

THE HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_

SAO No.2 of 2011

- 1(a) **Sri Karuna Mohan Pal,**
S/o Late Kamini Mohan Pal;
- (b) **Smt. Premangini Pal,**
S/o Late Kamini Mohan Pal;
- Both are residents of village Kalachari No.2,
P.S. Kamalpur, P.O. Kamalpur. Pin 799285,
District - Dhalai.
- (c) **Smt. Chhaya Pal,**
W/o Sri Mrinal Kanti Pal,
D/o. Late Kamini Mohan Pal,
resident of Kulai Bazar,
P.O. Kulai Bazar, PIN 799204,
PS. Salema, District - Dhalai.
- (d) **Smt. Bela Pal,**
W/o Shri Jogendra Pal,
D/o Late Kamini Mohan Pal,
Resident of Ratacherra,
Kumarghat, P.O. Kumarghat,
PS Kumarghat, District Unokoti,
Pin 799264.
- (e) **Smt. Bithika Pal,**
W/o Shri Sunirmal Pal,
D/o Late Kamini Mohan Pal,
Resident of Village Krishnanagar,
Fatikroy, P.O. Fatikroy, PIN 799290,
PS. Kumarghat, District Unokoti.
- (f) **Smt. Bani Pal,**
W/o Shri Samir Pal,
D/o Late Kamini Mohan Pal, Resident of Gandhighat
Quarter Complex, Quarter Type II, Block C,
Room No.4, Agartala - 799001, P.S. West Agartala,
District - West Tripura.

..... *Appellants.*

- *V e r s u s* -

Shri Ram Mohan Paul,
S/o Late Ratish Paul
of Village - Kalachari No.2,
P.S : Kamalpur, P.O. Kamalpur,
Pin - 799285, District - Dhalai.

..... *Respondent.*

BEFORE
THE HON'BLE CHIEF JUSTICE MR. DEEPAK GUPTA

For the appellants : Mr. D Chakraborty, Advocate,
Mr. H Laskar, Advocate.

For the respondent : Mr. P Datta, Advocate.

Date of hearing and delivery of judgment. : 29.01.2015.

Whether fit for reporting: Yes.

JUDGMENT & ORDER (ORAL)

This second appeal against order is directed against the judgment dated 15th March, 2011 passed the learned lower appellate Court i.e. Additional District Judge, North Tripura, Kamalpur, in Title Appeal No.1 of 2010, whereby he allowed the appeal of the defendant, set aside the decree of the learned trial Court and remanded the case back to the trial Court after framing fresh issues.

2. Briefly stated, the facts of the case are that the petitioner-plaintiff filed a suit praying for declaration of his right, title and interest over the suit land and he also prayed that the defendant who was in possession of the suit land be directed to hand over possession of the land to the plaintiff.

3. According to the plaintiff, he was always in possession of the suit land but in the year 1980 at the request of the defendant he had permitted the defendant to take possession of the suit land as permissive possessor. He, therefore, claimed possession of the suit land on the basis of his title.

4. Written statement was filed by the defendant. In the said written statement all the averments made in the plaint were denied. It was specifically pleaded that Sri Ratish Ch. Paul, father of the defendant had been possessing the suit land since 1967 asserting his right, title and interest thereon peacefully, uninterruptedly and to the knowledge of all including the plaintiff openly and adversely denying their right, title and interest to the suit land. It was also stated that the statutory period of limitation had expired.

The learned trial Court framed the following issues :

- "i. Is there any cause of action for this suit?*
- ii. Is the suit barred by the law of limitation?*
- iii. Has the plaintiff right title interest over the suit land?*
- What other relief/reliefs is the plaintiff entitled?"*

The learned appellate Court after hearing the parties reframed the issues as follows :

- "i. Is the suit maintainable in its present form?*
- ii. Is there any cause of action to institute the suit?*
- iii. Whether the plaintiff has any right title interest over the suit land?*
- iv. Whether the defendant has acquired any right title and interest over the suit land by way of adverse possession?*
- v. Whether the plaintiff is entitled to get recovery of khash possession over the suit land?*
- vi. To what other relief/reliefs is the parties are entitled to?"*

The main difference is that the learned lower appellate Court also framed an issue as to whether the defendant had acquired any right, title and interest over the suit land by way of adverse possession. He, therefore, keeping in view the fact that evidence would have to be led on this issue, remanded the case back for *denovo* trial. Aggrieved by this judgment, the plaintiff is before this Court.

5. The main point raised by Mr. D Chakraborty, learned senior counsel appearing on behalf of the plaintiff-appellant, is that issues are required to be framed only on the material proposition of fact or law affirmed by one party and denied by the other and furthermore only those propositions are material propositions which a party to a suit must allege in order to show his right in the suit property. Reference has been made to Order XIV sub-rule (1) and (2) of the Code of Civil Procedure which read as follows :

“1. Framing of issues – (1) Issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other.

(2) Material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence.”

The main contention of Mr. Chakraborty is that since the defendant has not filed a counter-claim claiming a decree for declaration of his right that he has become owner by way of adverse possession, no issue in this regard can be framed. On the other hand, Mr. P Datta submits that the learned lower appellate Court has rightly framed the issue since that arises out of the pleadings of the parties.

6. A bare perusal of sub-rules (1) and (2) of Order XIV Rule 1 shows that issues arise when a material proposition of fact or law is affirmed by one party and denied by the other. That affirmation can be made either by the plaintiff or the defendant. The legislature in its wisdom has not used the word “*plaintiff*” or “*counter-claimant*” but has very carefully used the phrase “*affirmed by one party and denied by the other*”. As far as material propositions are concerned, all those

propositions are material propositions which either a plaintiff must allege in order to show his right to sue or a defendant must allege in order to constitute his defence. As far as the defendant is concerned, he may make an allegation which constitutes a defence and which defeats the right of the plaintiff without claiming any right. He can defeat the claim of the plaintiff even without claiming any right. In this case the plaintiff claimed that he was the owner of the suit land and that the defendant was in permissive possession of the suit land. The stand of the defendant was that the defendant from the time of his father was in adverse possession of the suit land. Even without claiming any title in the suit property the defendant can legitimately defeat the claim of the plaintiff by proving that he is in adverse possession.

7. Limitation is one aspect where a suit may be barred even though no adverse possession has been claimed but adverse possession is claimed when the defendant states that he has openly been in a hostile possession adversely to the interest of the true owner. Once that allegation is made, then an issue on adverse possession has to be framed.

8. I am clearly of the view that the learned lower appellate Court rightly re-framed the issue because the issue of adverse possession was a very vital issue which goes to the root of the matter. Since this issue goes to the root of the matter and the parties had not led evidence on this issue, there was no other option before him but to

remand the case as a whole to the trial Court. Therefore, I find no merit in the appeal which is, accordingly, rejected.

9. It is, however, made clear that any observation made herein has been made only for the purpose of deciding this appeal and nothing stated herein shall be treated to be an observation on merits of the dispute between the parties and the learned trial Court shall decide the issues now framed by the appellate Court strictly on the basis of the evidence led by the parties before it.

10. The parties through their counsel are directed to appear before the learned trial Court on 10th March, 2015. The learned trial Court is directed to ensure that the original suit which was filed in the year 2009 is disposed of, as early as possible and in any manner not later than 31st December, 2015.

CHIEF JUSTICE

Sukhiendu