

**THE HIGH COURT OF TRIPURA
AGARTALA**

RSA NO. 83 OF 2011

PLAINTIFF-APPELLANTS :

- 1. Smti. Alpana Nath,**
Wife of Late Sishir Kanti Nath,
- 2. Smti Satanuka Nath(Minor),**
Daughter of Late Sishir Kanti Nath,
 - represented by her natural guardian
and mother at serial No.1.
 - Both residents of Padmapar,
P.O. & P.S. Dharmanagar,
District-North Tripura,

BY ADVOCATES :

Mr. A.K Bhowmik, Sr. Advocate,
Mr. B Bhattacharjee,
Mr. R Dutta,
Ms. M Choudhury.

- *Vs* -

PRINCIPAL-DEFENDANT-RESPONDENTS :

- 1. Shri Ashutosh Nath,**
- 2. Shri Sudhamoy Nath,**
- 3. Shri Bhupal Chandra Nath,**
 - Both sons of late Banka Behari Nath,
all residents of village, P.O & P.S.-Kanchanpur,
District-North Tripura,

PROFORMA-DEFENDANT-RESPONDENTS :

- 4. Smti. Bina Bala Nath,**
Wife of Late Satyabrata Nath,
- 5. Sri Sukanta Nath,**
Son of Late Satyabrata Nath,
Both residents of village, P.O & P.S. Kanchanpur,
District North Tripura.
- 6. Smti. Nirmala Nath**
Wife of Late Parimal Chandra Nath,

7. Shri Prithish Nath,
Son of late Parimal Chandra Nath,

8. Smti. Nirupama Nath,
Daughter of late Parimal Chandra Nath.

- All residents of village, P.O & P.S Kanchanpur,
District North Tripura.

9. Shri Kriti Bodhan Nath,
Son of late Nikunja Behari Nath,
resident of Kalibari Road, P.O & P.S
Dharmanagar, District North Tripura.

10. Smti. Manjusree Nath,
Wife of Dr.Saroj Kumar Nath,
663, 2nd Main Road, Dumlur-Lay Out
Bangalore-560071.

11. Smti. Pragyasree Nath,
Wife of Shri Moloy Nath,
resident of Lyneson Villie,
Upland Road, P.O & P.S Laitumukhra,
Shillong-3, Meghalaya.

12. Sri Tushar Kanti Nath,

13. Shri Tuhin Nath,

14. Shri Tapan Nath,

15. Shri Shipon Nath,

16. Shri Biswakalyan Nath,

-All sons of late Manindra Chandra Nath.
All are residents of Tilthai Road, Padmapur,
P.O & P.S Dharmanagar, District North Tripura.

17. Smt. Gambhira Nath,
Wife of Shri Kripesh Nath,
Daughter of Late Manindra Chandra Nath
of village Padmapar, P.O & P.S Dharmanagar,
District North Tripura.

18. Shri Apurba Debnath,

19. Shri Ajit Kumar Debnath,

20. Shri Anup Kumar Nath,
- All sons of late Lalit Mohan Debnath,
- All are of Pragati Road P.O &
P.S Dharmanagar, District North Tripura.

21. Smti. Supta Debnath,
Wife of Shri Sailesh Debnath(Teacher),
Daughter of late Lalit Mohan Debnath,
Resident of Chebri, P.O & P.S Khowai,
District West Tripura.

22. Smti. Pramila Das,
Wife of Shri Manik Chandra Das,
resident of village Krishnapur,
P.O Krishnapur, P.S Dharmanagar,
District North Tripura.

PLAINTIFF-RESPONDENT :

23. Shri Sourav Nath,
Son of late Sishir Kanti Nath,
resident of village Padmapar,
P.O & P.S Dharmanagar,
District North Tripura.

BY ADVOCATES :

Mr. K.N Bhattacharjee, Sr. Advocate,
Mr. Kohinoor N Bhattacharjee,
Mr. S. Acharjee,
Ms. Y. Taneja,

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

Date of hearing : **23.06.2015.**

Date of delivery of Judgment
& order : **10.07.2015.**

Whether Fit for Reporting :

Yes	No
√	

JUDGMENT & ORDER

This second appeal under Section 100 of the Code of Civil Procedure, 1908 is directed against the judgment and decree of dismissal dated 10.06.2011 passed by learned Additional District Judge, Dharmanagar, North Tripura in Title Appeal No.15 of 2010, whereunder the learned Additional District

Judge upheld the judgment and decree of dismissal dated 18.05.2010 passed by learned Civil Judge(Senior Division), Dharmanagar, North Tripura in Title Suit (Partition) No.07 of 2008.

