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

REV PETN. 23 OF 2015 & I.A. NO.418 OF 2015

1. Sri Debendra Chandra Nath,
   son of late Uday Nath

2. Sri Satyendra Nath

3. Sri Jitendra Nath

4. Sri Harendra Nath

5. Sri Dwijendra Nath

   -all are sons of Shri Debendra Chandra Nath

6. Sri Dinesh Chandra Nath @ Sri Babu Nath

7. Sri Dipan Nath alias Sri Shiban Nath,

   -both are sons of Dwijendra Nath

8. Sri Uttam Nath,
   son of Sri Harendra Nath

9. Sri Barindra Nath,
   son of late Naresh Nath
   -all are residents of village- Ganganagar(South)
   P.O. Dharmanagar-799250,
   P.S. Dharmanagar,
   District : North Tripura

..... Petitioners

– Vs –

Shri Rakesh Chandra Nath,
son of late Lob Nath
resident of village – Ganganagar(South),
P.O. Dharmanagar-799250
P.S. Dharmanagar,
District : North Tripura

.....Respondents.

B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the petitioners	:	Mr. K.N. Bhattacharjee, Sr. Advocate Ms. S. Chakraborty, Advocate
For the respondents	:	Mr. D.K. Biswas, Advocate
Date of hearing	:	15.03.2016
Date of Judgment & Order	:	31.03.2016

Whether fit for reporting :

Yes	No
√	

JUDGMENT & ORDER

By this application the petitioners have urged this court to review its judgment and order dated 1.07.2015 delivered in CRP No. 62 of 2013.

2. Mr. K.N. Bhattacharjee, learned senior counsel appearing for the petitioner has submitted that the finding that has been returned by the said judgment and order dated 01.07.2015 would require revisit in view of the judgment and order dated 01.07.2005 delivered in GR 288/2004. Had that been produced in the evidence, contention of the petitioner as to the possession over the suit land would have been established inasmuch as by the said judgment while acquitting the petitioner from the charges under Sections 457/506/427/34 of the IPC, the

trial court, the court of the Judicial Magistrate, Dharmanager Tripura has observed as under :

> **“10. On the other hand Ld. A.P.P. did not say anything in support of the allegation of the complainant at the time of argument.**
>
> **On perusal of the evidence on record it appears that the complainant deposed that the accused persons entered into their land with a dao, lathi etc. and damaged their fruit bearing trees like trees of coconut, orange, banana, betel nut etc. But in support of their allegation they did not produce any document however they claimed that they purchased their land in the year 1970 and they peacefully possessed their land since 34 years back. Moreover during investigation, the investigating officer did not find any newly constructed hut and latrine at the place of occurrence as alleged by the complainant in his ejahar . He only found some banana trees cut down at the place of occurrence. Delay of lodging ejahar also was not explained properly by the complainant. Hon’ble Apex court also observed in cited case that if the complainant fails to produce evidence of ownership or property to which the commission of offence lodged to have committed and no independent witness examine then it was held that accused persons were entitled to be acquitted on benefit of doubt.”**

3. The petitioner for placing the said judgment and order dated 1.07.2005 delivered in Case No. GR 288/2008 has filed the interlocutory application being IA 417/2015 for acceptance of the same “as additional evidence in this review petition”. As contemplated that reference would be made to the said judgment and order dated 01.07.2005, Case No. IA 417/2015 has been taken up with the review petition for disposal by a common order.

4. Mr. K.N. Bhattacharjee, learned senior counsel has submitted that since the suit was on the immediate possessory right of the suit land for purpose of recovery of the possession in

terms of the Section 6 of the Specific Relief Act, 1963 which provides that if any person is dispossessed without his consent from the immovable property otherwise than in due course of law, he or any person claiming through him, may by suit, recover possession thereof, notwithstanding any other title that may be set up in such suit. As such, the essential component that is required to be established in such suit is that a person has been dispossessed without his consent from the immovable property otherwise than in due course of law. According to Mr. Bhattacharjee, learned senior counsel the petitioners plea in the suit was that they were in the possession all through and they did never dispossess the plaintiffs from the suit land. As the criminal prosecution was also launched against the petitioners by registering Dharmanagar P/S Case No.197/2004 and after investigation the final police report charge-sheeting the petitioner was filed, the trial vide case No. GR 88/2004 commenced on the charge as framed under Sections 457/506/427/34 of the IPC. In the paragraph as reproduced, it has been observed that during the investigation, the investigating officer did not find any newly constructed hut and latrine at the place of occurrence as alleged by the complainant in his ejahar. Therefore, from the said finding, it is established that the petitioners did not dispossess the plaintiffs. In absence of proof of dispossession, a suit under Section 6 of the Specific

Relief Act, 1963 cannot be maintained. It, in addition, gives rise to a probable story of possession of the petitioners. Mr. Bhattacharjee, learned senior counsel has submitted that the said judgment dated 01.07.2005 was not produced in the trial, even no reference has been made while placing submission in the revision proceeding being CRP No.62/2013 which has been disposed of by the judgment and order dated 01.07.2015. Mr. Bhattacharjee, learned senior counsel has urged that the discovery of the said document i.e. the judgment dated 01.07.2005 provides the required basis for review of the judgment dated 01.07.2015.

