

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

RFA NO. 08 OF 2012

1. Shri Anjan Dey,
2. Sri Chandan Dey,
3. Sri Nandan Dey,
4. Sri Manik Dey
 - all are sons of late Manindra Chandra Dey
 - residents of Arundhutinagar, Sarba Dharma Mission Colony,
 - P.S. West Agartala, District: West Tripura
5. Sri Nani Gopal Deb,
 - son of late Umesh Chandra Deb
 - (husband of since deceased Manju Rani Deb,
 - daughter of late Manindra Chandra Dey),
 - resident of Arundhutinagar, Sarba Dharma Mission Colony,
 - P.S. West Agartala, District: West Tripura
6. Sri Ranjan Dey,
7. Sri Sudip Dey,
 - both are sons of late Kalipada Dey,
 - resident of Arundhutinagar, Sarba Dharma Mission Colony,
 - P.S. West Agartala, District: West Tripura
8. Smti. Mitra Dey,
 - wife of Sri Asish Dey,
 - resident of Bhattapukur, P.S. West Agartala,
 - District: West Tripura
9. Sri Pintu Dey,
10. Sri Mintu Dey,
11. Sri Santo Dey,
 - all are sons of late Phani Bhushan Dey,
 - residents of Arundhutinagar Sarba Dharma Mission Colony,
 - P.S. West Agartala, District: West Tripura

..... Defendant-appellants

– Vs –

Sarba Dharma Mission,
 a Society Registered under the Societies Registration Act, 1860,
 having its registered office at Arundhutinagar, Agartala,
 P.S. West Agartala, District: West Tripura
 represented by its President, Sri Nabadwip Chandra Paul,
 son of late Tulsi Paul,
 resident of Hairmara Tilla,

P.S. West Agartala, District: West Tripura,
 presently Sri Kushum Kumar Bhattacharjee,
 son of late Khagendra Chandra Bhattacharjee,
 resident of Arundhutinagar Road No.19
 near Sarba Dharma Mission,
 P.S. West Agartala, District: West Tripura

.....Plaintiff-respondent

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

For the defendant-appellants :	Mr. P.K. Dhar, Advocate Mr. R.G. Chakraborty, Advocate				
For the plaintiff-respondent :	Mr. D. Chakraborty, Sr. Advocate Mr. H. Laskar, Advocate				
Date of hearing :	11.06.2015				
Date of judgment & order :	08.12.2015				
Whether fit for reporting :	<table border="1" style="display: inline-table; border-collapse: collapse;"> <tr> <td style="padding: 2px 10px;">Yes</td> <td style="padding: 2px 10px;">No</td> </tr> <tr> <td style="text-align: center; padding: 2px 10px;">√</td> <td style="padding: 2px 10px;"></td> </tr> </table>	Yes	No	√	
Yes	No				
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JUDGMENT & ORDER

This is an appeal under Section 96 of the CPC from the judgment dated 24.02.2012 delivered in Title Suit No.10/2006 by the Civil Judge, Senior Division, Court No.2, West Tripura, Agartala. By the said judgment, the suit filed by the respondent herein for declaration of title and recovery of khash possession of the suit land described in the Schedule to the plaint and comprised in revenue holding No.1, old khatian No.798 jer 808, revisional khatian No.18457, old plot No.1708/12037, corresponding to revisional plot No.4143, measuring 0.145.

2. The defendants, being aggrieved by the said judgment and decree, has preferred this appeal on various grounds of objection, which can be encapsulated as that appreciation of the evidence has not been properly carried out by the trial court and misconstruction of the provisions of law as to presumption as provided under Section 43(3) of the Tripura Land Revenue and Land Reforms Act, 1960. Ancillary thereto, it has been asserted that the source of title in favour of the plaintiff, the respondent herein, has not been properly proved inasmuch as, admittedly the suit land was retained by the intermediary, but that fact not has been proved by the plaintiff and further that Nabadwip Chandra Paul could not legally represent the plaintiff as per the Societies Registration Act, 1860.

3. For purpose of appreciating the grounds of objection as raised in this appeal, the essential facts may be introduced at the beginning.

