

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

RSA NO.26 OF 2011

1. Shri Anil Chandra Sarkar,
son of late Hriday Sarkar
 2. Shri Tapan Sarkar,
son of Sri Anil Chandra Sarkar
 3. Shri Swapan Sarkar,
son of Sri Anil Chandra Sarkar
 4. Shri Suklal Das,
son of Shri Sadhan Chandra Das
- all are residents of Chandranagar,
P.O. Bishalgarh, District Sepahijala, Tripura

..... Defendant-appellants

– Vs –

1. Shri Sunil Chandra Das alias Sunil Chandra Namasudra
2. Shri Anil Chandra alias Anil Chandra Namasudra,
- both are sons of late Sridam Chandra Das alias
Sridam Chandra Namasudra
3. Smt. Sandhya Das alias Sandhya Namasudra,
wife of late Nikhil Chandra Das alias
Nikhil Chandra Namasudra
4. Shri Litan Das alias Litan Namasudra
5. Shri Bhajan Das alias Bhajan Namasudra
6. Shri Laxman Das alias Laxman Namasudra
7. Smt. Sikha Das alias Sikha Namasudra
- all are residents of Chandranagar,
P.O. Bishalgarh, District Sepahijala, Tripura

.....Plaintiff-respondents

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

For the defendant-appellants : Mr. S.M. Chakraborty,
Sr. Advocate
Mr. D.C. Roy, Advocate

For the plaintiff-respondents : Mr. K.N. Bhattacharjee,
Sr. Advocate
Mr. R. Debnath, Advocate

Date of hearing : 18.06.2015 & 19.10.2015

Date of judgment & order : 23.11.2015

Whether fit for reporting :

Yes	No
√	

JUDGMENT & ORDER

This is a second appeal by the defendants under Section 100 of the CPC against the finding returned by the judgment dated 15.03.2011 and the decree drawn therefrom on 22.03.2011 in Title Appeal No.31/2010 by the District Judge, West Tripura, Agartala on reversing the judgment and decree dated 08.07.2010 delivered in Title Suit No.64/2001 by the Civil Judge, Jr. Division, Bishalgarh, West Tripura.

2. The suit was instituted by the plaintiff-respondents, thereafter referred to as the plaintiffs, being Title Suit No.64/2001 for declaration of their title and possession over the land described in Schedule-B of the plaint and for further declaration that the plaintiffs have acquired title over the Schedule-C land by adverse possession beyond the statutory

period and as consequential relief, the decree for recovery of possession evicting the defendants from the suit land described in Schedule-A comprising of Schedules B and C in the plaint and further that by a decree of perpetual injunction, the defendants be restrained from entering into the suit land as described in Schedule-A of the plaint.

3. By the judgment dated 08.07.2010 the court of the Civil Judge, Jr. Division, Bishalgarh, West Tripura, hereinafter referred to as the trial court, dismissed the suit holding that the plaintiffs have failed to prove their assertion and they are not expected to base their case on the defects of the defendants. Being aggrieved by the judgment and decree dated 08.07.2010, the plaintiffs filed an appeal in the court of the District Judge, West Tripura, Agartala, being Title Appeal No.31/2010.

4. On the purported re-appreciation of the evidence, the first appellate court allowed the suit partly by the judgment and decree dated 15.03.2011 and 23.03.2011 respectively, on observing as under :

"If we balance the evidence of the Plaintiffs and the Defendants taking into consideration of Exbt.1 in one hand and Exbt.D/1 on the other hand and further taking into consideration the finally published Khatian which was marked as Exbt.1 and Exbt.D/4 respectively, I find that the Plaintiffs case was in better footings than that of the Defendants."

It has been also observed in sequel that :

“Further, I find that the Trial Court granted interim injunction which was confirmed by the District Court and the Plaintiffs were dispossessed by the Defendants on 25.5.2005 after the injunction order was confirmed by the District Judge.”

On such premises, the decision of the trial court was interfered with and the right, title and interest including possession over the Schedule-B land was declared by the first appellate court.

5. In respect of the Schedule-C land, wherefrom the plaintiffs admitted to have been evicted on 25.05.2005, the plaintiffs claimed the title on adverse possession. The first appellate court, while partly interfering with the findings returned by the trial court, has observed that the burden was on the plaintiffs to prove the adverse possession over the land described in the Schedule-C land which was part and parcel of the land described in Schedule-A. According to the plaintiffs, they got possession of the suit land on the date of purchase by dint of Exbt.2, but Exbt.2 does not support it as there is nothing in the recital of the deed that within that boundary there was excess land beyond the purchased land measuring 38.5 acre. It has been observed that based on Exbt.1 and Exbt.D/4 it may safely be held that the plaintiffs were in possession of the suit land when the survey settlement operation was going on and accordingly the name of the plaintiffs have been recorded in the khatian as the forceful occupier. The presumptive value of the

entry cannot be drawn without proper scrutiny of the evidence, forwarded for rebuttal. It has been further observed by the appellate court as under :

