

**HIGH COURT OF TRIPURA
AGARTALA**

RSA 5 OF 2011

Shri Nirmal Chandra Roy,
Son of Late Nakul Chandra Roy
Resident of South Belonia (Vidyapith Corner),
P.O. and P.S. Belonia,
District South Tripura.

... Plaintiff-Appellant.

- Vrs -

- 1. Shri Nitai Sarker,**
Son of Late Sarada Charan Sarker.
- 2. Shrimati Minati Sarker,**
Wife of Shri Nitai Sarker.
- 3. Shri Debasish Sarker,**
Son of Shri Nitai Sarker.
- 4. Shri Ashish Sarker,**
Son of Shri Nitai Sarker.
- 5. Shri Nakul Sarker,**
Son of Shri Jiban Sarker.
- 6. Shri Sahadeb Sarker,**
Son of Shri Jiban Sarker.
- 7. Shri Arjun Sarker,**
Son of Shri Jiban Sarker.
- 8. Shri Subrata Sarker,**
Son of Late Satindra Sarker.
- 9. Shrimati Dipali Sarker,**
Wife of Late Satindra Sarker.

All are the residents of Village South Bharat Chandra
Nagar (Garrage Tilla), P.O. S.B.C. Nagar,
P.S. Belonia, District South Tripura.

... Defendant-Respondents.

**BEFORE
THE HON'BLE MR. JUSTICE S.C. DAS**

For the appellant : Mr. A. Dasgupta, Advocate.

For the respondents : Mr. D. Chakraborty,
Sr. Advocate,
Mr. H. Laskar, Advocate.

Date of hearing : **07.07.2015**

Date of delivery of judgment & Order : **23.07.2015.**

Whether fit for reporting : **Yes**

JUDGMENT & ORDER

This second appeal under Section 100 of the Code of the Civil Procedure is directed against the judgment and decree dated 30.04.2010 and 07.06.2010 respectively passed by the learned Addl. District Judge, South Tripura, Belonia, in Title Appeal No.4 of 2010 where-under the learned Addl. District Judge set aside the judgment and decree dated 22.01.2010, passed by the learned Civil Judge, Jr. Division, Belonia in Title Suit No.37 of 2007.

2. Heard learned counsel Mr. A. Dasgupta for the appellant and learned Sr. counsel, Mr. D. Chakraborty assisted by learned counsel Mr. H. Laskar for the respondents.

3. The second appeal has been admitted for hearing on the following substantial questions of law:-

(i) *Whether there is any necessity to discuss any legal contention, when the entire*

findings and decision of the First Appellate Court are based on perverse findings?

- (ii) *Whether the First Appellate Court had any scope to set aside the judgment and decree of the learned Trial Court asserting that the appellant being the plaintiff had to pay Court fees for his suit under Section 7(v)(d) of the Court Fees Act instead of under Section 7(iv)(c) of the said Act without giving an opportunity to the respondent (appellant of the instant appeal) to pay further the additional Court fees?*
- (iii) *Whether the appellate Court had any power and scope to ignore the deeds, which the Court had relied on at the time of disposing the Title Appeal?*

4. The appellant as plaintiff (hereinafter mentioned as plaintiff) instituted Title Suit No.37 of 2007 in the Court of learned Civil Judge, Jr. Division, Belonia, South Tripura against the defendant-respondents (hereinafter mentioned as defendants) seeking declaration of right, title, interest and recovery of the possession of the suit land described in the schedule of the plaint.