5. In support of his contention, Mr. Bhattacharjee, learned counsel has relied on a few decisions. The decision in **Mallikarjun Sadashiv Honrao versus Suratram Shivlal** reported **AIR 1971 Bombay 45** as rendered by the Bombay High Court is on merger and as such that decision does not have any relevance in the present context. In **Shri Hori Lal versus Shri Sharwan Kumar** reported **AIR 1993 Delhi 85,** the Delhi High Court has approvingly reproduce a decision of the Bombay High Court in **Hari Ganu Bhandriga versus Hari Ganu Shind** reported in **AIR 1929 Bombay 225** where the following view has been taken:

> **"Discovery of new and important evidence on a question of fact though a good ground for review of the decree of the first**

> **appellate court is no ground for review of the decree of the second appellate court; the finding of fact of the lower court being final and binding on second appellate court."**

6. Based thereon it has been further observed in **Horilal versus Sharwan Kumar** that discovery of new evidence on a question of fact, though is a good ground in the review of the decree of the first appellate court, is no ground for review of the decree of the second appellate court. It has been observed thereafter as follows :

> **"By this application, the applicant is seeking review of the judgment passed by this Court on the ground of discovery of new and important evidence as to question of fact . In my view the application is not maintainable in this Court. The application has no merit and is dismissed**."

Reliance has also been placed on **Board of Control for Cricket, India & Anr. versus Netaji Cricket Club & Ors.**, reported in **AIR 2005 SC 592,** where it has been observed by the apex court that:

> **"Law has to bend before justice if the court finds that the error pointed out in the review petition was under a mistake and the earlier judgment would not have been passed but for erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice nothing would preclude the Court from rectifying the error."**

[Emphasis supplied]

7. Mr. D.K. Biswas, learned counsel appearing for the respondents has unpretentiously stated that this application for review is a mere ploy of dragging the matter as from the reading of the judgment dated 01.07.2005 it would be apparent that it

does not say anything of possession by the petitioner nor it exculpate the petitioner for entering into the suit land and causing damage etc. Even though the judgment was pronounced on 01.07.2005 and the final order in the title suit being Title Suit 05/2005 was delivered on 20.07.2012, the said judgment was never produced in the trial even though it was within the knowledge of the petitioners as they defended the charge as the accused persons. Moreover, a fresh enquiry as to the fact cannot be conducted in a revisional application filed under Article 227 of the Constitution of India.

8. Faced with the contentions as projected by the learned counsel for the parties, the review on the basis of discovery of a new fact is not unbridled. The fact which was not discovered after exercise of due diligence and the fact was not within the knowledge of the person who discovered the fact after the judgment was passed, then only, that fact would be relevant in the jurisdiction where the fact can be appreciated afresh. For purpose of reference Order XLVII Rule 1 of the CPC may be reproduced :

> “1.Application for review of judgment—
>
> (1) Any person considering himself aggrieved—
> (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes,

and **who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record of for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order."**

[Emphasis supplied]

9. From bare reading, it appears that the following components must co-exist for taking the benefit of discovery of a new and important matter or evidence :

i) Despite due diligence the said new and important matter or evidence was not within knowledge.
ii) The said new and important matter or evidence could not be produced at the time when the decree was passed or order made.

10. There cannot be any amount of doubt that the second component is available here but the first component is entirely non-existed even there is no averment in this regard. Even if the technicalities are waived and the law is bent as observed by the apex court in **Lily Thomas versus Union of India,** reported in

AIR 2000 SC 1650 it would be found that even if the said judgment dated 01.07.2005 is considered there would be no change in the finding returned by the trial court and hence the plea of perpetration of any illegality or mis-carriage of justice does not hold good.

11. It is well settled that the standard followed in the criminal trial and the standard of proof followed in the civil trial are completely different. In the criminal trial the standard of proof is beyond reasonable doubt whereas in the civil trial the standard is of preponderance of probability. Mr. Biswas, has correctly pointed out that in the said judgment there is no finding that the petitioner was in the possession. The suspicion which frustrated the prosecution is relating to the deviant statement made by the complainant in the trial. But this piece of evidence can differently be appreciated in the civil trial. Moreover, this court is also of the opinion that while exercising the jurisdiction under Article 227 of the Constitution, this court does not reappraise the evidence acting as the appellate court but with required circumspection examine whether the jurisdiction has been properly exercised or whether there is any patent illegality apparent on the face of the records. There cannot be any debate that this jurisdiction under Article 227 of the Constitution is narrower than the jurisdiction under Section 100 of the CPC and

hence the decision of **Horilal versus Sharwan Kumar** squarely applies in this case. Hence, on the ground of 'discovery of new and important evidence' the judgment under reference, cannot be reviewed.

12. Having observed thus, both the review petition and the interlocutory application for placing the judgment dated 01.07.2005 are dismissed.

There shall be no order as to costs.

JUDGE

Sabyasachi B