

THE HIGH COURT OF TRIPURA
AGARTALA

CRP No.62 of 2013

1. Sri Debendra Chandra Nath,
son of late Uday Nath,
2. Sri Satyendra Nath,
3. Sri Jitendra Nath,
4. Sri Harendra Nath,
5. Sri Dwijendra Nath,
all are sons of Sri Debendra Chandra Nath,
6. Sri Dinesh Chandra Nath alias Sri Babu Nath,
7. Sri Dipan Nath alias Sri Shiban Nath
both are sons of Sri Dwijendra Nath,
8. Sri Uttam Nath,
son of Sri Harendra Nath,
9. Sri Barindra Nath,
son of late Naresh Nath,
all are resident of village – Ganganagar (South)
PO – Dharmanagar, 799 250,
PS – Dharmanagar,
Dist. North Tripura

.....Petitioners

- Vs -

Sri Rakesh Chandra Nath,
son of late Lob Nath,
resident of Village – Ganganagar (South),
PO – Dharmanagar, 799 250,
PS – Dharmanagar,
Dist. North Tripura

.....Respondent

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

For the petitioners	: Mr. D. Chakraborty, Sr. Advocate Ms. N. Majumder, Advocate
For the respondent	: Mr. G. K. Nama, Advocate
Date of hearing and delivery of Judgment and order	: 01.07.2015
Whether fit for reporting	: YES

Judgment and Order (Oral)

Heard Mr. D. Chakraborty, learned Sr. counsel assisted by Ms. N. Majumder, learned counsel appearing for the petitioners as well as Mr. G. K. Nama, learned counsel appearing for the respondent.

02. By this revision petition filed under Section 115 of the CPC, the judgment and decree dated 20.07.2012 delivered in Title Suit No.05 of 2005 by the Civil Judge, Junior Division, Dharmanagar, North Tripura has been challenged.

03. At the outset, Mr. Chakraborty, learned senior counsel has fairly submitted that the petitioners had unsuccessfully ventured to question the legality of the impugned judgment and decree by filing an appeal under Section 96 of the CPC being Title Appeal No.20 of 2012 in the court of the Addl. District Judge, North Tripura, Dharmanagar and that venture was entirely misconceived in view of Sub-Section 3 of Section 6 of the Specific Relief Act, 1963. Mr. Chakraborty, learned senior counsel has further submitted that an appeal under Section 100 of the CPC against the said judgment and decree dated 24.04.2013 was preferred, but on legal advice that appeal was not pressed for paving the course in the appropriate remedial measure. Mr. Chakraborty, learned senior counsel has also referred to para 2 of the impugned judgment which reads as under:

"This case has been send (sic) back on remand as per Judgment passed by Ld. Addl. District Judge, Dharmanagar, North Tripura on 20.06.06 for fresh adjudication with a direction to record the evidence of the parties if lead (sic) in support of their contention and accordingly after getting back this case record on remand Ld. Trial Court has examined D.W.5 and also P.W.11 and P.W.12 and also exhibited documents in support of both the sides."

04. Both Mr. Chakraborty, learned senior counsel and Mr. G. K. Nama, learned counsel for the respondent submitted that neither the plaintiff nor the defendants had raised any objection regarding the jurisdiction of the Addl. District Judge, North Tripura, Dharmanagar in respect of entertaining an appeal under Section 96 of the CPC against the judgment and decree delivered in the suit instituted under Section 6 of the Specific Relief Act when such appeal is circumvented. Since both the parties without raising any protest acceded to that jurisdiction and when the case was remanded for fresh trial, they have not raised any objection, this Court is not inclined to open that aspect of the matter for appreciation or inquiry. But it is observed that the Addl. District Judge, North Tripura, Dharmanagar had no jurisdiction to entertain an appeal challenging the judgment and decree in a suit instituted under Section 6 of the Specific Relief Act.