2. The second appeal has been filed challenging concurrent findings of two Courts below and has been admitted for hearing on the following substantial question of law :-

“Whether the co-sharer by virtue of their possession beyond the period of limitation can claim title against the other co-sharer, who was not in possession by way of adverse possession?”

3. Heard learned senior counsel, Mr. A. K. Bhowmik, assisted by learned counsel, Mr. R. Datta for the appellants and learned senior counsel, Mr. K. N. Bhattacharji, assisted by learned counsel, Mr. S. Acharji for the principal respondent Nos.1, 2 and 3.

4. Predecessor of the appellants, Sishir Kanti Nath (since deceased), husband of appellant No.1 and father of appellant No.2, as plaintiff (hereinafter mentioned as ‘plaintiff’) instituted Title Suit (Partition) No.07 of 2008 in the Court of Civil Judge(Senior Division), Dharmanagar, North Tripura against the principal defendant Nos.1, 2 and 3 (hereinafter mentioned as ‘principal defendants’) and proforma defendant Nos.4 to 22, (hereinafter mentioned as ‘proforma defendants’) seeking partition of the suit land described in schedule ‘A’ and ‘B’ of the

plaint and further seeking cancellation of three title deeds mentioned in schedule 'C' of the plaint.

5. The case of the plaintiff, in short, is that the suit land described in schedule 'A' of the plaint situated at Mouja-Dharmanagar Town and the suit land described in schedule 'B' of the plaint situated at Mouja-Kanchanpur originally belonged to Banka Behari Nath, who died about 25 years ago (from the date of filing of the suit) and his wife Mokshadabala Nath also died about 17 years ago. Banka Behari Nath had six sons, namely, (1) Birendra Chandra Nath (died unmarried), (2) Sri Ashutosh Nath (principal defendant No.1), (3) Sri Sudhamoy Nath (principal defendant No.2), (4) Sri Bhupal Chandra Nath (principal defendant No.3), (5) Satyabrata Nath (who died leaving behind proforma defendant Nos.4 and 5) and (6) Parimal Nath (who died leaving behind proforma defendant Nos.6 to 8). Banka Behari Nath had three daughters, namely, (1) Mrinalini Nath (who died leaving behind the plaintiff and proforma defendant Nos.9 to 11), (2) Indubala Nath (who died leaving behind proforma defendant Nos.12 to 17) and (3) Padmabala Nath (who died leaving behind proforma defendant Nos.18 to 21).

It is the case of the plaintiff that Mrinalini Nath being one of the daughters of deceased Banka Behari Nath was entitled to 1/8th share of the suit land described in schedule 'A' and 'B' of the plaint and hence, he and proforma defendant Nos.9 to 11

were entitled to 1/32nd share each out of the suit land. The plaintiff contended that since the death of Banka Behari Nath, the principal defendants took over possession of the land described in schedule 'A' of the plaint, which is most valuable land and they also took over the land of 'B' schedule, which was possessed by Banka Behari Nath with one Swasti Samabaya Samity, Kanchanpur and was allotted by said Samity in favour of Banka Behari Nath. The plaintiff further contended that he demanded share to the usufruct of the suit land but the principal defendants denied to share the usufruct with him and other proforma defendants and, therefore, he and other proforma defendants became dissatisfied and also on his demand refused to share the documents of the suit property. The plaintiff has also contended that principal defendant Nos.1, 2 and 3 by executing two sale deeds dated 14.02.2008 (sale deeds mentioned in Item (a) and (c) of schedule 'C' of the plaint) sold out a portion of the suit land of schedule 'A' to Smt. Pramila Das (proforma defendant No.22) and principal defendant Nos.2 and 3 sold out by executing a sale deed dated 14.02.2008 (sale deed mentioned in Item No.(b) of schedule 'C' of the plaint) a portion of the suit land described in schedule 'A' of the plaint to principal defendant No.1. The principal defendants already sold out land more than their share in 'A' schedule land and, therefore, the sale transactions were fraudulent, illegal and collusive and those sale deeds confer no right on the purchaser. The plaintiff, therefore, prayed for partition of the suit land described in schedule 'A' and 'B' of the

plaint and also prayed for cancellation of the sale deed mentioned in schedule 'A' of the plaint.

