

**THE HIGH COURT OF TRIPURA
AGARTALA**

RSA NO.31 OF 2011

Sri Satyendra Nath,
S/o.Late Kashi Charan Nath,
Vill-South Padmabil,
P.S: Panisagar, P.O:Panisagar,
Dharmanagar, North Tripura,
PIN – 799260.

..... *Appellant*

- *Vs* -

Smti. Kadambini Debnath,
W/o. Shri Sudhir Chandra Debnath,
Vill – North Padmabil,
P.S: Panisagar, P.O: Panisagar, PIN – 799260,
Dharmanagar, North Tripura.

..... *Respondent*

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

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

For the respondent : None.

Date of hearing & delivery
of Judgment & order : **15.06.2015**

Whether Fit for Reporting :

Yes	No
	✓

JUDGMENT & ORDER (ORAL)

This second appeal under section 100 of the Code of Civil procedure, 1908 has been admitted for hearing on the following substantial questions of law:-

"(1) Whether the courts below committed error by refusing to accept the oral evidence of the defendant in support of his plea of possession?"

(2) Whether the finding of the learned trial judge that, in view of the allotment order passed by the Collector in favor of the vendor of the plaintiff, the oral evidence adduced by the defendant regarding possession was not acceptable, is perverse?"

2. Heard learned senior counsel, Mr. D. Chakraborty, assisted by learned counsel, Mr. H. Laskar for the appellant. No representation on behalf of the respondent.

3. The respondent as plaintiff (hereinafter mentioned as 'plaintiff') instituted Title Suit No.3 of 2009 in the Court of Civil Judge(Senior Division), Dharmanagar, North Tripura against the defendant appellant (hereinafter mentioned as 'defendant') seeking decree declaring right, title and interest of the plaintiff in the suit land and also for recovery of khas possession of the suit land from the defendant. The Plaintiff *inter alia* contended that the suit land was allotted in the name of Radharani Nath by the Collector under an order of allotment dated 16.09.1983 and from the date of allotment Radharani Nath was possessing the suit land for continuous ten years. Thereafter she obtained permission from D.M & Collector seeking transfer of the suit land and by executing a sale deed dated 14.10.1993 she sold out the suit land to the plaintiff and handed over possession to the plaintiff. After purchase, the plaintiff mutated the suit land in her name and khatian No.623 of Mouja- Dakshin Padmabil was prepared in the name of the plaintiff. At the time of survey and settlement operation, Khatian was finally prepared in the name of the plaintiff and was finally published. The

defendant forcefully dispossessed her from the suit land on 15.09.2003 having no right, title and interest and, therefore, the plaintiff prayed for declaration of her right, title interest and decree of recovery of possession.

4. The defendant contested the suit by filing written statement, *inter alia*, contending that he had been possessing the suit land from 01.01.1977, constructed his dwelling house on the suit land and living there without any interference from any corner. Radharani Nath managed to get the land allotted in her name keeping him in dark and thereafter sold it to the plaintiff fraudulently. He approached the D.M & Collector and the matter was enquired through the Sub-Divisional Magistrate, Dharmanagar(for short 'SDM, Dharmanagar') and SDM, Dharmanagar found the defendant in possession and it was also found on inquiry by the SDM, Dharmanagar that Radharani Nath got allotment without physical possession. The defendant, therefore, prayed for dismissal of the suit.

5. Considering the pleadings of the parties, the trial court formulated nine issues, namely:-

"I. Whether the plaintiff has cause of action to sue the defendant?

II. Whether the suit is maintainable in its present form and nature?

III. Whether the suit is barred by the law of limitation?

IV. Whether the defendant has been possessing the suit land adversely since 1-11-1977 by constructing houses thereon?

V. Whether deed No. 1- 3614 dated 14-10-1993 executed between Smti. Radha Rani Nath and Kadambini Debnath is fraudulent and not binding upon the defendant?

VI. Whether the plaintiff has right, title and interest over the suit land?

VII. Whether the plaintiff has been dispossessed from the suit land by the defendant?

VIII. Whether the plaintiff is entitled to the decree for declaration and recovery of possession by evicting the defendant from the suit land?

IX. Whether the parties are entitled to any other relief?"

6. In course of trial, the plaintiff examined herself as PW.1 and also examined four more witnesses, namely, PW.2, Shri Sudhir Ch. Debnath, PW.3, Shri Manindra Nath, PW.4, Shri Narendra Ch. Roy and PW.5, Shri Haralal Nath.

In support of his case the plaintiff also proved six items of documents, which are marked as Exhibits, namely:-

"Ext. 1 – Allotment order dt.16-09-1983.