4. The suit was filed by the plaintiff-respondent on 20.02.2006 against the defendants No. 3, 4, 5 and the predecessors of the defendants No. 1(a) to 2(d), namely Manindra Chandra Dey and Kalipada Dey, who died on 27.12.2008 and 31.01.2009 respectively. According to the plaintiff, namely Sarba Dharma Mission, a registered society, represented by its President, namely Nabadwip Chandra Paul, the plaintiff is the owner of a piece of land measuring 0.140 acre

corresponding to 7 gandas 1 kranta, appertaining to old khatian No.798 jer 808, corresponding to the revisional khatian No.18457, comprised of old plot No.1708/12037(P), corresponding to revisional plot No.4143 of mouja Badharghat, hereinafter referred to as the suit land. The plaintiff got a vast tract of land measuring 10 drones including the suit land from the Talukdar, namely Smt. Kanchanprava Devi by a registered patta dated 17.12.1949. With the advent of the new legal regime, for introduction of the Tripura Land Revenue and Land Reforms Act, 1960 ('TLR & LR Act', in short), the said land did not vest with the State but the plaintiff became the raiyat in possession under the Government of Tripura. On observing the due process, the plaintiff's name has been recorded in the khatian No.798 jer 808 after the first settlement operation for the C.S. plot No.1708/12037 at mouja Badharghat. After the revisional settlement operation, the suit land was recorded in the khatian No.18457 in the R.S. plot No.4143 in the name of the plaintiff.

5. The plaintiff has asserted that they were in possession since 1949, till 04.02.2006, asserting their possession by growing vegetables without any obstacle from any quarters. The dwelling house of the defendants are admittedly situated in the adjacent south boundary of the suit land and having advantage thereof, the defendants and their predecessor in interest used to create disturbance over the suit land. In the month of December, 2004,

the plaintiff in its annual conference resolved that in the event of any land dispute between the neighbouring land holders and the plaintiff, appropriate legal action should be taken against the wrongdoers. On 02.06.2005, the defendants filed an application to the Secretary of the plaintiff for granting settlement of the suit land. Thereafter, the defendants did not pursue the said prayer. On 05.02.2006 at noon, two members of the plaintiff-society, namely Kalipada Paul and Chandra Sekhar Paul, observed that the defendants were excavating trench on the suit land for laying foundation of a building. They raised serious objection, but the defendants did not stop that work. According to the plaintiff, the defendants completed the building upto the roof level despite vehement objection from the plaintiff. The plaintiff has further asserted that the defendants are the rank-trespassers and they by force constructed the building on the suit land on 05.02.2006 most illegally and without any sort of permission from the plaintiff. Thus they prayed for recovery of the suit land from the defendants.

6. The defendants by filing the written statement have categorically submitted that the plaintiff has suppressed the material facts from the court. They have asserted in the said written statement that their predecessor in interest, namely Monmohan Dey, son of late Banka Chandra Dey, was the owner of the land comprising of C.S. plots No. 1694, 1695, 1698 and

1707, entered in the khatian No.791 and the suit land is just adjacent to the said jote land of Monmohan Dey. Said Monmohan Dey had started possessing the suit land unauthorisedly and forcibly denying the right, title and possession of the plaintiff to their full knowledge since 15.08.1965, by constructing cow sheds, khatahs and maintaining haystack. Monmohan Dey sold some timbers extracted from the trees in the year 1995. According to the defendants, the stumps were also available in the suit land. Said Monmohan Dey died on 05.07.1972. Thereafter, the original defendants took possession over the suit land. On 02.02.1975, the defendants started permanent construction over the suit land and they posted pacca pillars in the boundary of the suit land, removing the wooden pillars. The defendants also constructed one mud wall dwelling hut and one pacca wall dwelling house in the suit land. In the year 1975, the defendants constructed one kaccha bathroom and latrine in the suit land and the said kaccha construction was converted into pacca construction in the month of May, 1995. Before that, in the year 1980, they got water supply connection from the Public Health Department, Govt. of Tripura. The defendants also erected one bamboo fencing and tin-shed roof grocery shop facing the main road on the suit land in the first week of April, 1989. Subsequently, the said kaccha shop was converted into pacca construction in the month of July, 2004. From the year 1991, the son-in-law of the original defendant No.1

has also started running a mechanical workshop, namely 'Dayamay Mechanical Works' in the suit land on obtaining three phase commercial electricity line from the Power Department, Govt. of Tripura. The defendants were also given the materials under the Indira Abash Yojana by the Government for construction of hut in the suit land. The Power Department had provided the electricity connection in the year 1997 to the said hut. In the year 1993, one kitchen and one room for worship had been constructed by the defendants in the suit land. The defendants also installed one tube-well and on taking financial help from the social forestation scheme, they planted some teak saplings in the suit land. In the year 1996, a path was also created over the suit land for smooth ingress and egress from the main road.