6. Principal defendant Nos.1, 2 and 3 by filing a joint written statement, *inter alia*, contended that principal defendant No.1 has been residing on a plot of land measuring 0.085 acres of schedule 'A' of the plaint, recorded in Khatian No.1836, R.S. Plot No.10296 after constructing permanent house and living there for about 45 years. The plaintiff and his deceased mother, Mrinalini Nath, residing very close to the house of the principal defendants and they had never possessed any iota of suit land. Mother of the plaintiff, Mrinalini Nath, after her marriage at first resided in her husband's house at Pakistan, now Bangladesh, and thereafter at Padmapur in the present homestead, which is now plaintiff occupying and she never claimed or possessed the suit land described in schedule 'A' of the plaint. Other proforma defendants also never possessed the suit land described in schedule 'A' of the plaint and the principal defendants have been possessing the suit land denying right, title and interest of other proforma defendants and ousted them from the suit land continuously in hostile assertion of their right. The principal defendants further contended that the land described in schedule 'B' of the plaint of Mouja-Kanchanpur belonged to Swasti Samabaya Samity Ltd. and the principal defendants along with proforma defendant Nos.4 to 8 were possessing the suit land described in schedule 'B' of the plaint being members of the Swasti Samabaya Samity and the land has been recorded in the

name of Swasti Samabaya Samity, but that Swasti Samabaya Samity has not been arrayed as defendant in the suit and, therefore, the suit is bad for non-joinder of necessary party. The answering principal defendants further contended that they being the absolute owner and possessor of the land described in schedule 'A' of the plaint entered into sale transactions by executing sale deeds mentioned in schedule 'C' of the plaint and those are genuine sale deeds executed on receipt of consideration and handing over of possession and the sale deeds are not liable to be quashed or set aside.

The principal defendants further contended that the suit land described in schedule 'A' of the plaint recorded in the name of principal defendants to the knowledge of the plaintiff and other proforma defendants and the khatians were finally published, but no objection was raised by the plaintiff or proforma defendants at any point of time. The suit land described in schedule 'B' of the plaint are in possession of the principal defendants and proforma defendant Nos.4 to 8 and the khatians also have been finally published long back but no objection raised by the plaintiff or other proforma defendants. It is clearly contended by the principal defendants that they have been possessing the suit land adversely within the knowledge of the plaintiff and other defendants and the world at large totally ousting the plaintiff and other defendants on and from 1st January, 1983 and accordingly, the plaintiff and other proforma defendants cannot have any right to the land described in

schedule 'A' of the plaint. Schedule 'B' land belonged to the Swasti Samabaya Samity Ltd. and principal defendants and proforma defendant Nos. 4 to 8 being the members of the Samity possessing the land described in schedule 'B' of the plaint to which the plaintiff and other proforma defendants have no right, title and interest in any manner. The principal defendants, therefore, contended that the plaintiff has no case at all and there is nothing to have partitioned of the suit land.

7. Proforma defendant Nos.12 and 14 by filing written statement admitted the claim of the plaintiff and sought for partition of the suit land. Other proforma defendants did not appear and the suit was decided ex-parte against the other proforma defendants.

8. The learned trial Judge considering the pleadings of the parties framed six issues, namely, :-

"(i) Whether the plaintiff has got cause of action for filing the suit?

(ii) Whether the suit is barred by law of limitation?

(iii) Whether the suit is maintainable in its present form?

(iv) Whether the registered sale deed bearing No.1-297 dt. 14.02.2008, 1-298 dt. 14.02.08 and 1-299 dt. 14.02.08 are fraudulent, collusive and not binding upon the plaintiff and liable to be cancelled and void?

(v) Whether the plaintiff is entitled to the decree as prayed for?

