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

W.P.(C) No.427 of 2014

1. **Shri Babul Chandra Das,**
2. **Shri Amar Manik Das,**
3. **Shri Udai Manik Das,**
4. **Shri Satyaranjan Das,**
5. **Shri Sanjoy Das**

   -all are the sons of late Satish Chandra Das, residing at Kamalnagar, Bishnu Master Para, P.O. Moharcherra, P.S. Kalyanpur, District- Khowai, Tripura

6. **Smt. Laxmi Rani Das,**
   wife of Shri Adhir Das, resident of Dasda Kanchanpur, P.O. & P.S. Kanchanpur, District – North Tripura

7. **Smt. Saraswati Das**
   wife of Shri Nirmal Paul, resident of Kamalghat, P.O. Kamalghat, P.S. Lefunga, District – West Tripura

.... Petitioners

– V e r s u s –

1. **The State of Tripura,**
   represented by the Secretary Department of Revenue, Government of Tripura, P.O. Kunjaban, P.S. New Capital Complex, District- West Tripura

2. **The District Collector,**
   Khowai District, P.O. & P.S. Khowai

3. **The Sub-Divisional Magistrate,**
   Teliamura, P.O. & P.S. Teliamura, District - Khowai

4. **Shri Rakhal Mitra,**
   son of late Khagendra Mitra of Kamalnagar, Bishnu Master Para, P.O. Moharcherra, P.S. Kalyanpur, District – Khowai, Tripura

.... Respondents

BEFORE
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the petitioners	:	Mr. A.K. Bhowmik, Sr. Advocate Mr. R. Dutta, Advocate
For the respondents No. 1 to 3	:	Mr. S. Chakraborty, Addl. G.A.
For the respondents No. 4	:	Mr. B. Saha, Advocate Mr. Samarjit Bhattacharji, Advocate
Date of delivery of Judgment & Order	:	**28.09.2015**
Whether fit for reporting	:	

Yes	**No**
√	

JUDGMENT & ORDER (ORAL)

Heard Mr. A.K. Bhowmik, learned senior counsel assisted by Mr. R. Dutta, learned counsel appearing for the petitioners as well as Mr. S. Chakraborty, learned Addl. G.A. appearing for the respondents No.1,2 & 3 and Mr. B. Saha and Mr. Samarjit Bhattacharji, learned counsel appearing for the respondent No.4.

[2] The dispute in the writ petition falls within a very short compass. On 22.04.1976, the land measuring 4.07 acres pertaining to Khatian No.812, C.S. Plot Nos.9/2936, 9/2940, 9/2937, 854, 853/2931, 853 and 849 corresponding to R.S. Plot Nos.18,24,26,2665,2727,2728 and 2729 in Mouja- Kamalnagar was allotted in favour of late Satish Chandra Das, the predecessor in interest. Satish Chandra Das continued his possession till his death i.e. on 03.08.2002 and thereafter, the petitioners are in possession over the said land. According to the petitioners on 14.05.2013, the respondent No.4 who is sharing a common boundary along with R.S. Plot No.2729 had dispossessed the petitioners from a piece of land, measuring 0.16 acres (8 gandas) from the R.S. Plot No.2729 by way of stealthy encroachment. The petitioners No.1 to 5 instituted a suit being Title Suit No.07 of 2014 on 16.03.2014 in the court of the Civil Judge, Jr. Division, Khowai seeking declaration of title and recovery of possession from the respondent No.4. In that suit, the petitioners No.6 and 7 have been impleaded as the proforma respondents. On 30.05.2013, the respondent No.4 made an application to the respondent No.2 that he was in possession over 0.42 acres of land on the said R.S. Plot No.2729 since his birth but that land was not recorded in his name. He prayed for recording his name in the said R.S. Plot. Based on the said application dated 30.05.2013, the respondent No.2 initiated a revenue proceeding being Revenue Case No.79 of 2013 under Section 95 of the TLR & LR Act, 1960. A field inquiry was carried out by the respondent No.3. In the field inquiry report dated 10.02.2014 as submitted by the Deputy Collector, Teliamura and the report dated 20.02.2014, Annexures-5 & 6 respectively to the writ petition where it has been shown that the respondent No.4 is having his possession over that disputed piece of land. The petitioners raised serious objection against the said report and stated that the respondent No.4 forcibly dispossessed the petitioners from 0.16 acres of land on 14.05.2013. It is apparent that the said application for correction of the ROR was filed by the respondent No.4 much before the institution of the suit.

[3] Mr. A.K. Bhowmik, learned senior counsel appearing for the petitioners has submitted that despite knowledge of pendency of a civil suit, the respondent No.2 passed the final order on 11.06.2014 in Revenue Case No.79 of 2013 holding that the piece of land measuring 0.16 acres out of R.S. Plot No.2729 was not under possession of Satish Ch. Das but that was in the possession of the respondent No.4 and the said piece of land was wrongly allotted in favour of Satish Ch. Das.