7. The defendants, the appellants herein, have further asserted that on 05.02.2006, Kalipada Paul and Chandra Sekhar Paul met the defendant No.3 in his shop and introduced themselves as the representatives of Nabadwip Chandra Paul, the President of the plaintiff-society and told him to settle the matter with them by paying Rs.2,00,000/- as the value of the land. But, the defendant No.3 did not accept that proposal and replied that they were possessing the suit land from 1965 adversely and continuously, denying the right, title and interest of the plaintiff and hence the plaintiff has lost any title over the suit land. Having

heard so, Kalipada Paul and Chandra Sekhar Paul got furious and threatened them of evicting from the suit land by filing a suit. The defendants have denied the pleadings of the plaintiff, the respondent herein. On the basis of the pleadings, the following issues were framed by the trial court :

(I) Is the suit maintainable in law?

(II) Is the suit barred by limitation?

(III) Has the plaintiff any right, title and interest over the suit land?

(IV) Whether the defendants dispossessed the plaintiff on 5.2.2006?

(V) Whether the defendants have acquired adverse possession over the suit land?

(VI) Is the plaintiff entitled to decree for recovery of khash possession?

(VII) Whether the plaintiff is entitled to get any other relief or reliefs as prayed for?

8. The plaintiff adduced six witnesses and admitted in the evidence some documents, namely original patta dated 17.12.1949 (Exbt.1), khatian No.798 jer 808 (Exbt.2), application by one Manindra Chandra Dey dated 02.06.2005 (Exbt.3), revenue receipt No.807103 (Exbt.4), certified copy of the resolution dated 16.02.2006 (Exbt.5).

9. The defendants in order to establish their claim, even though submitted the examination-in-chief of number of witnesses, but only DWs. 1, 4 and 5 appeared in the court for their examination and cross-examination and hence the

examination-in-chiefs filed for the other witnesses are of no value. However, they also submitted a good number of documentary evidence, such as original khatian No.18457 (Exbt.A), one original telephone bill (Exbt.B), one Industries registration certificate (Exbt.C), one letter of the Assistant Engineer, Agartala Water Supply dated 16.09.1988 (Exbt.D) and one electricity bill raised in the name of M/s Dayamay Mechanical Workshop dated 30.05.1998 (Exbt.E). The defendants have also submitted the finally published khatian No.146218 (Exbt.A.1).

10. After appreciating the evidence and the argument placed by the respective counsel for the parties, the trial court has observed while deciding the Issues No. I and II as under :

"To prove their adverse possession the defendants proved the original khatian No.18457 of mouja Badharghat sheet No.2 (not finally published (Exbt.A), one original telephone bill (Exbt.B), one Small Scale Industries registration form (Exbt.C), one letter issued by the Assistant Engineer, Agartala Water Supply dated 16.9.1988 (Exbt.D), one electric bill (Exbt.E). But except Exbt.A none of the other exhibited documents showed that those were related to the suit land of this suit. The defendants also failed to adduce any other documentary evidence to prove the fact how the staff of the settlement department gathered their knowledge about forceful possession of the defendants over the suit land since 1975 when all the DWs in their respective deposition claimed that they had talked with the Amin party during the revisional survey operation in the year 1997 and they did not disclose the actual year of dispossession of the plaintiff from the suit land though the witnesses were very much aware about the exact year which itself shows that taking the advantage of Exbt.A the defendants tried to make out a case of their adverse possession over the suit land herein this suit.

On the other hand Exbt.2 i.e. the khatian No. 798 jer 808 of mouja Badarghat attested by the R.O. On

12.8.67 shows that the suit land was not in the adverse possession of any other person including the present defendants. Exbt.3 i.e. the application dated 2.6.2005 written and submitted by Manindra Dey, the original defendant No.1 to the Secretary, 'Sarba Dharma Mission' shows that the original defendant No.1 prayed for amicable settlement of his land disputer with the plaintiff and since the defendants did not examine said original defendant No.1 who died on 27.12.2008 AD in this suit as a witness. There is no scope to make a presumption that he did not write the said application whereas the recording of cross-examination of DWs started on and from 28.11.2007 and since DW.4 also admitted in his deposition that the plaintiff society asked the defendants to leave the suit land, I find sufficient ground to presume that the defendants forcefully entered into the suit land on 5.2.2006 and dispossessed the plaintiff from the suit land. Subsequently, the defendants proved one finally published khatian (Exbt.A.1) which was published on 10.10.2006 which also confirmed the adverse possession of the defendants over the suit land since 1975, but is has already been discussed here-in-above that how the settlement authority got the information of the said adverse possession when the defendants themselves differ with that year."

