

THE HIGH COURT OF TRIPURA  
AGARTALA

**RSA NO. 12 OF 2002**

1. Shri Tapas Deb,
2. Shri Bikash Deb,  
- both sons of late Nepal Chandra Deb,
3. Smti. Helen Deb (Sen),
4. Smti. Dulan Deb (Sarkar),  
W/O. Shri Tapan Sarkar,
5. Smti. Bela Deb,  
W/O. Late Nepal Chandra Deb,  
- All residing at Arundhuti Nagar,  
P.S. West Agartala, Dist.-West Tripura,
6. Shri Sankar Sur,  
S/O. Late Amar Sur,  
resident of M.B.Tilla,  
Road No.6, P.S.-West Agartala,  
District-West Tripura.

..... *Defendant-Appellants.*

-Vs -

1. Sri Rati Ranjan Chakraborty,  
S/O. Late Gurudas Chakraborty,  
Resident of Arundhuti Nagar,  
P.S. West Agartala, Dist.-West Tripura,

..... *Plaintiff-Respondent.*

2. The State of Tripura,  
Represented by the Secretary  
to the Government of Tripura,  
Department of Revenue,  
Agartala.
3. The District Magistrate & Collector,  
West Tripura, Agartala.
4. The Sub-Divisional Officer, Sadar,  
Agartala, West Tripura.

..... *Defendant-Respondents.*

**BEFORE  
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA**

For the defendant-appellants : Mr. A.K.Bhowmik, Sr.Advocate,  
Mr. B.Battacharji,  
Ms. K. Deb, Advocates.

For the plaintiff-respondent : Mr. D. Chakraborty,  
Mr.P.Chakraborty,  
Mr.P.Datta, Advocates,

Date of hearing : 10.05.2013.

Date of delivery of  
Judgment and order : 31.05.2013.

Whether fit for reporting : 

YES	NO
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**JUDGMENT & ORDER**

This regular second appeal is directed against the judgment and decree dated 15.12.2001 passed by the learned Additional District Judge, West Tripura, Agartala in Title Appeal No. 08 of 2000, whereby he allowed the appeal of the plaintiff and set aside the judgment and decree of the learned Civil Judge (Junior Division), Court No.1, Agartala, West Tripura in Title Suit No. 21 of 1998, whereby the learned Trial Court had dismissed the suit of the plaintiff being time barred. After setting aside the judgment, the learned lower appellate Court decreed the suit of the plaintiff.

2. Briefly stated the undisputed facts are that the respondent No.1 (hereinafter referred to as 'plaintiff') filed Title Suit No. 21 of 1998 before the learned trial Court against the State and officials of the State of Tripura and the private defendants (herein after referred to as 'appellants'). In this suit it was claimed

that the land described in Schedule-A of the plaint was jote land belonging to the plaintiff. Out of this land, the land measuring 975 sq. ft. i.e., 1 ganda 1 kara and 11 dhurs as reflected in Schedule-B of the plaint was the subject matter of the suit (herein after referred to as 'the suit land'). The land in Schedule-B was the part and parcel of the land in Schedule-A.

3. The original defendant Nos. 5 and 6 had filed an application before the Collector under Section 95 of the Tripura Land Revenue and Land Reforms Act, 1960 (herein after referred to as 'the Act') against the plaintiff and five others. In these proceedings before the Collector it was prayed that the land comprised in Schedule-B was actually a path and should be recorded as such in the revenue record. A prayer was made for correction of the revenue entries and it was prayed that the land comprised in Schedule-B be recoded as a path. The case was registered as Revenue Case No. 58 of 1988 and vide order dated 18.04.1989 the Collector rejected the petition filed by the defendants and directed the parties to approach the civil Court for declaration of their rights. Thereafter the defendant Nos. 5 and 6 filed an application on 10.07.1989 under Section 96 of the Act for review of the order dated 18.04.1989. This review petition was allowed on 21.11.1991 and the Collector directed that the land in B-Schedule be deleted from the land in A-Schedule and be recorded as a public path in the revenue record.

4. According to the plaintiff, this order of review was not implemented by anybody. On 19.03.1994 the S.D.M., Sadar

passed an order for removal of all the obstructions from the suit land. That order was also not implemented. Finally on 22.02.1997 the defendant No.4 gave a notice to the plaintiff that demarcation of the suit land would be conducted on 25.02.1997, but no demarcation was conducted. Another notice was issued on 30.05.1997, but demarcation could not be conducted since there was opposition by the plaintiff and others.

5. Thereafter the plaintiff filed writ petition before this Court, which was registered as C.R. No. 399 of 1997. The said writ petition was dismissed on 17.12.1997. Thereafter the plaintiff filed writ appeal No. 01 of 1998, which was disposed of with the following observations :

***"It is not necessary for us to go into the aforesaid contention of Mr. Chakraborty on the scope of review because we are of the view that the dispute between the parties in respect of the land is such that the matter can be best sorted out in a civil suit. Since the Collector, West Tripura, in the impugned order dated 21.11.91 has held that the matter can be taken to civil Court if the appellant is aggrieved, in our view also it would be more appropriate if the appellant is left to claim his relief by way of civil suit.***

..... .....