Ext.2 – Sale permission dated 30-09-1993.

Ext.3 – Registered sale deed dt. 14-10-1993.

Ext.4 – Finally published Khatian No.623 of South Padmabil mouja.

Ext.5 – Certified copy of the finally publised Khatian No.623 of South Padmabil mouja.

Ext.6 – Map of sheet No. 1/part of the suit land."

Defendant examined himself as DW.1 and also examined three more witnesses, namely, DW.2, Shri Niranjn Goswami, DW.3, Shri Niranjn Nath and DW.4, Shri Sudhan Nath.

In support of his case the defendant also proved 2 documents, namely :-

1. **Ext.-A - a report of SDM, Dharmanagar dated 25.02.2009; and**
2. **Ext.-B - a report of Revenue Inspector, Panisagar dated 06.02.2009.**

The trial court decided all the issues in favour of the plaintiff and decreed the suit.

7. Aggrieved, the plaintiff preferred Title Appeal No. 3 of 2010 in the court of learned Addl. District Judge, Dharmanagar, North Tripura and by impugned judgment dated 25.08.2011 learned Addl. District Judge dismissed the appeal and upheld the judgment and decree passed by the trial Court. Hence, this second appeal is filed against concurrent findings of the two Courts below.

8. Learned senior counsel, Mr. Chakraborty appearing for the defendant appellant submitted that neither the plaintiff nor her predecessor, Radharani Nath, ever possessed the suit land, the defendant adduced oral evidence in support of his pleading that he is in possession of the suit land and such oral evidence is also supported by Ext A and Ext B, the reports submitted by the SDM, Dharmanagar and Revenue Inspector, Panisagar which proved the possession of the defendant in the suit land and, therefore, the trial court would dismiss the suit and the appellate court also would allow the appeal and set aside the judgment and decree passed by the trial court. He has also submitted that taking into consideration the allotment order and the khatian prepared in the name of the

plaintiff, both the courts below passed the judgment and the oral evidence adduced by the defendant has not been considered at all. The entry in the record of right is not a conclusive proof about the possession, but it is rebuttable and hence, the trial court and the first appellate court committed a wrong in not appreciating the oral evidence on record.

9. Non appreciation of evidence is no doubt a substantial question of law in a second appeal. In the second appeal the appellant has to show that there was total non appreciation of evidence on record. If in a suit both oral and documentary evidence is adduced and the suit is decided taking into account the documentary evidence, there is nothing wrong in the decision taken by a trial court or by an appellate court. Documentary and oral evidence are both forms of evidence prescribed under the Evidence Act. Documentary evidence always prevails over oral evidence. If an issue is proved by documentary evidence, in that case a court of law may not elaborately discuss the oral evidence.

10. In the present suit the plaintiff proved the order of allotment in the name of her predecessor, Radharani Nath, which is marked as Exbt.-1 and she also proved the order of the Collector according permission to Radharani Nath to sell the suit land which is proved and marked as Exbt.-2. Plaintiff also proved khatian prepared in her name, which is marked as Exbt.-4 and finally published khatian, which is marked as Exbt-5. The allotment order was issued on 16.09.1983. There is no scrap of paper to show that

the defendant was in possession of the suit land on the date of allotment i.e., 16.09.1983. The defendant contended that he has been possessing the land from 01.01.1977, had it been so, then his name would have been reflected in the khatian as an occupier of the suit land. The trial court and the appellate court both considered the material document i.e., the allotment order and Khatian and as per Section 43 of the Tripura Land Revenue and Land Reforms Act, there is a presumption of correctness of entries made in the khatian, until contrary is proved. The record of right prepared and finally published should be presumed to be correct. A khatian is a *prima facie* proof of possession of a person and while khatian is in the name of the plaintiff, it proves the plaintiff's possession in the absence of any entry therein about the possession of the defendant from 01.01.1977.

11. The plaintiff alleged that she has been dispossessed from the suit land on 15.09.2003 and in support thereof oral evidence has been adduced. The defendant has no doubt adduced oral evidence to show that defendant is in possession since long, but since there is documentary evidence, the trial court as well as the appellate court relied on the documentary evidence and I find nothing wrong in taking of such decision by the courts below.

12. It is a settled position of law that concurrent findings of fact taken by the trial court and the appellate court should not be disturbed in second appeal unless there is serious infirmity in the judgment passed by the courts below involving substantial question

of law. In the present case, in my considered opinion, both the trial court as well as the appellate court took decision referring to the evidence on records and there is no infirmity in the judgment passed by the courts below and hence the second appeal is found to be devoid of any merit and accordingly stands dismissed.

13. Send back the L.C. records along with copy of the judgment.

JUDGE