked as Ext.1. By that deed one Sambhu Ratan Tewari sold out korfa jote land to the plaintiff-respondent, Nihar Ranjan Choudhury. No Korfa Khatian is produced. Document was executed in the year 1961. But korfa khatian, to prove that the land belonged to Sambhu Ratan Tewari, is not produced. From the Order of the District Collector, Dhalai passed in connection with TPP Case No.5/2002

(Ext.4) it is revealed that Sambhu Ratan Tewari executed the Pattapatra for the land under jote No.20. Revenue receipt was produced before him. That revenue receipt was in respect of Debottor property of Sri Sri Shiva Shambhu and Sri Sri Kalimata Bigrahadoy against jote No.59, but not jote No.20. So, there is no definite evidence to show that Sambhu Ratan Tewari was the jotdar of jote land under jote No.20. Thus, the basis of ownership over the suit property by Nihar Ranjan Choudhury is clouded. That could is not removed. On the other hand, the appellants' defendants produced the khatian No.1/124 where Govt. of Tripura is shown as title holder. In column No.24 Nihar Ranjan Choudhury is shown as an illegal possessor. The document before the Court land the evidence do not suggest the ownership of the plaintiff-respondent over the suit property. Survey operation was done by one Basanta Kumar Das. That survey report is also on the basis of the korfa deed executed. But, the root of the korfa deed and the korfa khatian is not available to determine the right title and interest of Sambhu Ratan Tewari, who executed the sale deed on 8.2.1961. Thus, right, title and interest of the plaintiff-respondent is not established at all, but the Court below declared the same in favour of the plaintiff-respondent by discarding the findings of the Collector, Dhalai only.

Point No.1 is decided accordingly."

Based on this finding the judgment and decree of the trial court was reversed by the impugned judgment and decree.

09. There is no dispute that the suit has been filed for declaration of title based on Exbt.1 and Exbt.9, not on any other instrument or claim. Further, recovery has also been sought on the basis of the title has become infructuous inasmuch as by the proceeding drawn under Tripura Public Premises (Eviction of Illegal Occupants) Act, the plaintiff is already evicted from the suit land.

10. On the face of the strict resistance offered by the respondents as the defendants in the suit, the main issue framed by the trial court is that whether the plaintiff has got any title over the suit land or not. For that purpose, the plaintiff could not produce any document showing that the predecessor of the plaintiff had any korfa right over the suit land. The plaintiff could not produce either any patta or any entry in the record of right based on the said patta but the defendants have produced a khatian opened in the year 1965 immediately after the first survey operation. Unless the entries made in the khatian are rebutted by satisfying evidence, the presumption under Section 43(3) of the TLR & LR Act, 1960 is liable to be drawn on the basis of the entry. Moreover, it appears to this Court that the first appellate court has rightly questioned the claimed right by inheritance over the property. The plaintiff has not taken the task seriously to prove how the plaintiff has inherited the property as Subhasini Choudhury cannot inherit the property from Malati Deb Roy, according to Section 15 of the Hindu Succession Act, 1956. There is no testament or evidence that Malati Deb Roy bequeathed the property or transferred it to Subhasini Choudhury. The first appellate court has rightly held that law does not recognise any system of the disclaimer certificate. The moment the disclaimer certificate becomes an instrument of transfer, that shall mandatorily be registered in terms of Section 17 of the Registration Act but no such instrument has been produced in this Court. So the title in favour of the plaintiff could not be proved. Despite that wholly

on preposterous interpretation the trial Court has decided the issue No.5 in favour of the plaintiff. This Court is of the considered opinion that the appellate court has rightly reversed that finding on interpreting law correctly and dismissed the suit.

11. This appeal being devoid of merit is bound to fall through and accordingly it is dismissed.

LCRs be sent down after preparation of the decree in terms of this judgment.

JUDGE

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