

IN THE HIGH COURT OF TRIPURA
A G A R T A L A

RSA.NO. 12 OF 2010

- 1(a). Smt Bela Rani Mitra,
wife of late Dulal Mitra,
Vill. Kalabaria, P.O. Maicherra,
P.S. Belonia, Dist. South Tripura
- 1(b). Shri Biplab Mitra,
son of late Dulal Mitra,
Vill. Kalabaria, P.O. Maicherra,
P.S. Belonia, Dist. South Tripura
- 1(c). Smti Rupali Mitra, (Patari),
wife of Shri Atul Patari
Vill. Haripur, P.S., P.O. and Sub-Divn.:
Belonia, Dist. South Tripura
- 1(d). Smti Shaibya Mitra (Das),
wife of Shri Atul Chandra Das,
Vill. North Kalabaria,
P.O., P.S. and Sub-Divn. : Belonia,
Dist. South Tripura
- 1(e). Smti Sima Mitra (Mahajan),
wife of Shri Ashish Maahajan of Sonar Tilapara
Vill. Lauganj., P.O., P.S. and Sub-Divn.:
Santirbazar, Dist. South Tripura
- 1(f). Smti Madhumita Mitra (Roy),
wife of Shri Nilaybaran Roy of Ashram Tilla,
Vill. Bokafa, P.O. and P.S. Santirbazar,
Dist. South Tripura
2. Shri Sushen Mitra
son of late Bikarna Mitra
3. Shri Amar Chand Mitra,
son of late Ram Kumar Mitra
all are the residents of
Vill- Kalabaria, P.O- Maicherra,
P.S. Belonia, Dist- South Tripura

.....Defendant appellants

-V E R S U S-

1. Shri Uttam Kumar Mitra,
son of late Raj Kumar Mitra,
a resident of Vill- North Kalabaria,
Dist- South Tripura

.....Plaintiff respondent

2. Shri Sukhen Mitra,
son of late Bikarna Mitra,
a resident of Vill-Kalabaria,
P.O- Maicherra, P.S- Belonia,
Dist-South Tripura

..... Defendant Pro- Respondent

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

For the defendant appellants : Mr. S.M. Chakraborty, Sr. Advocate
Ms. B. Chakraborty, Advocate
For the plaintiff respondents : None
Date of hearing : 05.03.2015
Date of judgment & order : 08.05.2015

Whether fit for reporting :

Yes	No
✓	

JUDGMENT & ORDER

This is an appeal under Section 100 of the CPC from the concurrent finding of fact returned by the judgment dated 09.12.2009 delivered in Title Appeal No. 14/2009 passed by the Additional District Judge, South Tripura, Belonia.

[2] At the time of admission the following substantial questions of law were framed by this Court by the order dated 12.04.2010:

(i) Whether a Civil Court has got any jurisdiction to entertain and try a suit with respect to any matter arising under and provided for by Tripura Land Revenue and Land Reforms Act, 1960 without any express provision to try such suit?

(ii) Whether the pendency of a proceeding before Revenue Authority under TLR and LR Act for cancellation of

the order of allotment can be ignored by a Civil Court while trying a suit and passing judgment involving the property covered by such allotment order?

[3] The essential facts relevant for the purpose of appreciating these substantial questions of law may be introduced in brief at the outset.

[4] The plaintiff-respondent, hereinafter the respondent, instituted the suit being Title Suit No. 10/2008 in the Court of the Civil Judge, Jr. Division, Belonia, South Tripura. The father of the plaintiff, namely, late Raj Kumar Mitra, got allotment of the suit land as described in the plaint, measuring 5.63 acres in the year 1974 from the Government and the record of right was created and updated in his favour by Khatians No. 858/1, 858/2 and 858/3S.

[5] During the survey carried out in the year 1980, Khatian Nos. 858/1, 858/2 and 858/3 emerging from the old Khatian No. 1131 were published in the name of the respondent after demise of his father. The predecessor of the respondent and the proforma defendant, the respondent No. 2 herein have been possessing the suit land since 1974. The appellants, the defendants in the suit made futile attempts several times to dispossess the respondent from the suit land.

[6] On 02.03.2007, the defendants dis-possessed the respondent from the suit land. Thereafter, the defendant appellant approached the Sub-Divisional Magistrate, Belonia, South

Tripura, for cancellation of the original allotment order issued in favour of the said predecessor of the respondent. The said proceeding for cancelling the allotment order is still in-conclusive. However, the appellants, the defendant in the suit, by filing the written statement contested the suit of the respondent contending that since 1967 they have been possessing the suit land uninterruptedly and allotment made in favour of the predecessor of the respondent is nothing short of paper transaction. The trial court decreed the suit in terms of the judgment dated 07.09.2009 delivered in T.S. No. 10/2008 categorically holding that:

The fact that the father of the plaintiff was allotted the suit land is evident from Exhibit-5. Exhibit-5 is the Parcha bearing No. 1131 which contains the name of the plaintiff's father and subsequently the plaintiff and proforma defendant has allotted of the suit land. The above fact is confirmed with the final publication Exhibits No. 2, 3 and 4 in the name of the plaintiff and proforma defendant since after 1980 survey operation. Exhibits No. 2, 3 and 4 are the finally published Khatian bearing No. 858/2, 858/3 and 858/1 in favour of the plaintiff and proforma defendant in respect of the suit land. The plaintiff has completely relied on the above documents while claiming the right and title over the suit land.

