

THE HIGH COURT OF TRIPURA
AGARTALA

RSA NO.46 OF 2006

- 1(a). Smti. Laxmi Patari (Datta),
W/O. Late Monoj Kanti Datta,
- 1(b). Smti. Poulami Datta,
D/O. Late Monoj Kanti Datta,
- 1(c). Shri Pallab Datta (Minor),
S/O. Late Monoj Kanti Datta, represented
by his natural guardian mother and next
friend Smti. Laxmi Patari (Datta) at serial No.1(a).
-All are residents of Saltilla, P.S. Belonia,
District-South Tripura.
2. Smti. Abha Datta (Majumder),
Wife of Sri Rakhal Majumder,
Village-Mirja, P.S. R.K. Pur,
District-South Tripura.

..... **Plaintiff Appellants.**

- V e r s u s -

- 1(a). Smti. Bibha Datta,
W/O. Late Nripendra Datta,
- 1(b). Shri Kartik Datta,
S/O. Late Nripendra Datta,
- 1(c). Shri Sanjit Datta,
S/O. Late Nripendra Datta,
- 1(d). Shri Tutan Datta,
S/O. Late Nripendra Datta,
- 1(e). Smti. Chandana Datta,
D/O. Late Nripendra Datta,
- 1(f). Smti. Bandhana Datta,
D/O. Late Nripendra Datta,
-All of village Beltilla, P.S. Belonia,
District-South Tripura.

..... **Defendant Respondents.**

2. Smt. Mamata Datta (Roy),
Wife of Sri Nepal Roy of Rajnagar,
P.S. Santirbazar, District-South Tripura.
3. Niva Datta (Majumder),
Wife of Sri Biraj alias Bijoy Majumder,
Village-Fulkumari,
P.S.-R.K. Pur,
District-South Tripura.

..... **Plaintiff Respondents.**

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

For the appellants	: Mr. A.K. Bhowmik, Sr. Advocate, Ms. A. Banik, Advocate.
For the respondents	: Mr. S.M. Chakraborty, Sr. Advocate, Ms. B. Chakraborty, Advocate.
Date of hearing	: 27.07.2015.
Date of judgment	: 30.09.2015.
Whether fit for reporting	: YES.

JUDGMENT & ORDER

This appeal by the plaintiff-appellant is directed against the judgment and decree dated 11.8.2006 passed by the learned Additional District Judge, Belonia, South Tripura in Title Appeal No.12 of 2005 partly modifying the judgment and decree dated 09.6.2005 passed by the learned Civil Judge, Junior Division, Belonia, South Tripura in Title Suit No.09 of 1998.

2. Plaintiffs Monoj Kanti Datta, Smti. Kiranmoyee Datta, Smti. Mamata Datta (Roy), Smti. Niva Datta (Majumder) and Smti. Abha Datta (Majumder) instituted Title Suit No.09 of 1998 against Sri Nripendra Kr. Datta praying that they were the owners of the suit land described in the schedule and prayed that a decree for possession of the suit land by removing all obstructions be passed in their favour. They also prayed for correction of Revisional Survey Khatian No.468 wherein the name of the defendant had been entered in place of the plaintiffs.

3. The case of the plaintiffs was that they were the legal heirs of Late Sudhangshu Bimal Datta who had purchased 588 decimal of land from one Nishi Kanta Datta vide registered sale deed No.3935 dated 07.7.1972. According to the plaintiffs, Nishi Kanta Datta had permitted defendant Nripendra Kr. Datta to reside in one portion of the dwelling house as permissive possessor on the condition that he would handover possession of the dwelling house on demand. Nripendra Kr. Datta continued to reside in the house and Late Sri Nishi Kanta Datta permitted him to stay on on the condition that he would vacate the suit land after 1½ months.