“Defendants claimed that they have purchased 3 kanis 5 gandas 3 karas 1 kranta and 10 dhurs of land by dint of Exbt.D/3 from one Anil Chandra Shil on 1.3.1971. In the recitals of that deed it has been stated that Anil Chandra Shil got ownership through Deed No.1-6458 dated 20.5.1968 and stated that the land originally belonged to Ramijuddin Bhuiya and others. The description of land has been mentioned as of Khatian No.1853 Plot No.5021 with contradictory jote number. The description of that land does not at all tally with the description of land of Khatian No.620 i.e. the suit land. Therefore, I find no connectivity of the land of Exbt.D/3 with that the land described in Schedule ‘A’. On the other hand, Plaintiffs’ case was that they had been in possession of the suit land at least from the date of final publication of the Khatian which stands good. Order passed by the Trial Judge granting temporary injunction was upheld by the District Judge by order dated 11.4.2005 in Civil Misc. Appeal No.2/2003. Thereafter, on 25.5.2005 the Plaintiffs were dispossessed from the suit land. The Defendants have no right to disturb possession of the Plaintiffs in the suit land, save and except in due process of law. Plaintiffs’ forceful occupation of the suit land in the circumstances of the case was liable to be protected. Defendants could not prove that they were the rightful owner of ‘C’ Schedule land. It appears that Ramijuddin Bhuiya and others were the rightful owner of ‘C’ Schedule land which was not disputed. Plaintiffs denying the title of Ramijuddin Bhuiya and others possessing the land and therefore, entitled to protect the right of forceful possession but not entitled to a declaration of title by adverse possession since the rightful owners have not been made a party in this suit, in absence of whom no decree of declaration can be given. Accordingly, the decision of the Trial Judge in respect of Issue No.3 has been interfered and the Issue has been partly decided in favour of the Plaintiffs. Plaintiffs are entitled to protect their forceful possession in the suit land.”

The said judgment and decree delivered in Title Appeal No.31/2010 has been challenged in this appeal.

6. By the order dated 08.06.2012 this appeal has been admitted on the following substantial questions of law :

- “(1) Whether the learned first appellate court committed error by holding that the plaintiffs are entitled to protect the right of forceful possession without being entitled to a declaration of title by way of adverse possession?**
- (2) Whether the findings of the learned first appellate court regarding right, title and interest in favour of the plaintiffs, in absence of any evidence regarding the exchange deed alleged to have been executed in favour of the vendor of the plaintiffs is perverse and bad in law?”**

7. Mr. S.M. Chakraborty, learned senior counsel appearing for the appellants, has submitted that the reversal decree is wholly unsustainable inasmuch as the basic document relating to the title has been withheld from the court. The finding that has been returned by the trial court in respect of the right, title and interest over the Schedule-B land has been reversed in the name of “balancing” the evidence. It has been observed by the trial court that for substantiating the right, title and interest over the Schedule-B land, the plaintiffs have submitted Exbt.2, the certified copy of the sale deed under No.1-4396, executed by Nepal Chandra Das and others on 12.02.1980 in favour of the plaintiffs and such sale deed has been introduced by PWs. 3 and 4. It is the plaintiffs’ case that by dint of registered deed of exchange dated 09.10.1968, the entire land described in Schedule-A was transferred to many persons including said

Nepal Chandra Das. Out of the Schedule-A land, a piece of land measuring 0.385 acres was sold to the plaintiffs. The Schedule-A land was measured to be 1.15 acres. The further case of the plaintiffs is that the remaining 0.765 acres of land had been possessed by the plaintiffs from 12.12.1980 when Exbt.2 document was executed. The said land measuring 0.765 acres was described in Schedule-C. The defendants, the appellants herein, denied the possession of the plaintiffs over the Schedule-A land and over the Schedule-C land in particular. They have stated in their written statement that by the registered sale deed No.1-2618, Exbt.D/3, which was executed on 01.03.1971, the defendant No.1 purchased the land measuring 3 kanis 5 gandas 3 karas 1 kranta and 10 dhurs from one Anil Chandra Sarkar. By dint of Exbt.D/1 the defendant No.1 purchased another piece of land measuring 38.5 sataks, which was executed on 26.02.1991. On perusal of Exbt.D/2, it transpires that the original vendors, namely Nibaran Chandra Debnath and another got the suit land on 09.10.1968 by the registered deed of exchange vide No.1-8538, which was sold to Radha Charan Sarkar on 12.06.1978. Thereafter, Radha Charan Sarkar sold the said purchased land to the defendant No.1 on 12.06.1978 as stated. The plaintiffs' claim was that the Schedule-A land fell in the share of Nepal Chandra Das, Biswajit Debnath, Ramesh Chandra Debnath, Amar Krishna Debnath, Bipin Chandra Debnath and Bipin Behari Debnath after an amicable partition of the land in exclusion of the other co-