The defendants while giving a counter to the above documents did not furnish any paper as proof of their title and possession over the suit land. The defendant only furnished the report of Revenue Inspector marked as Exhibit-A to establish their possession over the suit land since 1967 and also about the pendency of an allotment cancellation proceeding. Exhibit-A talks about the execution of a WILL vide which the defendants became owner and possessor of the suit land. Exhibit-A also proposed for cancellation of the allotment order in the name of the plaintiff's father. Now on bare perusal of the record the WILL as mentioned above is not found available with the record. Further the defendants furnish a scrap of paper which talks about execution of a WILL in respect of the suit land. The defendants not even for once took plea of an existing WILL.

The pendency of an allotment cancellation proceeding is not disputed by the plaintiff but here the question is whether an allotment given prior to 1980 can be cancelled or not. As we all know it is well settled that an allotment prior to 1980 can not be cancelled as the power conferred under allotment Rule 1982 can not be invoke to cancel an allotment prior to 1980. Above all the cancellation proceeding is sub-judice and till its disposal the allotment in the name of the plaintiff's father stands good. Going ahead it is accepted by the defendants that they are in possession of the suit land. As discussed above the defendants has failed to place a single scrap of paper to establish their title and possession over the suit land. Hence it is to be assumed that the defendants since 02.03.2007, are possessing the suit land forcefully and plaintiff have every right to get back his possession over the suit land.

[7] Being aggrieved by the said judgment dated 07.09.2009, the appellant filed an appeal under Section 96 in the court of the Additional District Judge South Tripura, Belonia, being Title Appeal No. 14/2009. On hearing, the said appeal has been dismissed by the impugned judgment affirming the finding of the trial court in the following terms:

“It is contended by the respondent that in the year 1974 their father got allotment of the suit land from the Government of Tripura and accordingly separate Khatian vide No. 1131 was prepared in his name. On expiry of their father they started to possess the suit land as his legal heirs and separate Khatian bearing No. 858/1, 858/2 and 858/3 was finally published during the revisional survey of 1980 and thus they are possessing the land continuously right from 1974 till their dispossession.

On the other hand it is the case of the appellants that they have been possessing the suit land since 1967 and at no point of time the suit land was possessed by the respondent. In support of the claim of the respondents they produced Khatian No. 1131 and finally published records of right vide No. 858/1, 858/2 and 858/3. On the contrary the appellants have failed to produce any such records of right in their name. Save and

except one enquiry report done by the Revenue Inspector (Exhibit-A). In comparing the documents of both sides it is established that the respondents have better title over the suit land. So far as the possession of the appellants on the suit land is concerned i find that the respondents specifically stated that on 02.03.2007, they were dispossessed by the appellants from the suit land. The principle of law is that the title follows possession and hence it is legally presumed that he respondents had been possessing the suit land till the date of their dispossession. The so called report of Revenue Inspector simply support the present possession of the appellants which is also stated by the respondents. The Revenue Inspector simply found the appellants in-possession of the suit land and he has no authority to determine the possession of the appellants since 1999 without supporting by any documents. The appellants besides the report of Revenue Inspector have failed to prove their possession on the suit land since 1967. As such the appellants are possessing the suit land since 1967 cannot be said to be well proved. On the contrary since the respondents have their better title they are presumed to be in-possession of the suit land since from the date of allotment in the year 1974. The respondents are required to prove their title and when they admit their dispossession, they are entitled to recover the possession of the suit land and considering the above facts of their title and dispossession i hold that the respondents are entitled to get recovery of the suit land from the appellants.

The facts argued by the appellant's side that a case is pending before the Court of S.D.M. Belonia for cancellation of the allotment has got no legal stand. The allotment till its cancellation stands good. Moreover, it is pertinent is mention here that the allotment given prior to 1980 cannot be cancelled as per allotment Rule 1982.

[8] Mr, S. M . Chakraborty, learned senior counsel appearing for the appellants has strenuously argued that the trial court ought not have decided the suit before finalisation of the proceeding for cancellation of the allotment order. He has further submitted that the jurisdiction of the civil court is barred by

Section 88 of the Tripura Land Revenue and Land Reforms Act 1960 inasmuch as any dispute arising under or provided for by the said Act cannot be entertained by the civil court for the bar created by the said provision.

[9] In the course of elaborating his submission Mr. Chakraborty, learned senior counsel has submitted that the central issue involved in the suit is whether the plaintiff is entitled to recover the possession from the principal defendant on the strength of the questioned allotment order. Thus, it can safely be inferred that the dispute is directly arising under or provided for the Tripura Land Revenue and Land Reforms Act 1960. Hence, the civil court does not have jurisdiction to entertain the suit in view of the provision engrafted in Section 9 of the CPC and as such suit is ousted from the jurisdiction of the civil court.

[10] On scrutinizing the records of the courts below and on appreciation of the submission made by Mr. Chakraborty, learned senior counsel it appears that it is an admitted fact that the order of allotment has not yet been cancelled and on culmination of the fact finding exercise, the courts below have observed that at the time of dispossession on 02.03.2007, the plaintiff-respondent was in the possession of the suit land. This Court is not inclined to disturb that concurrent finding of the fact as the appellants have not questioned that finding in any manner.

[11] The question that requires response in this appeal is whether the civil court was right in exercising its jurisdiction or not. Merely for the reason that the allotment order has been questioned the jurisdiction of the civil court cannot be held to be barred inasmuch as the issues on board are whether the plaintiff has the title or he had been dispossessed by the defendants or whether the plaintiff is entitled to recover the suit land.

[12] Without delving into the depth it can be safely said that unless the order of allotment is cancelled or declared inoperative for whatever purpose, the civil court has got jurisdiction to entertain the suit of this nature.

[13] Hence, this appeal is entirely devoid of merit, inasmuch as in the event the allotment order is cancelled that would give rise to a fresh cause of action for action at law.

[14] In the result the appeal is dismissed

[15] Draw the decree accordingly. Send down the LCRs thereafter.

JUDGE

A. Ghosh.