Thus the plea of adverse possession was virtually discarded when deciding those issues it has been held that the suit was not barred by limitation.

11. While deciding the Issues No. III and IV, it has been held that there is no dispute as to the ownership of the suit land. In the course of deciding the Issue No.V, it has been further held that the defendants made the inconsistent statement regarding dispossession of the plaintiff inasmuch as DW.1 has categorically stated that he was unaware of whether any enquiry was conducted by the revenue authority before issuing Exbt.1 or not. Surprisingly, it has been observed as under :

DW.1 also could not say what actually happened on 5.2.2006 pertaining to the suit land. DW.4 Sri Dayamay Chakraborty who claimed himself to be an eye witness of the incident of dispossession of the plaintiff society from the suit land, in his cross examination stated that probably in the year 1975 pacca pillars were posted on the boundary of the suit land to separate it from the land of 'Sarba Dharma Mission'. But surprisingly none of the defendants and their witnesses claimed the adverse possession of the defendants and their predecessor in interest over the suit land since 1965 at the time revisional survey operation conducted in the year 1977 in respect of the suit land.

In the present suit the defendants tried to establish their adverse possession over the suit land since 1975 by adducing documentary evidence and at the same time they tried to prove their such possession over the suit land since 1965 by adducing oral evidence and by that way the defendants themselves raised a considerable doubt about their adverse possession over the suit land.

12. Having observed that an entry in the record of rights or other revenue records is not conclusive and raises a rebuttable presumption which cannot form the sole basis to decide one way or the other, against one or the other party, it has been held that, if the civil court on evidence finds them not to be founded on facts, the entries lose all their weight. Thus, the Issue No.V was decided against the defendants that, by discarding their claim they were adversely possessing the suit land beyond the period of limitation. As consequence of the said decisions, Issues No. VI and VII have been decided holding that the plaintiff was entitled to recover the khash possession of the defendants by evicting and/or by removing all obstructions.

13. Mr. P.K. Dhar, learned counsel appearing for the appellants has submitted that against Exbt.A and Exbt.A/1, the plaintiff has admittedly not taken any action for deletion of the entry as made showing the defendants or their predecessors as the forcible occupier against the suit land. As such, such entry unless rebutted by evidence, would be treated as correct and due presumption can be drawn therefrom. Mr. Dhar, learned counsel has further submitted that on the basis of the application dated 02.06.2005 (Exbt.3), the principle of estoppel cannot be applied against the defendants, inasmuch as Exbt.3 was admitted without observing the proper procedure and objection so raised by the defendants at the time of its admission, was not visited and no decision has been rendered by the trial court. Apart that, in the written statement, the defendants have stoutly projected that they did never approach for any settlement with the plaintiff. Mr. Dhar, learned counsel has further stated that if the said application (Exbt.3) is considered, it has to be considered in its entirety. In the said application, it has been stated by one Manindra Chandra Dey that they were the resident over the said land for long time. Mr. Dhar, learned counsel has also pointed out that the said application was written on 02.06.2005. He has further submitted that the khatian No.798 jer 808 (Exbt.2) was published on 23.05.1974 on the basis of the first settlement operation. According to him, the khatian No.18457 (Exbt.A) at

the draft publication stage was published on 19.07.2004, where the following entry is available under column 24 :

"Forceful occupier – Manindra Chandra Dey, Kalipada Dey, sons of Monmohan Dey since 1975."

It is not in dispute that the said khatian was finally published on 10.10.2006 as would be evident from the khatian No.1462/8 (Exbt.A.1).

14. Mr. Dhar, learned counsel appearing for the appellants, while concluding his submission, has submitted that the trial court has completely misconstrued the law of burden of proof. It is not the duty of the defendants to show that the application dated 02.06.2005 (Exbt.3) was not signed by Manindra Chandra Dey, rather it is the onus of the plaintiff to show that the said application was signed by Manindra Chandra Dey, the original defendant No.1 in the suit.