4. Instead of vacating the suit land, the defendant Nripendra Kr. Datta filed a suit bearing No.T.S. 230 of 1972 in the Court of the learned Munsiff, Belonia for cancellation of sale deed No.3935 dated 07.7.1972 and for perpetual injunction restraining Sudhangshu Bimal Datta from interfering in his possession. This suit was filed by Nripendra Kr. Datta and Smti. Labanya Prabha Datta. Smti. Labanya Prabha Datta was the wife of Nishi Kanta Datta and in the said suit it was claimed that Nripendra Kr. Datta had been adopted by Nishi Kanta Datta and his wife when he was only two months old. It was also alleged that the defendant Sudhangshu Bimal Datta had unduly influenced Nishi Kanta Datta in executing a sale deed No.3935 of the suit land in his favour on 07.7.72. According to the plaintiff, no consideration money was paid and there was no valid sale deed. Sudhangshu Bimal Datta who is the predecessor in interest of the present plaintiffs contested the suit. According to him, Nishi Kanta Datta had sold

the suit land to him since he was tortured by his wife and Nripendra Kr. Datta. The trial Court decreed the suit in favour of the present defendant Nripendra Kr. Datta. The defendant filed an appeal being Title Appeal 15 of 1982. In the appeal, the appellate Court held that the sale deed was a valid sale deed and that Nripendra Kr. Datta was not the adopted son of Nishi Kanta Datta. Thereafter, the present defendant filed RSA 22 of 1982 and in this regular second appeal the learned Single Judge of the Agartala Bench of the Gauhati High Court upheld the finding of the learned lower appellate Court that Nripendra Kr. Datta was not the son of Nishi Kanta Datta. The Title Suit No.230 of 1972 was thus dismissed. Therefore, there is a clear cut finding that Nripendra Kr. Datta is not the owner of the land. There can be no dispute with regard to this fact.

5. After the suit filed by Nripendra Kr. Datta was dismissed, the legal heirs of Sudhangshu Bimal Datta filed a suit for recovery of possession of the land from Nripendra Kr. Datta on the ground that the civil suit of Nripendra Kr. Datta having been dismissed, they are the true owners being the sole legal heirs of Sudhangshu Bimal Datta. It was alleged that after the judgment was passed in RSA 22 of 1982, the plaintiffs approached the defendant Nripendra Kr. Datta and requested him to vacate the land but when he did not do so, they had to file the fresh suit. This suit was contested by Nripendra Kr. Datta on various grounds and one of the pleas raised was that the suit is barred by the law of limitation and that the plaintiffs had suffered the defendant being

in adverse possession of the suit land for more than 12 years and so their right, title in the land stood extinguished.

6. The learned trial Court held that the plaintiffs were owners of the suit land and were entitled to recovery of possession and accordingly decreed the suit. The learned trial Court also passed a decree for correction of the Khatian. Nripendra Kr. Datta challenged this judgment and decree. The main ground raised was that when Nripendra Kr. Datta filed Title Suit No.230 of 1972, Sudhangshu Bimal Datta had not filed any counter claim nor filed any separate suit claiming possession of the land. In Title Suit 230 of 1972, the plaintiff had claimed himself to be the owner of the suit land and, therefore, his possession was adverse and hostile to the true owner. The learned lower appellate Court accepted the plea and held that though the plaintiffs were owners of the suit land, they are not entitled to get recovery of the possession of the land. He further went on to hold that they are entitled to get compensation to the extent of 60% of the present market value of the entire suit land under Khatian No.468 and on receipt of 60% of the market value of the entire suit property, the respondent-plaintiff shall execute the sale deed in favour of the appellant.

7. This judgment has been challenged by the original plaintiffs and they have claimed that they are entitled to the possession of the entire suit land.

8. Sri A.K. Bhowmik, learned Sr. Counsel for the plaintiff-appellants, submits that the earlier suit was decided in the year

1996 and the cause of action arose only after the year 1996 and, therefore, the suit filed is within limitation. He further submits that since the earlier suit was contested on merits, it was not necessary to file a counter claim or a counter suit. His next submission is that unless the earlier suit filed by Nripendra Kr. Datta was disposed of, no fresh suit could be filed. Immediately after disposal of the suit, the present suit was filed. Lastly, it is urged that there is no clear cut plea of adverse possession.