(vi) Whether the parties are entitled to any other relief?

9. In course of trial, the plaintiff examined himself as PW1 and also examined two more witnesses, namely, PW2, Samarjit Adhikari and PW3, Dinesh Chandra Nath. Apart from the oral testimony of the plaintiff and other witnesses, the plaintiff also proved the following documents in support of his case :-

"1. Exhibit-1. Khatian No.3355 of Dharmanagar town Mouja.

2. Exhibit-2. Khatian No.425/745.

3. Exhibit-3. Khatian No.425/744.

4. Exhibit-4. Certified true copy of sale deed No.1-297 of 2008.

5. Exhibit-5. Certified true copy of sale deed No.1-298 of 2008.

6. Exhibit-6. Certified true copy of sale deed No.1-299 of 2009.

7. Exhibit-7. Trance map of Dharmanagar Mouja No.19 sheet No.10(part).

8. Exhibit-8. Certified true copy of trance map of Dharmanagar town Mouja sheet No.12(part).

9. Exhibit-9. Certified true copy of trance map of Kanchanpur Mouja No.9 sheet No.2(part)."

10. Principal defendant No.2 examined himself as DW1 and also examined another witness, namely, DW2, Sukhendra Nath. Apart from oral evidence the principal defendants also proved the following documents marked as Exbt.-A to Exbt.-C :-

"1. Exhibit-A. Khatian No.1836 of Dharmanagar town Mouja.

2. Exhibit-B. Khatian No.425/744 of Kanchanpur Mouja.

3. Exhibit-C. Khatian No.525/740 of Kanchanpur Mouja."

11. The learned trial Judge decided all the material issues against the plaintiff and accordingly, dismissed the suit.

12. Aggrieved, the plaintiff preferred Title Appeal No.15 of 2010 in the Court of Additional District Judge, Dharmanagar, North Tripura and by impugned judgment dated 10.06.2011 the appeal has been dismissed and hence, this second appeal on the substantial question of law mentioned hereinbefore.

13. Learned senior counsel, Mr. Bhowmik appearing for the appellants argued that the trial Judge dismissed the suit of the plaintiff firstly on the ground that Swasti Samabaya Samity, Kanchanpur was a necessary party and since Swasti Samabaya Samity was not made a party in the suit, the suit was bad for non-joinder of necessary party and accordingly, decided the material issues against the plaintiff. Such decision of the trial Court, which is upheld by the appellate Court, was not justified since the suit land was allotted by Swasti Samabaya Samity in favour of Banka Behari Nath and being heirs of Banka Behari Nath the principal defendants and proforma defendant Nos.4 to 8 entered into the possession of the suit land described in schedule 'B' of the plaint. Swasti Samabaya Samity being a society was not at all a necessary party.

14. Learned senior counsel, Mr. Bhattacharji, on the other hand, has argued that Exbt.-2 and Exbt.-3, i.e., Khatian Nos.425/745 and 425/744, which the principal defendants also produced and marked as Exbt.-B and C, clearly show that the

suit land described in schedule 'B' of the plaint was recorded in the name of Swasti Samabaya Samity. In their plaint in para 19 the plaintiff contended that the suit land described in schedule 'B' of the plaint was possessed by Banka Behari Nath and Swasti Samabaya Samity allotted the said land to Banka Behari Nath. The plaintiff produced no document to show that Swasti Samabaya Samity allotted the land in the name of Banka Behari Nath. Even no khatian in the name of Banka Behari Nath is produced by the plaintiff. The principal defendants contended that the suit land described in schedule 'B' of the plaint belonged to Swasti Samabaya Samity and being the members of the Samity, the principal defendants and proforma defendant Nos.4 to 8 are possessing the suit land and Khatians accordingly prepared in the names of the principal defendants and proforma defendant Nos.4 to 8, which were finally published long ago and neither the plaintiff nor other proforma defendants raised any objection. Since Swasti Samabaya Samity was the owner of the land described in Schedule 'B' of the plaint, it was a necessary party in a suit for partition and since it has not been made a party, the partition suit is bad for non-joinder of necessary party and the Courts below rightly decided the issues against the plaintiff.