5. The plaintiff, *inter alia*, contended that the suit land originally belonged to Chinta Haran Mallick and Gita Rani Mallick and that by a registered deed of purchase vide Deed No.1-2502 dated 20.12.2006 he purchased 118.5 decimals of land from the original jotedar Gita Rani Mallick and got possession of the suit land. He also purchased 1.14 acres of land by a registered Deed of purchase No.1-103 dated

16.01.2007 from the legal heirs of Chinta Haran Mallick i.e. wife and children of Chinta Haran and got physical possession of the land. The defendants have got their land in the western side of the plaintiff's purchased land and since after 3(three) months of the purchase of land by the plaintiff, the defendants with their men and agents started disturbing the possession of the plaintiff. They dispossessed the plaintiff from the suit land on 3rd day of Ashar, 1414 B.S. which corresponds to 18.06.2007 at about 09/09-30 a.m. and thereafter the defendants unauthorisedly cleared the jungles from the suit land and planted some banana trees and other trees on the suit land to show their possession. The plaintiff requested the defendants to vacate the suit land and to hand over possession but the defendants declined and hence the plaintiff instituted the suit for declaration of title and for recovery of possession.

6. The defendants contested the suit by filing a joint written statement, *inter alia*, contending that they have been possessing the suit land from the year 1970 denying right, title and interest of the rightful owner and thereby acquired title by adverse possession. The plaintiff and his predecessor has no right, title, interest in the suit land and their right, title, interest if any, has already been extinguished due to the adverse possession of the defendants. From the year 1970, the defendants peacefully possessing the land denying title of

rightful owner and they have constructed their huts over the suit land in 1984. The predecessor of the plaintiff earlier also instituted a Title Suit No.17 of 1985 against defendant No.1 and father of defendant Nos.5, 6 and 7.

It is also contended by the defendants that after purchase the plaintiff filed petition for mutation before Belonia Tehasil Kachari but the prayer of the plaintiff for mutation was rejected since the plaintiff was not found in possession of the suit land. The defendants further contended that they filed an appeal under Section 93 of the TLR and LR Act before the Collector and the same is pending. They also filed a petition under Section 95 of the TLR and LR Act for correction of the record of right. The defendants, therefore, prayed for dismissal of the suit.

7. The trial Court considering the pleadings of the parties, framed following issues:-

- (1) *Is the suit maintainable in its present form?*
- (2) *Has the plaintiff any cause of action to file this suit?*
- (3) *Has the plaintiff right, title and interest over the suit land?*
- (4) *Is the plaintiff entitled to recovery of possession of the suit land?*
- (5) *What other relief or reliefs is the plaintiff entitled under laws and equity?*

8. In course of trial, the plaintiff examined himself as P.W.1 and also examined 6(six) more witnesses namely- PW 2

Chitta Debnath, PW 3 Dilip Paul, PW 4 Ranindra Debnath, PW 5 Balaram Debnath, PW 6 Mridul Datta and PW 7 Sanjit Roy.

9. In support of his case plaintiff proved two items of documents namely-

Exhibit-1 Certified copy of Khatians No.308/1 & 308/2 of Mouja-South Bharat Chandra Nagar and

Exhibit-2 Certified copy of map, Sheet No.4/p.

10. Defendant Nos. 1 and 7 namely Nitai Sarkar and Arjun Sarkar examined themselves as DWs 1 and 2 and also examined 3(three) more witnesses namely- DW 3 Jaharlal Debnath, DW 4 Beni Madhav Mahajan and DW 5 Alamgir Hossain.

11. In support of their case, the defendants also proved four items of documents namely Exhibit A to Exhibit D.

EXBT.A – Certified copy of prayer U/S 95 of TLR & LR Act, 1960.

EXBT.B – Certified copy of the report of R.I., Belonia.

EXBT.C – Certified copy of map &

EXBT.D – Original summon issued in connection with T.S.17/85.

12. The trial Court decided the material issues in favour of the plaintiff and accordingly decreed the suit.

13. The defendants challenged the judgment and decree in the Court of learned Addl. District Judge, South Tripura, Belonia, vide Title Appeal No. 4 of 2010 and the learned Addl. District Judge by impugned judgment dated 20.04.2010 allowed the appeal and set aside the judgment and decree passed by the trial Court and hence, this second appeal.