[4] As consequence of that order, it has been directed that the respondent No.3 should initiate a fresh proceeding for cancellation of the allotment of the land in question. In compliance of that direction, the respondent No.3 had started a revenue case being Revenue Case No.01 of 2014 by the order dated 08.09.2014 for cancellation of the allotment order in respect of the said piece of land measuring 0.16 acres pertained to R.S. Plot No.2729. The petitioners entered their appearance in the said revenue case and filed an application seeking time on 25.09.2014 for filing the objection. The respondent No.3 granted such time and fixed the matter on 27.12.2014.

Now, by filing this writ petition, the petitioners have challenged the order dated 11.06.2014 passed by the respondent No.2 in Revenue Case No.79 of 2013 as well as the initiation of proceeding for cancellation of the allotment of the land made in the year 1976 by the order dated 08.09.2014 being Revenue Case No.01 of 2014 by the respondent No.3.

[5] Mr. Bhowmik, learned senior counsel appearing for the petitioners has submitted that if the suit succeeds, the very basis of the order dated 11.06.2014 would be removed. Fundamentally, according to Mr. Bhowmik, learned senior counsel the dispute centres around the title of the suit land measuring 0.16 acres. When a suit is pending in the civil court, the order dated 11.06.2014 should not have been passed by the respondent No.2.

[6] From the other side, Mr. S. Chakraborty, learned Addl. G.A. appearing for the respondents No.1,2 & 3 has submitted that the order dated 11.06.2014 is based on the reports of the field inquiry made by the two responsible officers and as such, there is no infirmity in the proceeding. Mr. Chakraborty, learned Addl. G.A. has further submitted that the suit was instituted subsequent to the institution of the revenue Case No.79 of 2013. Therefore, the respondent No.2 was under no obligation to stay the proceeding. Similarly, he has submitted that in compliance of the said order dated 11.06.2014 when the respondent No.3 had initiated the proceeding for part cancellation of the allotment made in the year 1976, being revenue case No. 01 of 2014 by the order dated 08.09.2014, he did not commit any wrong. As such, this Court may not be inclined to interfere with the impugned orders under its jurisdiction conferred by Article 226 of the Constitution of India.

[7] Mr. B. Saha, learned counsel appearing for the respondent No.4 has supplemented by submitting that against the reports of the field inquiry filed by two responsible officers of the administration, the petitioners raised their objection and on assessing due reasons, the said objection was rejected. As such, there is no infirmity in the proceeding.

[8] From the rival contentions as exposited by the learned counsel appearing for the parties, two pertinent questions fall for consideration by this Court viz:

> **(i) Whether the revenue court is under any obligation to stay the proceeding when a suit is filed by one of the parties as regards the title and when the dispute before it substantially touches the issue of title.**
>
> **(ii) Whether the civil court has got the jurisdiction to decide the issue of the title in view that the very basis of the title by the order of allotment was being examined by the authority which made such allotment.**

[9] It is well settled that when a dispute regarding the title or it variants is in seison of the revenue authority and if it is found that on the same title and/or for the identical cause, a suit is pending in the competent civil court, it is the duty of the revenue authority to stay the further proceeding and to wait for the outcome in the civil suit. Unless that practice is followed, there would be conflict and the decision passed by the competent civil court would eclipse the decision of the revenue authority or it would lead to travesty of justice. As such, the revenue court before passing the order dated 11.06.2014 should have waited for the outcome of the civil suit pending in the competent civil court. However, this Court would not make any comment on the merit of the order dated 11.06.2014. The said order dated 11.06.2014 shall remain subject to the decision of the civil court. If the civil court decides the title and possession in favour of the petitioners, obviously the order dated 11.06.2014 shall be treated as inoperative for all purposes. The other question that is being considered by this Court is that when the title as acquired by way of allotment is being examined by the competent authority which made the allotment can be the subject matter of the subsequent suit or not. There is no prohibition that such suit cannot be filed when the dispute centres around the title or its variants. In this regard, proviso to Section 188 of the TLR & LR Act has removed all ambiguities. Proviso to Section 188 of the TLR and LR Act postulates as under:

> **188. No suit or other proceeding shall, unless otherwise expressly provided in this Act, lie or be instituted in any civil court with respect to any matter arising under and provided for by this Act.**
>
> **Provided that if in a dispute between parties a question of title is involved, a civil suit may be brought for the adjudication of such question.**

Sujay

[10] As such the general bar, made under Section 188 of the TLR & LR Act has been waived or excepted when the dispute centres around title and hence, it cannot *prima-facie* be said that the suit can be declared barred under Section 9 of the C.P.C. However, this Court is not making any comment on the merit of the maintainability of the suit vis-a-vis the revenue proceeding. Hence, the respondent No.4 would be at liberty to raise the question of the maintainability of the suit in accordance with the procedure as prescribed by law.

[11] Having held so, the respondent No.3 is directed to stay the further proceeding of Revenue Case No.01 of 2014 till the Title Suit No.07 of 2014 is decided.

Accordingly, this writ petition is allowed to a limited extent as indicated above. There shall be no order as to costs.

JUDGE

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