15. From the other side, Mr. D. Chakraborty, learned senior counsel appearing for the respondents, the plaintiff in the suit, has submitted that the fundamental burden no doubt lies on the plaintiff, but when the defendants set up a distinct plea the onus would definitely shift to the defendants to prove the relevant pleadings. In the case in hand, it is incumbent on the defendants to prove that the principal owner was in possession of the land in question and the true owner has been ousted from the said

possession and the person who is claiming adverse possession has been in the possession uninterruptedly showing animus possidendi to the true owner beyond the period of limitation in terms of Section 27 read with Article 65 of the schedule appended to the Limitation Act, 1963. According to Mr. Chakraborty, learned senior counsel, there is no dispute as to the title of the land that the land belongs to the plaintiff. There is no serious endeavour on the part of the defendants to show that the land was not settled with the plaintiff after the intermediary ownership was abolished by the TLR & LR Act, rather the khatian (Exbt.A.1), which was heavily relied by the defendants shows the recorded raiyat of the suit land is the plaintiff. So far the question of dispossession of the true owner is concerned, according to Mr. Chakraborty, learned senior counsel, there is no consistent materials based on which safely an inference can be drawn that on certain day the true owner was dispossessed from the land. He has further submitted that there is no proof of hostility against the true owner at any point of time, rather if the said application (Exbt.3) is relied on it would show that there is a proof of long possession, but there is no material of hostile possession. Mr. Chakraborty, learned senior counsel, has further submitted that long possession without demonstration of the perceptible hostility cannot entitle someone to claim the title over a land on adverse

possession. He has strongly submitted that there is no infirmity in the impugned judgment.

16. After scrutinising the evidences on record, both oral and documentary, and on appreciating the submissions of the learned counsel appearing for the appellants and the respondents, the following points are essential for decision of this appeal :

- (i) Whether the plaintiff has successfully proved that they were dispossessed on 05.02.2006?
- (ii) Whether the defendants or their predecessors were possessing the suit land since 1965 or 1975 adversely or not?
- (iii) Whether the entry made in column No.24 of Exbt.A.1, has been successfully rebutted by the plaintiff, if not rebutted, what would be the consequence of that?

17. For proving their dispossession, the plaintiff has adduced the original patta executed by Maharani Kanchanprava Devi on 17.12.1949 through her attorney. The said patta shows that they were handed over possession under certain conditions for a period of 16 years. It is not disputed that the land described in the patta or part thereof which included the suit land was settled in the name of the plaintiff and the plaintiff obtained the

khatian No.798 jer 808 on 12.08.1967. It is the admitted position that against the suit land there is no entry under column 23 (which was later on made column 24). That apart, they have adduced the witness, namely Ranjit Kumar Deb (PW.1), who has stated elaborately about the granting of settlement by the talukdar and opening of the record of right after abolition of intermediary right. So far the possession is concerned, he has just reiterated what has been pleaded in the plaint that they are raising vegetables over the suit land. He has stated that the suit land was under their possession till 04.02.2006, but on 05.02.2006 the defendants dispossessed them. He has admitted in the cross-examination that he submitted a photo-copy of the revisional khatian No.18457 of Badharghat mouja with the plaint. He has also admitted that there is an entry that the defendants or their predecessors were forcefully occupying the suit land and there is another entry of forceful occupation by one Sujit Dey. However, he denied the suggestion that on 05.02.2006 there was no dispossession.

18. One Sri Kalipada Paul (PW.2) has stated that when he found on 05.02.2006 at noon alongwith one Chandra Sekhar Paul, he raised objection as the defendants were digging trench on the suit land for erection of foundation of building. Despite their objection, they continued with the construction. Within 15 days they completed the building on the suit land up to the roof level

despite vehement objection from others. At this juncture, it is to be noted that the suit was filed on 20.02.2006 i.e. on the 15th day of the alleged dispossession. In the cross-examination, he denied the suggestion that there is no such dispossession on 05.02.2006.

19. Chandra Sekhar Paul (PW.3) has stated in the same way as stated by PW.2 and denied the suggestion from the defendants. Sri Pabitra Debnath (PW.4), a clerk of the plaintiff, has stated that on 02.06.2005, Manindra Chandra Dey, the original defendant No.1 came to the office of the plaintiff and presented an application and he received that application. He identified the said application. He has, however, stated that he has not put any signature as token of receipt on the said application dated 02.06.2005.

20. Milan Sarkar (PW.5) has stated that the suit land was under the possession of the plaintiff by growing vegetables. It has been also recorded in the cross-examination as under :

"It is not a fact that before the first part of February, 2006 Sarba Dharma Mission used to grow vegetables in the suit land."