05. While exercising jurisdiction, whether any objection is raised or not, it is the primary duty of any court to make inquiry whether it has got the jurisdiction in law or not. Failure to observe such duty, has unleashed this inhospitable context.

06. Having observed thus, this Court would consider this revision petition on merit. The province of consideration in a revision petition under Section 115 of the CPC is very narrow. It is confined to the legality and the substantial irregularity in the procedure. Those aspects can be examined having regard to the substantive justice. Mr. Chakraborty, learned senior counsel appearing for the petitioner has basically raised two objections, viz. (1) there is no evidence to show that the plaintiff was dispossessed from the suit property to attract Section 6 of the Specific Relief Act and (2) that the suit was not filed within the period of limitation meaning within six months from the date of dispossession. Mr. Chakraborty, learned senior counsel has also laid the essential facts relevant to the challenge. There is no dispute that the respondent filed the suit under Section 6 of the Specific Relief Act being Title Suit No.05 of 2005 for recovery of the suit property as described in the schedule appended below the plaint. According to the plaintiff, the possession of the khas land, which comprises the suit property, was sold out to the plaintiff by the deed of release (Exbt.7) which was executed on 08.04.1970 and thereafter the plaintiff was in possession by exercising his right uninterruptedly. On 20.09.2004 the defendants, the petitioners herein, dispossessed him from the suit property. Within a short while i.e. on 01.10.2004, the plaintiff filed a complaint in the Court of the Sub-Divisional Judicial Magistrate on 22.09.2004 but without taking any cognizance of the offence as alleged in that complaint, the sub-Divisional

Judicial Magistrate forwarded that complaint on due consideration to the Officer-in-Charge, Dharmanagar Police Station. Dharmanagar Police Station based on the disclosure made in the complaint registered a case being Dharmanagar PS. Case No.107 of 2004 under Section 342/447/506/427 and 149 of the IPC on 01.10.2004 and took up investigation. It transpires that on completion of the investigation, the charge-sheet was filed against the defendants. The First Information Report, the relevant orders including the chargesheet are admitted in the evidence as Exbt.2 in series.

07. Mr. Chakraborty, learned senior counsel has taken this Court to the cross-examination of PW-3, Dharendra Nath, PW-4, Prafulla Nath, PW-5, Sri Nityananda Nath and PW-6, Sri Sailendra Nama to show that those witnesses as well as the other witnesses who came to support the case of the plaintiff even could not identify the suit property. Above all, they failed to state on which date the plaintiff was dispossessed from the suit land. Having referred thus, Mr. Chakraborty, learned senior counsel has submitted that the finding returned by the trial court suffers from serious non-application of mind. Mr. Chakraborty, learned senior counsel has also referred to the examination-in-chief of DW-1, Satyendra Nath who was in possession since 1947 and on 31.03.1961 he applied for the allotment of the suit property. His father along with his family had been living on the suit property by constructing huts and raising various fruit bearing trees and

bamboos. According to DW-1, the plaintiff came into the said area in the year 1965 from the erstwhile Pakistan and started living in a tilla with permission from his father. He has also admitted that from his father the plaintiff purchased one and half kani of land. DW-1 has stated further that even though the plaintiff has taken possession of a sufficient amount of Government land, for the purpose of creating further trouble on their possession, in the year 2001 the plaintiff instituted a false case being TS No.21 of 2001 in the Court of the Civil Judge, Junior Division, Kailashahar and in the context of that case, the defendants filed a parallel suit being Title Suit No.07 of 2003. But he has stated nothing what happened to those suits at all. Mr. Chakraborty, learned senior counsel has also referred to the statements made in the trial by one Barindra Nath, DW-2 who has supported the case of the defendant No.1. He has stated that defendant No.1 is the karta of his family and constructed dwelling hut 8/9 years before from the date when he made the statement in the trial. In the cross-examination, he has categorically denied that the plaintiff was in possession since 08.04.1970. DW-3, Sushil Nath and DW-4, Prafulla Nath have also stated similarly. DW-5, Debendra Chandra Nath is defendant No.1 in the suit. He has stated in congruity to what has been stated by DW-1. He has categorically denied that on 20.09.2004 the defendants had dispossessed the plaintiff from the suit land. He has further stated that he constructed dwelling house on the suit land about 9/10 years before from the day when the statement is recorded. He has categorically denied that