9. Sri Bhowmik, learned Sr. Counsel, has relied upon the judgment of the Apex Court in ***T. Anjanappa and others vs. Somalingappa and another, [(2006) 7 SCC 570]*** wherein in para-12, the Apex Court held as follows:-

“12. The concept of adverse possession contemplates a hostile possession i.e. a possession which is expressly or impliedly in denial of the title of the true owner. Possession to be adverse must be possession by a person who does not acknowledge the other's rights but denies them. The principle of law is firmly established that a person who bases his title on adverse possession must show by clear and unequivocal evidence that his possession was hostile to the real owner and amounted to denial of his title to the property claimed. For deciding whether the alleged acts of a person constituted adverse possession, the animus of the person doing those acts is the most crucial factor. Adverse possession is commenced in wrong and is aimed against right. A person is said to hold the property adversely to the real owner when that person in denial of the owner's right excluded him from the enjoyment of his property.”

10. He has also placed reliance on the judgment of the Apex Court in ***Hemaji Waghaji Jat vs. Bhikhabhai***

Khengarbhai Harijan and others, [(2009) 16 SCC 517]

wherein the Apex Court dealing with the concept of adverse possession held as follows:-

“32. Before parting with this case, we deem it appropriate to observe that the law of adverse possession which ousts an owner on the basis of inaction within limitation is irrational, illogical and wholly disproportionate. The law as it exists is extremely harsh for the true owner and a windfall for a dishonest person who had illegally taken possession of the property of the true owner. The law ought not to benefit a person who in a clandestine manner takes possession of the property of the owner in contravention of law. This in substance would mean that the law gives seal of approval to the illegal action or activities of a rank trespasser or who had wrongfully taken possession of the property of the true owner.

33. We fail to comprehend why the law should place premium on dishonesty by legitimising possession of a rank trespasser and compelling the owner to lose his possession only because of his inaction in taking back the possession within limitation.

34. In our considered view, there is an urgent need for a fresh look regarding the law on adverse possession. We recommend the Union of India to seriously consider and make suitable changes in the law of adverse possession. A copy of this judgment be sent to the Secretary, Ministry of Law and Justice, Department of Legal Affairs, Government of India for taking appropriate steps in accordance with law.”

11. As far as the second judgment is concerned it does not change the law. It only expresses the opinion of the Court that the law should not benefit a person who is in illegal occupation and, therefore, the law of adverse possession requires a relook. The

legislature has not changed the law and, therefore, the law continues to be the same. A person in adverse possession can claim that his possession has matured into title after 12 years.

12. The main issues are whether it was necessary for the plaintiffs- predecessor in interest to file a counter claim or counter suit in the year 1972. The further issue is whether the defendant Nripendra Kr. Datta has become owner of the suit land by way of adverse possession.

13. The sale deed was executed on 07.7.1972. Thereafter, Nripendra Kr. Datta filed a suit in which he claimed to be owner of the suit land. In that suit, he also challenged the ownership of Sudhangshu Bimal Datta, predecessor in interest of the plaintiffs. Therefore, in my mind, there can be no doubt that he was claiming hostile possession against Sudhangshu Bimal Datta because he claimed to be the owner of the suit land.

14. The case of the plaintiffs is that their father Sudhangshu Bimal Datta had permitted the defendant to stay on for 1½ months after the sale deed was executed on 07.7.1972. Thereafter, Nripendra Kr. Datta filed a suit claiming that he was the true owner of the land and denied the title of the plaintiff. At that stage, Sudhangshu Bimal Datta should have either filed a counter claim claiming possession or filed a separate suit for recovery of possession of the suit land. He did not do that. No doubt, finally the suit of Nripendra Kr. Datta was dismissed and the second appeal was dismissed in the year 1996 but by this time 24 years

had elapsed and Nripendra Kr. Datta had been in possession of the land for 24 years claiming adversely to Sudhangshu Bimal Datta.

15. At this stage, it would be pertinent to point out that no material has been placed on record to show that there was any stay order restraining Sudhangshu Bimal Datta from filing a civil suit for possession of the suit land. Assuming that there was a stay order that he should not interfere in the possession of Nripendra Kr. Datta, that did not mean that he was restrained from filing a suit.

16. Sri S.M. Chakraborty, learned Sr. Counsel appearing for the defendant-respondents, has made reference to Section 27 of the Limitation Act which reads as follows:-

“27. Extinguishment of right to property.—At the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished.”