15. Though there is no substantial question of law formulated on the issue of non-joinder of necessary party, since it is argued vehemently, I have carefully considered the issue raised by learned senior counsel, Mr. Bhowmik and confronted by

learned senior counsel, Mr. Bhattacharji. While deciding issue No.3, the trial Court held that the suit was not maintainable for non-joinder of Swasti Samabaya Samity as defendant. The plaintiff in his pleadings made clear averment that the suit land owned and possessed by Banka Behari Nath and Swasti Samabaya Samity Ltd. and that Swasti Samabaya Samity allotted the land to Banka Behari Nath. The plaintiff produced no document to show that Swasti Samabaya Samity permanently allotted the suit land in the name of Banka Behari Nath conferring all right, title and interest and thereby created a permanent interest in favour of Banka Behari Nath. Since no document has been produced, the plaintiff's contention that the suit land was allotted by Swasti Samabaya Samity in favour of Banka Behari Nath does not stand at all. Rather from the Khatian produced by the plaintiff and principal defendants, i.e., Exbt.-3 and Exbt.-B, I find that Swasti Samabaya Samity is the owner of the land and the possession of the principal defendants and proforma defendant Nos.4 to 8 recorded in the khatian. The principal defendants contended that Swasti Samabaya Samity is the owner of the land and they being the members of the Samity possessing the land. Khatian in the name of Swasti Samabaya Samity and the principal defendants and proforma defendant Nos.4 to 8 prepared and finally published long ago and neither the plaintiff nor other proforma defendants raised any objection at any point of time. The plaintiff in his cross-examination clearly admitted that 'B' schedule land is now in occupation of Swasti

Samabaya Samity. It is, therefore, evident that Swasti Samabaya Samity was a necessary party and since the plaintiff did not array the Swasti Samabaya Samity as a defendant in the suit, the suit suffered from non-joinder of necessary party and the issue was rightly decided against the plaintiff.

16. The next contention raised by learned senior counsel, Mr. Bhowmik, is that the possession of one co-heir/co-sharer is the possession of all co-heirs/co-sharers is a settled principle and while the principal defendants were in possession of the suit land, it would mean the possession of the plaintiff and other proforma defendants. So, the right, title and interest of co-heirs/co-sharers cannot be extinguished unless there is clear and unequivocal evidence that the co-heirs/co-sharers in possession had ousted the other co-heirs/co-sharers and that the co-heirs/co-sharers in possession has acquired a hostile title over the suit land. He has contended that the defendants failed to prove that they had totally ousted the plaintiff and other proforma defendants from the suit land and acquired a hostile title over the suit land.

17. Learned senior counsel, Mr. Bhattacharji, countering the submission argued that the principal defendants clearly contended in their written statement that they have been possessing the suit land adversely within the knowledge of the plaintiff and other proforma defendants and to the knowledge of the world at large, totally ousting the plaintiff and other proforma

defendants on and from 1st January, 1983. In their evidence also they have made it clear. Khatians recorded in the name of the principal defendants in respect of 'A' schedule land clearly proved the fact that the principal defendants are in possession of the 'A' schedule land. The plaintiff is a close neighbour of principal defendants and neither he nor his deceased mother, Mrinalini, ever claimed any right, title, interest and possession in the suit land. Their rights, if any, submits learned senior counsel, Mr. Bhattacharji, were already extinguished because of the hostile continuous and uninterrupted possession of the principal defendants.

18. Both side relied on a three Judges' decision of the Apex Court in the case of **P. Lakshmi Reddy V. L. Lakshmi Reddy**, reported in **AIR 1957 SC 314**. Learned senior counsel Mr. Bhowmik further relied on a decision of the Apex Court in the case of **Sadasivam V. K. Doraisamy**, reported in **AIR 1996 SC 1724**.