***To enable the appellant to move the civil court for appropriate order of injunction, the demarcation of the disputed land sought to be made by the Sub-Divisional Officer, Bishalgarh, West Tripura by his letter dated 30.5.97 shall remain suspended for a period of three(3) months from today, in case such demarcation is not already over."***

6. Consequently, the plaintiff filed this suit praying for the following reliefs:

***"(a) For declaration that the order dated 21.11.1991 passed by the Collector, West Tripura, Agartala in Revenue Case No. 38 of 1989 is illegal;***

- (b) For declaration that the order dated 19.3.1994 passed by the Sub-Divisional Magistrate, Sadar under Section 133 of the Criminal Procedure Code in pursuance of order dated 21.11.1991 of the Collector is void;**
- (c) For declaration that the plaintiff has right, title and interest of the suit land;**
- (d) For declaration that there is no path way over the suit land; and**
- (e) For perpetual injunction restraining the defendant Nos. 1 to 4 from executing the order dated 21.11.1991."**

7. The defendants contested the suit and on the pleadings of the parties, the learned trial Court framed the following issues:

- "I. Whether the suit is maintainable in its present form?**
- II. Whether the suit is barred by law of limitation?**
- III. Whether the order dated 21.11.1991 of the Collector, West Tripura, was wrongly made declaring the suit land as Govt. khas land being the path way?**
- IV. Whether the order dated 21.11.1991 of the Collector, West Tripura, is liable to be declared as void?**
- V. Whether the plaintiff is entitled to get any perpetual injunction restraining the defendants from executing the order dated 21.11.91 of the Collector?**
- VI. Whether the plaintiff is entitled to get any other relief as sought for?"**

8. Issue Nos. I and III were decided in favour of the plaintiff and it was held that the plaintiff was actually in possession of the land and that the decision of the Collector, West Tripura was wrong as no path was existed on the land. However, Issue No.II was decided against the plaintiff and it was held that the suit filed by the plaintiff was barred by limitation since it had not been filed within three years of the order passed by the Collector, West

Tripura allowing the review petition and, therefore, the plaintiff's prayer for declaring the order dated 21.11.91 to be vague and was time barred. The suit of the plaintiff was, therefore, dismissed.

9. The plaintiff filed an appeal and the learned lower appellate Court came to the conclusion that the suit was within time and not barred by limitation and consequently decreed the suit of the plaintiff. Hence, this second appeal.

10. This appeal was admitted on 23.07.2002 on the following substantial questions of law :

***"(i) Whether the decision of the learned First Appellate Court in reversing the decision of the learned Trial Court in Title Suit No. 21 of 1998 on the question as to whether the suit is barred by limitation sustainable in law?***

***(ii) Any other substantial question of law that may arise during the course of hearing."***

11. The only issue to be decided is whether the suit of the plaintiff was within time. Sri A. K. Bhowmik, learned senior counsel appearing for the defendant-appellants submits that the learned lower appellate Court gravely erred in holding that the suit was within time. According to him, the suit ought to have been filed within one year, or at the most within three years of the order being passed by the Collector, West Tripura in review petition on 21.11.1991. Since the suit was filed on 28.04.1998, the same was miserably barred by limitation. Sri Bhowmik further contends that the High Court neither granted extension of time in filing the suit nor it condoned the delay. He lastly contends that since the High

Court has upheld the order of the Collector, the Civil Court would not have come to a conclusion that the order is bad in law.

12. On the other hand, Sri D. Chakraborty, learned counsel appearing for the respondent submitted that the judgment of the learned lower appellate Court was totally legal calling for no interference in this appeal.

13. I have given my careful consideration to the case. No doubt, if limitation is to be calculated from the date of the order, i.e. 21.11.1991, then the suit would be barred by limitation. However, the matter is not so simple. True it is that one of the main prayers made by the plaintiff was that the declaration be granted that the order of the Collector dated 21.11.1991 was void and illegal. However, this was not the only prayer. He also prayed for a declaration of his right, title and interest on the suit land. The revenue authorities can only correct the revenue entries, but cannot decide the right, title and interest of any party on the suit land. The plaintiff also prayed for decree of permanent injunction restraining the defendants from interfering in his land. He claimed that the suit was within limitation from the date when the private defendants started interfering in his possession. Lastly, it was submitted that though orders had been passed, they were never implemented and the plaintiff continued to be in possession of his land and his right to sue arose when his possession was actually interfered with.

14. On facts both the learned Courts below have given findings in favour of the plaintiff. It has held that the plaintiff is in possession of the land. Both Courts have come to the conclusion that there was no path over the suit land. Therefore, the order dated 21.11.1991 passed by the Collector in review petition was totally illegal. If a party despite an order continues to remain in possession of the land and nobody interferes in his possession, it may or may not file a suit challenging the order whereby revenue entries have been corrected.

15. I am in agreement with the learned lower appellate Court that there were a series of acts which gave rise to the cause of action and the right to sue actually accrued when the defendants tried to assert their right in the suit land and infringe upon the rights of the plaintiff. There was a finding of fact that there was no path in existence and the land was in possession of the plaintiff. Even after the S.D.M passed an order Exbt-7 in 1994, the said order was not implemented. Therefore, the suit was within limitation.

16. The contention of Sri Bhowmik that the Civil Court could not have declared the order of the Collector to be illegal when the said order had been upheld by the High Court is without any merit. Neither the learned Single Judge nor the Division Bench gave any findings on the merits of the order passed by the Collector. The writ petition was disposed of only on the ground that since the Collector himself had directed the parties to establish their rights in the civil Court, the Court was rejecting the writ

petition. However, liberty was given to the parties to establish their rights in a civil Court. The order of the Collector and the writ Court clearly indicate that both the Collector and the Writ Court thought, serious question of title are involved it would be appropriate if the matter is settled in the civil Court. Therefore, this argument is also rejected.

17. In view of the above discussion, I find no merit in the appeal filed by the appellants and the same is dismissed with costs assessed at Rs.2,000/- (Rupees two thousand) only.

**CHIEF JUSTICE**