

THE HIGH COURT OF TRIPURA
AGARTALA

RSA No.28 of 2010

Smti Malini Bibi,
 wife of late Ali Akbar,
 resident of Vill. Kulubari,
 P.O. & P.S. Sonamura,
 Dist. West Tripura

.....**Appellant**

- Vs -

1. The State of Tripura,
 represented by the
 Collector, West Tripura,
 P.O. Agartala, West Tripura,
 Pin – 799 001
2. The Sub-Divisional Magistrate,
 Sonamura, P.O. Sonamura,
 West Tripura

.....**Respondents**

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

For the appellant : Mr. K. N. Bhattacharjee, Senior Advocate
 Mr. R. C. Deb, Advocate

For the respondents : Ms. A. S. Lodh, Addl. GA

Date of hearing and : **12.03.2015**
 delivery of judgment & order

Whether fit for reporting : **NO**

JUDGMENT & ORDER (ORAL)

Heard Mr. K. N. Bhattacharjee, learned senior counsel assisted by Mr. R. C. Deb, learned counsel appearing for the appellant as well as Ms. A. S. Lodh, learned Addl. GA appearing for the respondent Nos.1 and 2.

02. Against the concurrent finding of fact, this appeal under Section 100 of the CPC has been preferred questioning

the legality of the judgment and decree dated 06.04.2010 delivered in Title Appeal No.01 of 2010 by the Addl. District Judge, West Tripura, Sonamura affirming the judgment and decree dated 26.11.2009 passed by the Civil Judge, Jr. Divn., Sonamura, West Tripura in Title Suit No.02 of 2008.

03. By the said judgment and decree dated 26.11.2009 the Civil Judge, Junior Division, Sonamura, West Tripura has partly decreed the suit confirming the possession of the plaintiff. However, the Civil Judge, Junior Division, Sonamura has declined to declare the title over the suit land in favour of the plaintiff on adverse possession.

04. The appellant, the plaintiff in the suit, instituted the suit for declaration of title and confirmation of possession and for perpetual injunction. She pleaded that even her predecessor such as her grandfather had started to possess the land 80 years prior to the institution of the suit and she has been possessing the suit land for more than 30 years by growing fruit bearing trees and collecting fruits and seeds from the said land for purpose of sale. It has been asserted by the appellant that she had been possessing the suit land continuously and adversely for more than 30 years within the knowledge of the defendants. When the defendant Nos.3 and 4 attempted to dispossess her from the suit land on 01.01.2007, she initially instituted the suit being Title Suit No.01 of 2007 in the Court of the Civil Judge, Junior Division, Sonamura, West Tripura but later on, the said suit was withdrawn on 17.07.2007 with liberty to file a fresh suit. Since the true owner of the land was the

Government, due notice under Section 80(1) of the CPC was issued on the defendant Nos.1 and 2, the respondents herein and it appears from the records that those notices were duly served on them.

05. On expiry of the due period when no response was received, a fresh suit has been instituted for the said purpose. The respondent Nos.1 and 2 by filing the written statement have categorically denied the possession of the plaintiff over the suit land but they adduced no evidence for rebuttal. The plaintiff has examined three witnesses but did not produce any record in support of her possession over the said land. The witnesses of the plaintiff (PWs.1, 2 and 3) supported the plaintiff's case. However, in the cross-examination the complainant herself has stated that she cannot say the date from when she had started possessing the suit land adversely. Further she has stated that *"I approach the Government for allotment but they said I would be allotted the said land later on."* The plaintiff has further stated that she does not have any land nearby the suit land. In the examination-in-chief so filed by the plaintiff, she has merely stated that the suit land is having the trees and grass and nothing more. In the course of examination, PW-2, Alkas Miah and PW-3, Dulal Bhowmik have stated about the possession of the plaintiff but none of them could identify the suit land either by giving their plot number as recorded or by giving the boundaries. However, the trial court since the defendants did not adduce any evidence held that the plaintiff is in possession of the suit land, but denied to declare title in her favour on adverse

possession holding that it is *sine qua non* for having the title on adverse possession to prove the time from when the plaintiff has been possessing the suit land adversely. Else, as in the present case, the provisions of Section 27 of the Limitation Act read with Article 112 of the Constitution of India cannot be applied. The said finding has been affirmed by the impugned order.

06. Mr. Bhattacharjee, learned senior counsel for the appellant has submitted that both the appellant and her witnesses are the rustic persons. They are hardly expected to refer exact day and year correctly. But the appellant in her examination-in-chief has stated that the suit land was under possession of her grandfather and her's for last 80 years before the day of institution of the suit. Such statement shall be accepted to hold the fact that the plaintiff has been possessing the suit land adversely for a period of over 30 years. In support of his contention Mr. Bhattharjee, learned senior counsel has referred a decision of the apex court in ***Des Raj and Ors. vs. Bhagat Ram (Dead) By LRs. and Ors.*** reported in ***(2007)9SCC641*** where the apex court has held in para 12 as under:

12. In the Second Appeal preferred by the appellants, the High Court while determining the same, opined:

"In the present case, the plaintiff has specifically pleaded that he is in continuous possession of the land in dispute in open and unequivocal denial of title of defendants No. 1 to 22-A, since prior to 1052-53. As stated above, the longstanding revenue entries since 1952-53 record the plaintiff to be in exclusive possession of the land in dispute.

Ex. P.1 is the copy of the plaint of the suit instituted by some of the defendants in the year 1968, against the present plaintiff. This plaint is dated 29.2.1968. By virtue of this suit, the plaintiffs therein, who are the defendants in the present case, had prayed for joint possession of the land, which is the subject matter of this suit. In para 3 of this plaint, it has been averred that the plaintiff in the present case, was in exclusive possession of the land in dispute and that he was asserting and claiming himself to be the sole owner thereof."

07. Mr. Bhattacharjee, learned senior counsel has submitted that after such a long possession over the land if the appellant is allowed to be evicted from the land even by due process of law that would take away her right as matured in her favour on extinguishment of the right of the respondent No.1 over that land by prescription.

08. From the other side, Ms. A. S. Lodh, learned Addl. GA has submitted that this Court may not interfere with the concurrent finding of the fact in this regard inasmuch as the appellant has not shown anything that was not considered duly by the courts below. Unless it is shown that the findings so arrived by the first appellate court or the trial court, since the first appellate court has affirmed the finding of the trial court, that such finding is visited by perversity either in appreciation of the evidence or in application of any settled position of law, no interference in a second appeal is called for. In this case, there is no such ground.

09. Having regard to the rival contentions, as advanced by the learned counsel for the parties, this Court is of the view that the impugned judgment and decree do not require any

interference from this Court inasmuch as no perversity in arriving at the concurrent finding of the fact has been demonstrated by the appellant.

Accordingly this appeal stands dismissed.

Send down the LCRs after preparation of the decree.

JUDGE

MB