19. No doubt, it is a settled principle that possession of one co-heir/co-sharer is the possession of all the co-heirs/co-sharers. But if some of the co-heirs/co-sharers remain in continuous hostile possession of the joint property, ousting the other co-heirs/co-sharers and that is proved by unequivocal evidence, the co-heirs/co-sharers in possession may be treated as acquired title by way of adverse possession. The plaintiff in his pleadings made no clear and specific averment that he or his

deceased mother, Mrinalini, or any other proforma defendants ever possessed the suit land described in schedule 'A' and 'B' of the plaint. The plaintiff rather contended that all documents in respect of suit land were in possession of principal defendant No.1 and the principal defendants were possessing the suit land. He demanded share to the usufruct and the principal defendants refused to give any share to him and other proforma defendants. So, it is clear from the pleadings of the plaintiff itself that neither the plaintiff nor his predecessor ever entered in the possession of the suit land after the death of Banka Behari Nath. The principal defendants contended that they totally ousted the plaintiff and other proforma defendants from 1st June, 1983. The khatians of 'A' schedule land, which are proved as Exbt.-1 and Exbt.-A by both side clearly show that the record of right finally prepared and published in the name of principal defendants. The plaintiff in his cross-examination clearly admitted that he was aware that the record of rights was finally published in the year 1992-1993. In his cross-examination the plaintiff stated that his grandfather on the maternal side died in the year 1982 and thereafter his maternal uncles got the land of his grandfather recorded in their names. He has also stated that his mother and her sisters, namely, Indubala Nath and Padmabala Nath were not given any share of the suit land of plaint schedule 'B'. They have been totally ousted from the land of schedule 'B'. His mother and his said two sisters and brothers, namely, Satyabrata Nath, Parimal Nath and Birendra Chandra Nath have been totally ousted from

the suit land of plaint schedule 'A'. While the plaintiff himself made this clear statement that his mother and predecessors of other proforma defendants were totally ousted from the suit land, I am inclined to hold that the plaintiff admitted his and other co-sharers ouster from the suit land by the principal defendants.

20. The Supreme Court in the case of **P. Lakshmi Reddy(supra)** has clearly held that ouster of the non-possessing co-heir by the co-heir in possession who claims his possession to be adverse, should be made out. The possession of one co-heir is considered, in law, as possession of all the co-heirs and when one co-heir is found to be in possession of the properties it is presumed to be on the basis of joint title. The co-heir in possession cannot render his possession adverse to the other co-heir, not in possession, merely by any secret hostile animus of his own part in derogation of the other co-heir title. The Court has held that it is a settled rule of law that as between co-heirs there must be evidence of open assertion of hostile title, coupled with exclusive possession and enjoyment by one of them to the knowledge of the other so as to constitute ouster. We may gainfully refer here the observation of the Apex Court in para 4 of the judgment, which reads as follows :-

"4. Now, the ordinary classical requirement of the adverse possession is that it should be nec vi nec clam nec precario. (See Secretary of State for India v. Debendra Lal Khan, 61 Ind App 78 at p 82: (AIR 1934 PC 23 at p. 25)(A). The possession required must be adequate in continuity, in publicity and in extent to show that it is possession adverse to the competitor. (See, Radhamoni Debi v. Collector of Khulna, 27 Ind App 136 at p.140(PC)(B). But it is well-settled that in order to establish adverse possession of one co-heir as against another it is enough to show that one out of them is in sole possession and enjoyment of the

profits, of the properties. Ouster of the non-possessing co-heir by the co-heir in possession who claims his possession to be adverse, should be made out. The possession of one co-heir is considered, in law, as possession of all the co-heirs. When one co-heir is found to be in possession of the properties it is presumed to be on the basis of joint title. The co-heir in possession cannot render his possession adverse to the other co-heir not in possession merely by any secret hostile animus on his own part in derogation of the other co-heir's title. (See Corea v. Appuhamy, 1912 AC 230(C)). It is a settled rule of law that as between co-heirs there must be evidence of open assertion of hostile title, coupled with exclusive possession and enjoyment by one of them to the knowledge of the other so as to constitute ouster. This does not necessarily mean that there must be an express demand by one and denial by the other. There are cases which have held that adverse possession and ouster can be inferred when one co-heir takes and maintains notorious exclusive possession in assertion of hostile title and continues in such possession for a very considerable time and excluded heir takes no steps to vindicate his title. Whether that line of cases is right or wrong we need not pause to consider. It is sufficient to notice that the Privy Council in [N. Varada Pillai v. Jeevarathnamml](#), AIR 1919 PC 44 at p.47(D) quotes, apparently with approval, a passage from [Culley v. Deod Taylerson](#), (1840) 3 P&D 539 : 52 RR 566(E) which indicates that such a situation may well lead to an inference of ouster "if other circumstances concur". (See also [Govindrao v. Rajabai](#), AIR 1931 PC 48 (F). It may be further mentioned that it is well-settled that the burden of making out ouster is on the person claiming to displace the lawful title of a co-heir by his adverse possession."

