

**THE HIGH COURT OF TRIPURA  
AGARTALA**

*RSA NO 78 of 2011*

**APPELLANT-DEFENDANT NO.1 :**

**Shri Bidyut Baidya,**  
S/O Late Bhuvan Mohan Baidya  
Village-Kalpar,  
P.O. Kailashahar,  
P.S. Kailashahar,  
District-North Tripura,  
Tripura State.

**BY ADVOCATES :**

Dr. H. K. Bhattacharji,  
Mr. N Majumder,  
Mr. H. Deb,

**- Vrs -**

**RESPONDENT-PLAINTIFF :**

**1. Smt. Sunita Bala Shil(Chanda)**  
**alias Smt. Sunita Chanda,**  
wife of Late Umananda Shil,  
2<sup>nd</sup> Link Road(Lane-9),  
P.S. Rangirkhari, Silchar,  
District-Cachar, Assam,

**PROFORMA RESPONDENT-PROFORMA DEFENDANT NO.2.**

**2. Shri Radhananda Shil,**  
S/O. Late Umananda Shil,  
Village-Bathika(East Kalyanpur),  
P.S. Kalyanpur, P.O. Kalyanpur,  
District-West Tripura.

**BY ADVOCATES :**

Mr. P.Roy Barman,  
Mr. S.Bhattacharji,  
Ms. D. Bhattacharji,

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

Date of hearing & delivery of  
Judgment & order : **15.10.2015.**

Whether Fit for Reporting : 

| Yes | No |
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|     | √  |

### **JUDGMENT & ORDER(ORAL)**

This second appeal has been admitted for hearing on  
the following substantial question of law :-

***"(i) Whether the finding of the First Appellate  
Court in Title Appeal No.12 of 2011 is perverse?"***

***"(ii) Whether the claim of the plaintiff-respondent  
was barred by limitation?"***

**2.** Heard learned counsel, Mr. H. Deb for the appellant  
and learned counsel, Mr. P. Roy Barman for the respondent No.1.  
No representation on behalf of the respondent No.2.

**3.** Respondent No.1 as plaintiff (hereinafter mentioned  
as 'plaintiff') instituted Title Suit No.26 of 2010 in the Court of  
Civil Judge(senior Division), Kailashahar, North Tripura seeking  
recovery of possession of the suit land described in the schedule  
of the plaint. It is, *inter alia*, contended by the plaintiff that  
Umananda Shil, father of the plaintiff and proforma defendant,  
Radhananda Shil, was the owner of the suit land along with other  
land and that Umananda Shil died on 01.12.1982 leaving behind  
the plaintiff and proforma defendant, Radhananda Shil and they  
inherited the property of Umananda Shil. On 16.03.1996 by a  
registered deed of partition the plaintiff and proforma defendant,  
Radhananda Shil partitioned the property left by Umananda Shil

and the plaintiff was possessing the suit land since it was in her share.

The defendant No.1-appellant, Bidyut Baidya (hereinafter mentioned as 'principal defendant') was a cousin of the plaintiff and was residing near the suit land and he used to collect the rent and pay it to the plaintiff. On 02.10.2005 the plaintiff came to know that without her permission the defendant No.1 constructed hut over the suit land after cutting earth and defendant No.1 also instituted a suit in the Court of Civil Judge (senior Division) bearing No. T.S. 25 of 2005 seeking declaration of title by adverse possession, but that suit was dismissed for default. From 02.10.2005 the defendant No.1 has been possessing the suit land and hence, the plaintiff prayed for declaration and recovery of possession.

**4.** The defendant No.1, i.e., appellant herein, contested the suit denying all the averments made in the plaint and further stated that Bhuban Mohan Baidya, deceased father of defendant No.1, entered into possession of the suit land in the year 1950 and had been possessing it by constructing dwelling house and got electric supply connection etc. and after the death of Bhuban Mohan Baidya, the defendant No.1 possessing the suit land from 03.01.1988 denying right, title and interest of any other person adversely. The plaintiff was never in possession of the suit land and any right, title and interest of the plaintiff has already been extinguished.

5. The trial Court considering the pleadings of the parties formulated four issues, namely :-

**"(1) Is the suit maintainable in its present form?**

**(2) Is the suit barred by Limitation?**

**(3) Is the plaintiff entitled to get declaration and direction that plaintiff doth recover possession of the suit land after evicting the defendant No.1 there from and removing all obstructions and constructions there from created by the defendant No.1?**

**(4) Are the parties entitled to get any other relief or relieves?"**

6. In course of trial the plaintiff examined herself as PW1 and also examined another witness, namely, Sri Bhabatush Baidya as PW2 and proved the following documents, which are marked as Exbt.1 series :-

**"(1) Ext.1 series - Khatiyani No.1006 of Kailashahar Mouza**

**(2) Do - Registered deed of partition**

**(3) Do - Copy of survival certificate**

**(4) Do - Revenue receipt."**

7. Defendant No.1 also examined himself as DW1 and also examined two witnesses, namely, DW2, Kanu Miah and DW3, Smt. Kalpana Deb(Sen) and proved the following documents, which are marked as Exbt. A series :-

**"(1) Ext.A series - Receipt of water supply bill No.- 17757 dated 31.03.09**

**(2) do - Receipt of Electricity bill favoring Bhuban Mohan Baidya"**

8. The trial Court decided the material issues against the plaintiff and dismissed the suit.

**9.** The plaintiff preferred Title Appeal No.12 of 2011 and by impugned judgment dated 06.08.2011 the learned District Judge allowed the appeal and decreed the suit. Hence, this second appeal.

**10.** It is submitted by Mr. Deb, learned counsel for the appellant that the plaintiff could not prove title over the suit land. Simply a Khatian and a deed of partition have been produced, but how the father of the plaintiff got the suit land that has not been proved and once the plaintiff failed to prove her title, she was not entitled to get the decree of recovery of possession and the judgment and decree passed by the appellate Court, therefore, suffers from perversity.

**11.** Mr. Roy Barman, learned counsel for the respondent No.1, on the other hand, submitted that the plaintiff claimed declaration and recovery of possession based on title and the Khatian and the deed of partition are the proof of title of the plaintiff over the suit land. The defendant claimed adverse possession and thereby admitted the title of the plaintiff. Under such circumstances, the appellate Court rightly decreed the suit in favour of the plaintiff.

**12.** No doubt, it is a settled law that a Khatian is not a document of title, but in the absence of any other better document placed on record, a Khatian also may be basis of claiming title over the property recorded in the Khatian. Entries in the Khatian are presumed as correctly made unless the

contrary is proved. Here in this case the defendant's stand is that his father was in possession of the suit land from 1950 and thereafter he entered into possession and had been possessing the suit land denying the right, title and interest of the rightful owner. The plaintiff instituted the suit claiming the right and recovery of possession. The defendant could not produce any better evidence to destroy the case of the plaintiff. The trial Court, in my opinion, failed to consider the documents and the evidence adduced by the parties in the given facts and circumstances of the case, which has been correctly seemed to have considered by the appellate Court and I find no perversity in the judgment passed by the appellate Court. The plaintiff instituted the suit for recovery of possession based on title and it was within limitation and, therefore, the suit was not barred by limitation.

**13.** In view of the discussion made above, the appeal stands dismissed. The parties to bear their own costs.

**14.** Send back the lower Court records along with a copy of this judgment.

**JUDGE**