14. It is submitted by learned counsel Mr. Dasgupta that the first appellate Court set aside the judgment and decree passed by the trial Court on the ground that the suit was not correctly valued and stamped and that the title Deeds were not exhibited by the plaintiff. According to Mr. Dasgupta, learned counsel for the appellant, the appellate Court would direct the plaintiff to pay additional court fees if the Court found that the suit was not properly valued and stamped. He has also submitted that original purchase Deeds of the plaintiff were filed by the plaintiff by firisiti dated 08.10.2007 i.e. on the date of filing of the suit itself and the number of the title Deeds have also been mentioned in the plaint itself but it was not exhibited formally and that was a mistake or ignorance on the part of concerned lawyer of the plaintiff. He has also submitted while this original Deeds are on record, the finding of the first appellate Court that the title Deeds of the plaintiff has not been filed is a perverse finding and not tenable in law. He has also submitted that in the pleadings in Para 11 of their

written statement it is clearly admitted that the plaintiff purchased the suit land and applied for mutation but the mutation was not allowed since the plaintiff is not in possession and thereby the defendants admitted the purchase of suit land by the plaintiff and hence, the findings of the appellate Court is not tenable in law and fact and is liable to be interfered.

15. Learned Sr. counsel Mr. Chakraborty, on the other hand, has submitted that the suit was not properly valued and stamped as required under law. Since it was a suit for recovery of possession, which ought to be valued and stamped as per Section 7 (v)(d) of the Court Fees Act, the appellate Court rightly held that the suit was not properly valued and stamped. He has also submitted that mere production of the title Deed in the record was not enough to hold that the plaintiff purchased the suit land. Since those documents were not formally proved, the appellate Court has rightly held that the plaintiff failed to prove his title over the suit land. He has also submitted that the plaintiff applied for mutation but did not get mutation and therefore, the plaintiff has failed to prove his title and as such the plaintiff is not entitled to get recovery of possession. The appellate Court rightly passed the reversal judgment and decree and such judgment and decree may be maintained.

16. The plaintiff instituted the suit for recovery of possession based on both possession and title. According to the plaintiff he has purchased the suit land on 20.12.2006 and 16.01.2007 by dint of two registered Deed of purchase. Both the original registered Deed of purchase has been mentioned in the plaint itself as well as in the documents relied by the plaintiff mentioned at the bottom of the plaint. The suit was filed on 08.10.2007 seeking declaration of right, title, interest and for recovery of possession and on that day itself the plaintiff by firisti dated 08.10.2007 submitted the original purchase Deeds dated 20.12.2006 and 16.01.2006 as item Nos. 1 and 2 of the documents relied by the plaintiff. The plaintiff also produced the Khatian in the name of Chinta Haran Mallick and Gita Rani Mallick. It is the callousness and/or ignorance of the conducting lawyer of the plaintiff that the title Deeds were not formally proved as a document at the time of trial but while the original title Deeds are on record, the appellate Court would not ignore the original title Deeds in the given facts and circumstances of the case where the defendants did not deny the title of the plaintiff and his predecessor since they have simply set up their claim of adverse possession over the suit land. In para 11 of the written statement, the defendants stated –

“that after purchase of present suit land the plaintiff filed prayer for mutation of present suit land before Belonia T.K. where on enquiry the same has been rejected for non-finding plaintiff in

possession by mutation officer. Certified copy shall be submitted on receipt.”

17. The above statement is a clear admission on the part of the defendants that the plaintiff purchased the suit land and thereafter applied for mutation but the mutation was denied. While such admission is there in the plaint itself the appellate Court was absolutely wrong in holding that the plaintiff failed to prove his title by way of proving the title Deeds. The trial Court rightly decided the right, title, and interest of the plaintiff in the suit land in view of the pleadings of the parties as well as in view of the documents of title which are on record though not formally exhibited due to the callousness or ignorance on the part of the conducting counsel of the plaintiff. I have, therefore, no hesitation to hold that the trial Court rightly held that the plaintiff's right, title and interest in suit land has been proved.