21. In the case at hand the plaintiff failed to produce any evidence either documentary or oral that he or his predecessor in interest ever entered into the possession of the suit land after the death of Banka Behari Nath. It is admitted by the plaintiff that his house and the house of principal defendants are very close to each other and the distance is about 400/500 cubits. The plaintiff has also admitted that principal defendant No.1 is living in the house of 'A' schedule land for last 25 years and he was born in his house, which is adjacent to the house of principal defendants. There is nothing on record to show that after the death of Banka Behari Nath at any point of time Mrinalini, the mother of the plaintiff, claimed share of the suit land. Khatians were prepared in the name of principal defendants in respect of

'A' schedule land and those were finally published and the plaintiff clearly admitted that he was aware of the record of right finally prepared and published in the name of the principal defendants in the year 1992/1993 and so, at the time of preparation of record of rights also neither he nor other proforma defendants raised any objection. Banka Behari Nath died in the year 1982 and the principal defendants contended that they have ousted the plaintiff and other proforma defendants from the suit land since 01.01.1983. It is, therefore, amply clear that the principal defendants acquired a hostile title over the suit land by their continuous and exclusive hostile possession and enjoyment of the suit land to the knowledge of the plaintiff and other proforma defendants. Therefore, so far the law laid down by the Apex Court in the case of **P. Lakshmi Reddy(supra)** the principal defendants claimed that they are in exclusive possession of the suit land and they have ousted the plaintiff, his predecessors and other proforma defendants (their predecessors) from the suit land is well established and both the trial Court as well as the appellate Court rightly arrived at a conclusion that the plaintiff was already ousted from the suit land.

22. In the case of **Sadasivam(supra)** the Supreme Court reiterated the same principle as enunciated in the case of **P. Lakshmi Reddy(supra)**. The fact of the case of **Sadasivam(supra)** is quite distinguishable to that of the fact of the present case. However, we may gainfully refer here the

observation of the Apex Court in para 13 of the judgment, which reads as follows :-

"13. It has been contended by the learned Counsel for the respondent that if the sale deed was a sham document, not intended to be acted upon. Marappa should have established his possession of the lands under the sale deed to the exclusion of Doraisamy. We may indicate here that there is no finding by the High Court as to the exclusive possession of either of the party. Even if it is accepted that Doraisamy had exercised possession over the lands covered by the sale deed, such possession may be explained by indicating that Doraisamy obtained interest to the extent of half share by virtue of the will executed by Karuppanna. Hence, as a co-sharer, he was expected to possess the lands not partitioned between the parties. Exclusive possession of a co-sharer does not amount to adverse possession against other co-sharers unless such possession is exercised by ousting the other co-sharers. There is no such case of ouster of a co-sharer and thereafter exercise of exclusive possession openly and as of right by Doraisamy. That apart, the sale deed was executed by Marappa in September 1984 and the suit was instituted by Marappa for declaration of the sale deed as sham and invalid document in 1985. Hence, question of title by adverse possession did not arise."

23. The above observation also supports the case of the principal defendants in the given facts and circumstances of this case and hence, I have no hesitation to arrive at a conclusion that the right, title and interest of the plaintiff and other proforma defendants were ousted because of the continuous uninterrupted hostile possession of the principal defendants in the suit land mentioned in schedule 'A' of the plaint and the land described in schedule 'B' of the plaint is simply belonged to Swasti Samabaya Samity and the principal defendants and proforma defendant Nos.4 to 8 are the possessor of the suit land and that land also cannot be subject to partition as claimed by the plaintiff. The trial Court rightly decided the issues against the

plaintiff and the appellate Court rightly upheld the judgment and decree passed by the trial Court. The second appeal is, therefore, found to be devoid of any merit and accordingly, the same is dismissed with cost.

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

JUDGE