The correction has been made in the cross-examination by the trial court. He has admitted in the cross-examination that "Some person adjoining to the said Mission has illegally encroached the landed property of the said Ashram and being a disciple of the said Ashram I wish to dispossess them".

However, he has stated that in the first part of February, 2006 the defendants dispossessed the plaintiff. Sri Santosh Paul (PW.6), a disciple of the plaintiff has stated that till 05.02.2006 the plaintiff was in possession of the suit land. The cross-examination is the exact replica of the other PWs.

21. As stated earlier, except DWs 1, 4 and 5, the other DWs were not produced for examination and cross-examination. Therefore, appreciation of the oral evidence adduced from the defendants would be confined to the depositions of DWs. 1, 4 and 5.

22. Sri Kalipada Deb (DW.1), the defendant No.2 in the suit, has stated that Monomoan Dey, their predecessor in interest, was possessing the suit land since 15.08.1965. Initially Monmohan Dey constructed cow-sheds and kathals in the suit land and he made a haystack for his cows. In the mid of 1966, Monmohan Dey and his family members, planted some jack trees in the suit land and when those were matured he extracted timber for his own domestic purpose and some timbers were sold in the year 1995. The stumps were still available in the suit land. He has further deposed that the permanent construction over the suit land was started on 02.02.1975 when they posted the concrete pillars along with boundaries of the suit land by removing the old wooden pillars. Thereafter, they constructed one

mud-wall dwelling house and one pacca wall dwelling house in the suit land. Even the kachha construction was converted into pacca construction in the month of May, 1995. The Public Health Department, Govt. of Tripura, had provided water supply over the suit land in the year 1980. According to him, the bamboo fencing was erected in the month of April, 1989 alongside the tin-shed roof for the grocery shop. Thereafter, they started pacca construction which was completed in the month of July, 2004. He has further stated that the son-in-law of the defendant No.1 has been running a mechanical workshop, namely Dayamoy Mechanical Works from 1991 over that work-shop. The defendants were also given a hut under the Indira Abash Yojana by the Government and the Power Department provided the electricity connection in the year 1997. A kitchen and a room for god were made in the year 1993. Thereafter, they installed one tube-well in the suit land. Under the social forestation scheme, they also got some advance and they planted some trees in the suit land in the year 1996. They also constructed road over the suit land for smooth ingress and egress from the main road.

23. The defendant No.3 was advised to settle the matter by Nabadwip Chandra Paul on payment of Rs.2,00,000/-, but the defendant No.3 was never agreeable to pay the said amount. According to him, since 1965 always the defendants and their predecessors adversely and continuously possessing the suit land,

denying the right, title and interest of the plaintiff. Thus, the right to recover the suit land was lost long back. He has further stated that since 15.08.1965, Manmohan Dey was in possession till his death on 05.07.1972. After his death, the defendants' legal heirs possessed the suit land uninterruptedly, continuously and openly to the full knowledge of the plaintiff. The first physical field survey settlement was completed in the year 1964 and the land recording was attested by the competent Revenue Officer on 12.08.1967 and that was finally published on 23.05.1974. Since the physical survey was conducted before 15.08.1965, there was no occasion to record the possession of the predecessor of the defendants as their predecessor came into possession forcibly on 15.08.1965. The revisional survey operation was started in Badharghat mouja in the year 1997 and after the physical survey, the Revenue authority after verification, measurement and inquiries of all papers and documents, recorded the entries in the R.S. khatian No.18457, with the entry that the legal heirs of Manmohan Dey were adversely and forcibly possessing the suit land since 1975. The said khatian was attested on 19.07.2004. He has submitted certain documents as stated earlier as Exbts. A, B, C, D and E. He has admitted in the cross-examination that in the year 1965 he was a boy and he cannot say how his father, on 15.08.1965 trespassed into the suit land and has also admitted that he cannot say whether any survey operation was done

before the present survey operation on the basis of which khatian No.18457 (Exbt.A) was issued.