sharers. Thereafter, the said land was sold to the plaintiffs by Nepal Chandra Das and others. The said exchange deed was not brought before the court, even though the same was claimed to be registered one. From the finally published khatian (Exbt.D/5), which was published on 07.02.1964, it appears that the Schedule-A land has been recorded in the name of Ramij Uddin Bhuiya and two others. After the survey settlement, when the khatian was finally published, the plaintiffs' names were recorded as the forceful occupiers in the column No.24. From the revenue receipt, it appears that on 12.04.1983 the defendant No.1 had paid the revenue. The trial court has observed that without examination of the registered deed of exchange purportedly executed on 09.10.1968, the civil court cannot give the stamp of approval on the Exbt.2 as the valid deed of title and hence the declaration of title in respect of the Schedule-B land was denied. From Exbt.D/11, it appeared to the trial court that the defendants approached for correction of the record by way of deletion of the name of the plaintiff No.1 from the column 24 of khatian. At the first instance, the trial court has observed that the defendants have denied the plaintiffs' possession over the Schedule-C land. However, subsequently, by way of amendment, the plaintiffs succeeded to incorporate that on 25.05.2005 they were dispossessed from the Schedule-C land.

8. Mr. S. M. Chakraborty, learned senior counsel appearing for the appellants, has submitted that any

observation, unless based on specific admission made by the parties whose interest is in question, in the proceeding under Order XXXIX Rule 1 and 2 or any other ancillary proceedings whereby interim protection is granted, cannot have any bearing on the merit of the case. The merit of the case has to be determined solely on the basis of the evidence led by the parties in the suit. As such, the observations of the first appellate court are entirely perverse.

9. Mr. K.N. Bhattacharjee, learned senior counsel appearing for the plaintiffs, has submitted that there is no infirmity in the judgment and in the appeal under Section 100 of the CPC, this court would be reluctant to interfere with the finding of the fact. Mr. Bhattacharjee, learned senior counsel has further submitted that the defendants cannot have any right over the Schedule-B land and hence the declaration of title and possession over the Schedule-B land has been rightly made by the first appellate court in reversing the finding of the trial court. He has further submitted that since in the currency of the temporary injunction the plaintiffs have been dispossessed from the Schedule-C land, the court has rightly passed the order of restitution and as such this court may not interfere with such order of restitution.

10. While appreciating the rival contentions projected by the learned counsel for the parties, this court is inclined to formulate two questions for consideration :

- (i) Whether the title of the plaintiffs over the Schedule-B land has been established by evidence? And
- (ii) Whether based on the *prima facie* observation that the plaintiffs were in possession, can it be held that the plaintiffs are entitled to get restitution in view of the order of temporary injunction?

11. It is not denied that both the plaintiffs and the defendants are claiming the source of their title from the registered deed of exchange executed by one Ramijuddin Bhuiya and others. From the recitals of the subsequent deeds it appears that, one registered deed of exchange was executed on 09.10.1968 by Ramijuddin Bhuiya and others and another registered deed of exchange vide No.1-6458 was executed on 20.05.1968 by Ramijuddin Bhuiya and others. The deed of exchange dated 09.10.1968 is the latter deed and as such, unless that deed of exchange dated 09.10.1968 and the deed of exchange dated 20.05.1968 are carefully scrutinised and compared in respect of the Schedule-A land, it will not be prudent to declare their title, inasmuch as the predecessors of

both the plaintiffs and the defendants are claiming their title through said Ramijuddin Bhuiya and others, whose names were recorded as the rayats during the first settlement operation. A bare reading of the title deeds stokes severe doubt. Even the first appellate court in an extremely innovative manner has observed that the defendants claimed that they have purchased 3 kanis 5 gandas 3 karas 1 kranta and 10 dhurs of land by dint of Exbt.D/3 from one Anil Chandra Shil on 01.03.1971. In the recital of the said deed, it has been stated that Anil Chandra Shil got ownership through the deed No.1-6458 dated 20.05.1968. The said land originally belonged to Ramijuddin Bhuiya and others. As per the description, the land comprises in the Khatian No.1853, Plot No.5021. The description of that land does not at all tally with the description of land comprised in the Khatian No.620 i.e. the suit land. The parties claimed over the said plot of land as described in Schedule-A and the defendants had categorically denied at the first instance that the plaintiffs were in possession of the land covered by Schedule-A of the plaint. Without making inquiry into the devolution of the title, no civil court should declare the title in such fashion. It would only compound further complexity in the record and as such the trial court has rightly declined to declare the title over the Schedule-A land or Schedule-B land for lack of proper evidence.