18. No issue was framed on the point as to whether the suit was properly valued and stamped. The plaintiff instituted the suit for declaration of right, title, interest and recovery of possession. But the plaintiff valued it at Rs.100/- and court fee is paid under Section 7(iv) (c) of the Court Fees Act. While the suit has been instituted for recovery of possession, the suit ought to be valued under Section 7(v)(d) of the Court Fees Act and the plaintiff was supposed to pay the court fees on the valuation of the suit land for which the

plaintiff sought recovery of possession. So, the appellate Court while found that the suit was not properly valued or stamped would direct the plaintiff to pay additional court fee on the valuation of the suit land. Both the original title Deeds of the plaintiff are found on record and on the basis of the same, the value of the land can easily be determined and the plaintiff may be directed to pay additional court fee. The dismissal of the suit on that ground by the appellate Court was not at all warranted. The plaintiff shall pay the additional court fee on the basis of the valuation of the suit land.

19. The plaintiff prayed for recovery of possession of the suit land based on title and previous possession. According to the plaintiff he got possession of the suit land from his predecessors i.e. the vendors. Plaintiff did not examine any of his vendors as a witness. But to prove that he got possession and that he has been dispossessed on 3rd of Ashar, 1414 B.S. which corresponds to 18.06.2007 A.D., the plaintiff examined himself and six more witnesses. All those witnesses stated that the defendants entered into possession of the suit land on 3rd Ashar, 1414 B.S. which corresponds to 18.06.2007 A.D. at about 9/9-30 a.m. and thereby dispossessed the plaintiff. On the other hand, defendants also adduced oral evidence to show that they have been possessing the suit land from the year 1970 without any disturbance from any quarter. The plaintiff produced the Khatians recorded in the name of his

predecessors. Both the Khatians i.e. Khatian No. 308/1 and Khatian No.308/2 of Mouja Dakshin Bharat Chandra Nagar shows that Khatian No.308/1 was prepared in the name of Chinta Haran Mallick and Gita Rani Mallick and it was a finally published Khatian and there is nothing to show that the defendants were in forceful possession of the suit land but forceful possession of some other people has been recorded in the recorded land of the Khatian. Khatian No.308/2 stands in the name of Chinta Haran Mallick and in that Khatian also there is no record that any of the defendants were in forceful occupation of the suit land. Had the defendants in forceful occupation of the suit land from 1970, in that case their name would have been reflected in the finally published Khatian prepared in the name of predecessor of the plaintiff. It is a settled proposition of law that possession follows title. It is normally to be presumed that the possession is with the title holder. While the defendants claimed adverse possession of the suit land, burden lies on the defendants to prove that they have acquired title by adverse possession denying the title of the rightful owner.

20. Possession must be distinguished from mere occupation or detention. Possession in the eye of law consists of the fact of physical occupation and dominion and control as well as the consciousness of mind of the person having dominion over an object that he has it and can exercise it. The

unity of two elements, namely, occupation and animus possidendi is recognized as constituting "possession" in the eye of law. Possession is a flexible term and is not restricted to mere occupation. Legal possession is occupation with the intention of exercising the right of ownership in respect of it. Mere acts and user which do not interfere and are consistent with the owner's title, are not sufficient to constitute dispossession of the owner or start adverse possession in favour of the occupant. Whether in particular circumstances, the acts of the occupation means to possession and whether such possession is on behalf of the legal owner or in opposition to his title are matters of inference to be drawn from proved facts.

21. The concept of adverse possession contemplates a hostile possession i.e. a possession which is expressly or impliedly in denial of the title of the true owner. Possession to be adverse must be possession by a person who does not acknowledge the others right but denies them. The principle of law is firmly established that a person who bases his title on adverse possession must show by clear and unequivocal evidence that his possession was hostile to the real owner and amounted to a denial of his title to the property claimed. For deciding whether the alleged acts of a person constituted adverse possession, the animus of the person doing those acts is the most crucial factor. Burden lies on the defendants to

prove that their possession is hostile under a colour of title, actual, open, uninterrupted, notorious, exclusive and continuous. Adverse possession is made out by the coexistence of two distinguished ingredients; first, such a title as will afford colour, and second, such possession under it as will be adverse to the right of the true owner and title by adverse possession becomes complete only when the possession of the trespasser continues uninterruptedly for a full statutory period.