24. Sri Dayamaya Chakraborty (DW.4), a witness from the neighbourhood, has stated that there was no dispossession on 05.02.2006 by the defendants. He has categorically stated that the predecessor of the defendants were in possession since 15.08.1965. In the year 1966 the predecessors of the defendants, namely Monmohan Dey planted some jack trees in the suit land and extracted some timber of the trees for domestic purpose and later on sold some timber in the year 1995. The stumps were still available in the suit land. He has submitted that the defendant No.1 had planted a black berry tree in the suit land on February, 1975. He has also corroborated that Monmohan Dey died on 05.07.1972 leaving behind his sons and other family members. The permanent construction over the suit land was started on 02.02.1975. They posted pacca boundary pillars around the suit land in place of the wooden pillars and erected kaccha bathroom and latrine in the suit land in 1975. The said kaccha construction was converted into pacca construction in the month of May, 1995. They also erected a bamboo fencing and a tin-shed roof shop premises in the first week of April, 1989 for their grocery shop in the said suit land. Thereafter, the said kachha shop was converted into pacca construction and the masonry work was completed in the month of July, 2004. He has

also stated that the son-in-law of the defendant No.1 has been running a mechanical workshop, namely 'Dayamoy Mechanical Works' over the suit land and the Power Department had provided commercial three phase electricity line to that workshop. He has also stated that the defendants were awarded a hut under the Indira Abash Yojana. A kitchen and a room for worship were subsequently constructed by the defendants in the year 1993. Thereafter, they installed a tube-well in the suit land. Under the financial help of the social forestation scheme, the defendants planted some teak trees in the suit land and also constructed a brick-laid path in the year 1996 for smooth ingress and egress from the main road. He has also stated that the Revenue authorities, after verification and inquiries, has recorded the defendants' possession over the R.S. Khatian No.18457. He has also given the description of that khatian which came into existence.

25. In the cross-examination, DW.4 has stated that his house situates 200 yards from the suit land and he has been staying there only for 15/16 years. He has categorically stated in the cross-examination that he was present at the spot while the father of the defendants forcibly took possession of the suit land in the year 1965, but he did not raise any objection or protest against such illegal encroachment by the father of the defendants as he was mere a spectator of such occurrence. He could not

however recollect whether any other person was present at that time. But, he has failed to describe the quantum of land, said Monmohan Dey occupied by that dispossession. He has also stated that in the year 1975 pacca pillars were posted in the boundary of the suit land to separate it from the land of the plaintiff. He denied the suggestions projected by the plaintiff. He finally stated that on field verification, the Amin came to the conclusion that since 1975 the defendants were forcibly and adversely possessing the suit land on the basis of the record.

26. Sri Dilip Kr. Deb (DW.5) is also a witness from the neighbourhood. He has followed the same suit of DW.4 and stated in the similar fashion. He has stated that the suit land is measuring half kani of land. According to him, the suit land was originally owned and possessed by Monmohan Dey, but wrongly it was recorded in the name of Sarba Dharma Mission. In the year 1997, the revisional survey officers found the defendants in the possession of the suit land and accordingly such entry was made that they were in possession of the suit land since 1975. He has also stated that on 05.02.2006 the authority of the Sarba Dharma Mission asked the defendants to vacate the suit land.

27. From appreciation of the oral and documentary evidence, what appears is that much before the alleged date of dispossession i.e. 05.02.2006 the defendants were in the

possession. From the resolution that was adopted on 16.02.2006 (Exbt.5), it appears that since the peaceful negotiation has failed, it required to take legal action in respect of the land settled by Kanchanprava Debi. The resolution as taken, is as under :

"Several types of cases have arisen with the neighbours regarding the immovable property and land of the Mission. The Hon'ble President and Secretary of the Mission are being fully empowered to file case on behalf of the Mission or to run the case as the defendant on behalf of the Mission or to collect witness on behalf of the Mission or to give evidence/witness on behalf of the Mission and to execute the entire work as plaintiff or respondent on behalf of the Mission in such cases.

Finally the work of the Sabha was concluded after giving a shout of victory."

28. In respect of the land and other movable properties some cases had been instituted with the neighbouring people. For purpose of conducting those cases, the plaintiff had authorised its two chief functionaries for collection of the evidence or for placing the evidence in the court in those cases as resolved. All such activities or the supervision would be done by the President and Secretary of the Mission, the plaintiff and accordingly they have been given the authority. It does not speak of any specific case. However, authorisation is there to institute the suit. Another document whose admission is not in accordance with law, but that has been admitted and considered by the trial court and objection to its admission, even if is waived, it would show that the said application was filed by Manindra Dey, the original