12. This court finds that the finding returned by the first appellate court cannot be sustained inasmuch as the basic

document of the title even though the same is claimed to have been a registered one, has been withheld from the court. The plaintiffs have failed to prove by evidence that they were in the possession over the suit land on the day of filing the suit. For purpose of establishing a prima facie case, they relied on the finally published khatian, being Khatian No.620, which was published on 25.06.1985 showing Ramijuddin Bhuiya as the rayat in possession and Sunil Chandra Das, one of the plaintiffs as the forceful possessor on a part of the land under that khatian. But, from Ext.D/6, the letter of the Sub-Divisional Officer, Bishalgarh to the District Magistrate & Collector, West Tripura, Agartala, has transpired that :

“It appears from both the enquiry report that the applicant purchased land measuring 0.38 acres at C.S. plot No.70(p), 71(p) under khatian No.620 as per the deed No.1-917 from Shri Radha Charan Sarkar/Bimal Sarkar, S/O Bipin Sarkar. He also purchased land measuring 0.39 acres at C.S. plot No.60(p) under khatian No.36 (sabak) as per the deed No.1-618 from Shri Anil Shil, S/O Dinanath Shil. The original land belongs to (1) Ramijuddin (2) Ali Miah and the said land was exchanged vide deed No.1-8438/9-10-60 with Shri Amar Krishna Debnath and 18 others. The sellers who sold the land to Shri Anil Sarkar, S/O Hriday Sarkar has purchased the land from the persons who exchanged the land.”

13. From the khatian No.620, it appears that the old plot No.59, corresponding new plot No.70 has been recorded to have been under the forceful occupation of the plaintiff No.1. But, the Schedule-A land is covered by both the plots as appearing in the khatian No.620. Interestingly, Schedule-B land has been shown

to exist on the south of the plot No.59. Thus, the plaintiffs are not aware which part has been claimed on the basis of the title and which part on the basis of adverse possession. From the title deed (Exbt.2), it appears that the plaintiffs purchased a part of land from plot No.59 and also from plot No.60. But, the land in Schedule-B has not been described with the surveyed plot/s number and as such the first appellate court has committed serious and substantive error in declaring the title of the Schedule-B land inasmuch as the said title has not been declared on the basis of the said deed. As stated, the description in the deed does not correspond with the description of the Schedule-B. Even the description of the Schedule-C is inadequate. It does not relate to any plot, only a measurement has been given with the boundaries and the boundaries are not even very definite.

14. On the face that the defendants at the first instance stated that the plaintiffs were never in possession over the Schedule-A land or on the Schedule-C land in particular and in absence of a clinching evidence, the benefit of the entry of forceful possession in the khatian No.62 cannot be given to the plaintiffs when they failed to prove by adequate evidence that they were in possession and rightly they were favoured with the temporary injunction for purpose of protection of their possession. Rather the oral evidence as introduced by the defendants has made a probable story that the story of dispossession on 25.05.2005 was not genuine. The full-blood

brother of Radha Charan Sarkar (DW.2) has categorically stated that the Schedule-C land was never handed over to the plaintiffs. Sri Sudhan Das (DW.3), a witness from the neighbourhood, has also stated that from the date of purchase the defendants peacefully possessing the suit land without any obstruction from any corner. Smt. Minu Das (DW.4), another neighbouring witness, has stated that the suit land is actually possessed by the defendants by virtue of the deed without obstruction from any quarters. That apart, by virtue of Exbts. D/6, D/7 D/8, D/9 and D/10, the defendants have made out a probable case that the plaintiffs was not in possession over the schedule-C land. Thus, the provisions of Section 43(3) of the Tripura Land Revenue and Land Reforms Act, 1960 for purpose of presumption cannot be determinative to draw an inference that the plaintiffs were in possession over the Schedule-C land on 25.05.2005.

15. By the standard of pre-ponderance of the probability, the defendants' case being a probable one, this court cannot hold that the plaintiffs were in possession over the Schedule-C land before the institution of the case and as such no order of restitution for their dispossession cannot be sustained. The injunction order that was passed merely on the entry of the khatian No.620, but at the time of passing the said order necessary verification by the court was not made and as such the trial court has justly dismissed the suit. The petition for

amendment of the plaint was made after six months of the alleged dispossession. When there is no credible evidence of possession by the plaintiffs on the day of institution of the suit, it would not be safe to draw presumption of correctness of the entry in the khatian (the record of rights).

16. Having held so, the impugned judgment and decree is liable to be interfered with and accordingly it is interfered and set aside.

17. In the result, the appeal stands allowed. The judgment and decree passed by the trial court is restored. Prepare the decree accordingly.

Send down the LCRs forthwith.

JUDGE

ROY