22. In the case at hand the defendants though pleaded that they are in hostile possession of the suit land from the year 1970 but there is no document to support their pleading of adverse possession. The mere oral evidence of the defendants which is balanced by the oral evidence of the plaintiff has nothing to prove that they have acquired title by adverse possession.

23. In the case of **Gopal Krishna Deb & Ors. V. Jagadindra Kishore Dev Barma & Ors.**, reported in **AIR 1954 Tripura 21**, the Court has held that to prove title to any land by adverse possession it is not sufficient to show that some acts of possession have been done. The possession required must be adequate in continuity, in publicity and in extent to show that it is adverse to the owner. In other words, the possession must be actual, visible, exclusive, hostile and

continued during the time necessary to create a bar under the statute of limitation. In the facts of that particular case, the Court has held that where the defendants had remained in permissive possession for a few years and their application for the land being settled to them was rejected and they had prayed for time to vacate on account of rainy season but they did not plead adverse possession they could not be deemed to be in adverse possession as against the real owner and the real owner would be deemed to have remained in possession.

24. In the case of **S.M. Karim V. Mst. Bibi Sakina**, reported in **AIR 1964 SC 1254**, the Supreme Court has held that the claim of adverse possession must be clearly pleaded. The Court has held that 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. In that reported case there is no evidence when possession became adverse, if it at all did, and a mere suggestion in the relief clause that there was an uninterrupted possession "several 12 years" or that the plaintiff had acquired "an absolute title" was not enough to raise such a plea. Long possession is not necessarily adverse possession and the prayer clause is not a substitute for a plea.

25. In the case of **Hemaji Waghaji Jat V. Bhikhabhai Khengarbhai Harijan & Ors.**, reported in

(2009) 16 SCC 517 the Supreme Court has observed that the law of adverse possession which ousts a owner on the basis of inaction within limitation is irrational, illogical and wholly disproportionate. The law as it exists is extremely harsh for the true owner and a windfall for a dishonest person who had illegally taken possession of the property of the true owner. The law ought not to benefit a person who in a clandestine manner takes possession of the property of the owner in contravention of law. This in substance would mean that the law gives seal of approval to the illegal action or activities of a rank trespasser or who had wrongfully taken possession of the property of the true owner. The law should not place premium on dishonesty by legitimising possession of a rank trespasser and compelling the owner to lose his possession only because of his inaction in taking back the possession within limitation.

The Court in paras 14 and 23 has observed that a person who bases his title on adverse possession must show by clear and unequivocal evidence that his possession was hostile to the real owner and amounted to denial of his title to the property claimed. The ordinary classical requirement of adverse possession is that it should *be nec vi, nec clam, nec precario* and the possession required must be adequate in continuity, in publicity and in extent to show that it is possession adverse to the competitor.

26. In the case at hand, the plaintiff proved his title over the suit land. The defendants admitted the title of the plaintiff that the plaintiff purchased the suit land and thereby acquired title. The plaintiff contended that he got possession of the suit land from his predecessor and he was dispossessed by the defendants on 18.06.2007. The defendants claimed that they have been in possession of the suit land from 1970 but except plain oral evidence there is nothing more to show that they are in possession of the suit land from 1970 denying title of the rightful owner. Under such circumstances, I am of considered opinion that the trial Court rightly decided the issues in favour of the plaintiff and rightly directed that the plaintiff is entitled to get recovery of possession. Accordingly the judgment and decree dated 30.04.2010 and 07.06.2010 respectively passed by the learned Addl. District Judge, South Tripura, Belonia in Title Appeal No.4 of 2010 is set aside and quashed.

27. The judgment and decree dated 22.01.2010 passed by learned Civil Judge, Jr. Division, Belonia in Title Suit No.37/2007 is restored and upheld. The plaintiff is directed to pay the requisite court fees on the valuation of the suit land within 45 days from today.

28. The appeal is accordingly allowed.

29. Prepare appellate decree and send down the L.C. records along with a copy of this judgment and decree.

JUDGE