This Section clearly indicates that when the period for filing a suit for possession of any property has expired, that person's right to such property stands extinguished. He has also drawn my attention to the written statement in which there is clear cut claim of adverse possession.

17. In ***Amrendra Pratap Singh vs. Tej Bahadur Prajapati, [(2004) 10 SCC 65]***, the Apex Court held as follows:-

“22. Every possession is not, in law, adverse possession. Under Article 65 of the Limitation Act, 1963, a suit for possession of immovable property or any

interest therein based on title can be instituted within a period of twelve years calculated from the date when the possession of the defendant becomes adverse to the plaintiff. By virtue of Section 27 of the Limitation Act, on the determination of the period limited by the Act to any person for instituting a suit for possession of any property, his right to such property stands extinguished. The process of acquisition of title by adverse possession springs into action essentially by default or inaction of the owner. A person, though having no right to enter into possession of the property of someone else, does so and continues in possession setting up title in himself and adversely to the title of the owner, commences prescribing title on to himself and such prescription having continued for a period of twelve years, he acquires title not on his own but on account of the default or inaction on the part of the real owner, which stretched over a period of twelve years, results in extinguishing of the latter's title. It is that extinguished title of the real owner which comes to vest in the wrongdoer. The law does not intend to confer any premium on the wrongdoing of a person in wrongful possession; it pronounces the penalty of extinction of title on the person who though entitled to assert his right and remove the wrongdoer and re-enter into possession, has defaulted and remained inactive for a period of twelve years, which the law considers reasonable for attracting the said penalty. Inaction for a period of twelve years is treated by the doctrine of adverse possession as evidence of the loss of desire on the part of the rightful owner to assert his ownership and reclaim possession.

23. *The nature of the property, the nature of title vesting in the rightful owner, the kind of possession which the adverse possessor is exercising, are all relevant factors which enter into consideration for attracting applicability of the doctrine of adverse possession. The right in the property ought to be one which is alienable and is capable of being acquired by the competitor. Adverse possession operates on an*

alienable right. The right stands alienated by operation of law, for it was capable of being alienated voluntarily and is sought to be recognised by the doctrine of adverse possession as having been alienated involuntarily, by default and inaction on the part of the rightful claimant, who knows actually or constructively of the wrongful acts of the competitor and yet sits idle. Such inaction or default in taking care of one's own rights over property is also capable of being called a manner of "dealing" with one's property which results in extinguishing one's title in property and vesting the same in the wrongdoer in possession of property and thus amounts to "transfer of immovable property" in the wider sense assignable in the context of social welfare legislation enacted with the object of protecting a weaker section."

18. Article 65 of the Schedule to the Limitation Act provides limitation of twelve years for possession of immovable property based on title. The period of limitation starts running from the date when the possession of the defendant becomes adverse to the plaintiff. As far as the present case is concerned, the possession of Nripendra Kr. Datta became adverse to the possession of Sudhangshu Bimal Datta on the date when he filed the suit claiming that he was the adopted son of Nishi Kanta Datta and that he was the true owner of the suit land. Limitation started running from that date and this period of limitation is not interrupted by the mere fact that he had filed a suit. Nripendra Kr. Datta had filed a suit to establish his title. He may have failed to prove his title but it is an admitted fact that the possession remained with him. Therefore, his possession was adverse to the true owner, i.e. Sudhangshu Bimal Datta. The proper course for Sudhangshu Bimal Datta was to have filed either a counter claim in

the suit filed by Nripendra Kr. Datta or to have filed a separate suit and this suit could be filed within 12(twelve) years of the title becoming adverse.

19. In view of the above discussion, I hold that the learned Court below was fully justified in holding that the adverse possession of Nripendra Kr. Datta had fructified into full title. In fact, the learned lower appellate Court was not justified in holding that the plaintiffs were entitled to 60% of the market value of the land but since that portion of the decree has not been challenged by the respondents, this Court cannot set aside the same.

20. Therefore, I find no merit in the appeal which is accordingly dismissed. No order as to costs.

21. Send down the lower court records forthwith.

CHIEF JUSTICE