he had executed Exbt.7. Mr. Chakraborty, learned senior counsel has submitted that the cumulative effect of all these oral testimonies is that the plaintiff has failed to prove his possession over the suit land and the dispossession is imaginary.

08. From the other side, Mr. G. K. Nama, learned counsel for the respondent has submitted that if the documentary evidence, is read with the testimony of PW-1, there would be no ambiguity that on 20.09.2004 in the night, the defendant No.1 dispossessed the plaintiff from the suit property. The plaintiff was possessing the suit land since 1970 uninterruptedly. He has categorically stated in the cross-examination that he had purchased possession of the land measuring two kanis by dint of the deed (Exbt.7) and he is under possession of three and half kanis without any deed in addition to the suit property.

09. It is apparent from the impugned judgment that all these oral testimonies and the documents were properly appreciated by the trial court and the finding that the plaintiff was in possession over the suit property since 08.04.1970 when the deed, Exbt.7 was executed by the defendant No.1 has been returned as corollary. There was no issue as to the limitation. The issues as framed in the trial are as under:

- i) Whether the plaintiff has got right, title land interest over the suit land?***
- ii) Are the defendants dispossessed the plaintiff from the suit land?***

iii) *Is the plaintiff entitled to the decree as prayed for?*

iv) *To what other relief/reliefs the plaintiff is entitled to?*

10. Admittedly, the objection as to limitation was not raised before the trial court. Hence, the trial court had no occasion to appreciate that aspect of the matter. However, from the record, it has transpired clearly that dispossession as alleged was on 20.09.2004 and the suit was instituted on 14.03.2005 and as such the suit was instituted within six months from the day of dispossession and as such there is no substance in the objection and accordingly it is discarded.

11. Having regard to the deed transferring the possession of part of the suit property (Exbt.7) as well as to the First Information Report and the final police report (Exbt.2 series), this Court has no hesitation to hold that that the plaintiff has been able to prove his dispossession on 20.09.2004. As such, this Court does not find any infirmity in the impugned judgment and decree dated 20.07.2012. But before parting with the record, this Court is persuaded to interfere with the decree by which the plaintiffs' possessory right over the suit land has been declared. It is undisputed that the suit land is a khas land and in the suit, the Government of Tripura was not impleaded. No declaration can be made against the true owner declaring any right relating to that land without the true owner being impleaded in the proceeding. As a result, the decree declaring the plaintiff's possessory right

over the suit land as described in the schedule is interfered with and set aside. Thus, the decree is restricted to recovery of the possession of the suit land. Moreover, Section 6 of the Specific Relief Act debars a suit against the Government. It is limited for recovery of possession against any person who has dispossessed. The apex court in ***East India Hotels Ltd. vs. Syndicate Bank*** reported in ***1992 Supp.(2)SCC 29*** has observed that:

"The only prohibition under the provisions of Section 6 of the Act is not to use force and not to use any unlawful means for dispossessing a person. Both these circumstances are lacking in the present case. The ratio of the decided cases is that the Court in trying a suit under Section 6 of the Act will not go into the question of title. There cannot be any dispute with this settled proposition. However, in the present case the title of the company as well as the position of the plaintiff bank that its possession was as a licensee is an admitted case."

12. Here also the aspect of possessory right, which has inextricable nexus to the wholesomeness of the title, should not have been taken up and no possessory right should have been declared. Accordingly, this revision petition is dismissed subject to the limited interference as indicated hereinabove.

Send down the LCRs forthwith.

JUDGE