defendant No.1 on 02.06.2005, stating that the land has been possessed by them for long time. The other documents as adduced by the defendants, particularly Exbt.A and Exbt.A/1 i.e. the khatian Nos. 18457 and 1462/8, which were finally published on 10.10.2006 shows that the defendants were in possession since 1975. The plaintiff did not adduce one single witness to show that some persons for their behalf were doing the vegetation as claimed by them. Not a single one has stated that he was growing the vegetables over the suit land. As such, having interfaced with the application dated 02.06.2005 and the finally published khatian No.1462/8 (Exbt.A.1), it can be safely inferred that on the day of alleged dispossession i.e. 05.02.2006 or before that, the plaintiffs were not in possession. They have suppressed the material facts from the court. As such, the issue of limitation cannot be determined for the said suppression of fact and hence the suit is liable to be dismissed. That apart, the trial court has mechanically interpreted the provisions of Section 43(3) of the TLR & LR Act, 1960. It says, unless rebutted, the entries create a presumption of correctness. Now, the question that falls for consideration is, whether the plaintiff has rebutted the correctness of such entry or not? This court is of the considered opinion that the plaintiff has miserably failed to discharge their duty to prove that they were in possession and the entry that was made in column 24 of the said khatian No.1462/8 (Exbt.A.1) had

been done incorrectly. Moreover, they could not place any document that when they gathered the knowledge of any entry, they took any initiative against such entry by taking the appropriate course at law. However, the trial court has taken a correct decision that non-availability of any other material to show that the electricity connection in whose support Exbt.B and Exbt.E has been admitted in the evidence, the electricity connection cannot be related to the suit land. Similarly, whether the water supply connection has been extended to the suit land, cannot also be gathered from Exbt.D, which is a communication by the Assistant Engineer In-charge, Agartala Water Supply. According to the defendants, they made several construction and continued with planting of trees and such activities are the indicators of the hostility over their possession. It is not the case of the plaintiff that they permitted them to do such work and on 05.02.2006 they demonstrated the hostility to them. According to the plaintiff, they were in the possession and they have been dispossessed from the suit land on 05.02.2006. A cumulative reading of the evidence would show that the plaintiffs have not only suppressed the material facts from the court, but also failed to rebut the entry appearing under column 24 of the khatian (Exbt.A.1). Hence, it has to be held that the defendants have successfully proved that they are adversely possessing the suit land at least since 1975. It is required to be noted that it was the

plaintiff's onus to rebut the said entry by placing proper records before the court to show that such entry was either made collusively or not based on proper inquiry. On the contrary, the defendants, by adducing three witnesses viz. DWs. 1, 2 and 3, have successfully proved their possession over the land. The trial court has definitely misconstrued the provisions of law as provided under Section 101 of the Evidence Act. As to the existence of fact, onus is always with the person who is bound to prove the existence of such fact as he has claimed that the said fact existed. Similarly, Section 103 of the Evidence Act has more definitely provided that the burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person. Filing of the application dated 02.06.2005 (Exbt.3) was to be proved by the plaintiff that Monmohan Dey had filed that application for settlement. One clerk has come regarding filing of that application stating that Monmohan Dey filed that application to him. Even he did not identify the signature of Monmohan Dey showing that he was acquainted with the signature of Monmohan Dey or stating before the court that he knew Monmohan Dey from before. Therefore, by applying the principles of estoppel against the defendants, the trial court has deviated from the settled position of law, holding that the onus is only with the defendants to show that Monmohan

Dey did not submit such application, on the face of their clear denial in the written statement.

29. Having discussed thus, this court is persuaded to observe that :

- (i) The plaintiff has failed to prove the following standard of preponderance of probability that they were in possession over the suit land till 04.02.2006 and they were dispossessed from the suit land by the defendants on 05.02.2006.
- (ii) The defendants and their predecessors were possessing the suit land adversely, at least since 1975 when they posted the pillars by demarcating the possession over the suit land and they persuaded the possession over the suit land thereafter. Such fact was re-recorded during the revisional survey settlement operation, which started in the year 1997 and as such it has to be held that the defendants were possessing the suit land adversely beyond the period of limitation. Thus, the right of the plaintiff to recover the suit land had extinguished much before the institution of the suit on 20.02.2006.
- (iii) The plaintiff has failed to rebut the correctness of the entry made under column 24 of the khatian (Exbt.A.1)

and as such the court has no difficulty to rely on the said entry to presume that since 1975 the defendants were in possession forcibly over the suit land. Forcible occupation itself a component of hostility and as such, such possession carries the substratum, necessary to declare the adverse possession against the true owner.

30. Hence, the appeal is allowed. The suit as instituted by the respondents is dismissed. Prepare the decree accordingly. Send down the records thereafter.

JUDGE

ROY