

IN THE HIGH COURT OF TRIPURA
AGARTALA

RSA NO.29 OF 2012

Sri Chuni Chanda,
son of late Khagendra Kumar Chanda,
resident of Ranir Bazar, P.S. Ranir Bazar,
District : West Tripura

..... Appellant

- Vs -

- 1. The State of Tripura,
represented by the Principal Secretary to the
Government of Tripura, Revenue Department,
New Secretariat Complex, Agartala
- 2. Principal Secretary to the Government of Tripura,
Revenue Department, New Secretariat Complex, Agartala
- 3. The District Magistrate & Collector, West Tripura, Agartala
- 4. The Executive Officer, Ranir Bazar Nagar Panchayet,
Ranir Bazar, Jirania Sub-Division, West Tripura

..... Respondents

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

For the appellant : Mr. A.L. Saha, Advocate
Mr. S.R. Bhattacharjee, Advocate

For the respondents : Mr. D. Chakraborty, Senior Advocate
Mr. B. Datta, Advocate
Mr. H. Laskar, Advocate

Date of hearing : 04.05.2016

Date of judgment & order: 31.05.2016

Whether fit for reporting :

Yes	No
√	

JUDGMENT & ORDER

This appeal filed under Section 100 of the CPC has been admitted by the order dated 23.11.2012 on the following substantial question of law :

“Whether the judgment and decree passed by the court below suffers from perversity?”

2. At the outset it is to be noted that the courts below returned the concurrent finding of fact that the plaintiff, the appellant herein, has failed to prove his adverse possession over the suit land as described in the Schedule-A appended to the plaint, which reads as under :

Schedule-A

Within West Tripura District, Sadar Sub-Division, Mouja-Majlishpur, Khas Khatian No.4049, Plot Old 1033, area measuring 9 Satak of land with semi-pucca corrugated in roofing and pucca structural building made thereon.

The suit land is bounded by:-

**North-Pyari Mohan Debnath
South-Dighi(Pond) of plot 1048 of Khatian No.1
West- Plot No.1031, 1029 of Srish Debnath
East – Pyari Mohan Debnath**

Within these boundaries total land measuring 9 satak is the suit land.

3. It is required to be further noted that Schedule-B and Schedule-C land has been claimed to have been acquired by the appropriate Government by the notification dated 18.11.2002

under L.A. Case No.DM/LA/W/SDR/12/2002. Schedule-B and Schedule-C land is admittedly part of Schedule-A land and the plaintiff by filing the suit for declaration and consequential relief claimed his title over Schedule-A land on adverse possession. It would be apposite to reproduce the relevant pleadings by the plaintiff, which are as follows :

"That the right, title and interest of the defendants on the suit land have been extinguished under Sec 27 of the Limitation Act after the 30 years of continuous and uninterrupted possession of A-Schedule of suit land by the plaintiff adverse to the Government on and from 04.12.1997. The plaintiff has become exclusive owner in possession of the entire suit land mentioned in A-Schedule after completion of open adverse continuous uninterrupted possession for a period exceeding 30 years on & from 05.12.1997, denying right, title and interest of defendants over the suit land."

The context of the said pleadings has been elaborated in the plaint by stating that the plaintiff has been possessing the Schedule-A land adversely and openly since 04.12.1967 and he has been residing over the said suit land by constructing his dwelling hut thereon. Even in the year 1998 the plaintiff constructed building on the western part of the Schedule-A land.

4. The plaintiff has relied on a document relating to taking possession of the khas land measuring .09 acre from one Srish Ch. Debnath on 04.12.1967. In Khatian No.4049, against the plot No.1033, the suit land as described in the Schedule-A of the plaint, the name of Srish Ch. Debnath has been shown as the

occupier. Except that, the plaintiff on 28.06.2004 resisted the defendants in taking possession of the suit land pursuant to the Memorandum No.4233-49/DM/LA-SDR/12/02 dated 16.06.2004. No other incidence of hostility or hostile demonstration of possession has been narrated in the plaint. From scrutiny of the records, it appears that the said document whereby the possession was taken by the plaintiff was not admitted in the evidence. However, some documents such as Khatian No.4049 (Exbt.1), original quotation for electricity connection (Exbt.2) etc. have been admitted in the evidence by the plaintiff.

5. The defendants, to rebut the claim of the plaintiff, have also placed certain documents such as Khatian No.1/164(A) (Exbt.A), Khatian No.8122 at the stage of attestation, of mouja Majlishpur (Exbt.B), the correction list relating to Khatian No.1-164 (Exbt.C). The incident of acquisition has not however been denied by the defendants, but the defendants have denied the claim of adverse possession by the plaintiff over the suit land. From the Khatian No.4049 (Exbt.1), it appears that against the plot No.1033, the name of one Srish Ch. Debnath, son of Braja Basi Debnath has been recorded in column No.23 as illegal possessor. As stated earlier, the handing over of the possession of Srish Ch. Debnath by means of the unregistered document dated 04.12.1967 has not been admitted in the evidence nor

Srish Ch. Debnath has been made party in the proceeding. Even Srish Ch. Debnath or anyone from his family has appeared as the witness.

6. The plaintiff adduced three witnesses including himself (PW.1). The other two witnesses who were examined on his behest are Sri Pankaj Kumar Saha (PW.2) and Sri Promode Chandra Das (PW.3).

7. PW.2, Pankaj Kumar Saha even though in his examination-in-chief has stated that the plaintiff purchased the suit land from one Srish Ch. Debnath in the year 1967, but in the cross-examination he has clearly stated that he does not know the dag number of the land occupied by said Srish Ch. Debnath.

8. PW.3, Promode Chandra Das has also stated in the same manner and in the cross-examination he has also clearly stated that he does not know the dag number and khatian number of the land of the plaintiff.

9. The documents those were filed by the defendants are the list as stated and some records of rights in the various stages. Those do not shed any light how the Khatian No.4049 which was finally published on 06.09.1967 had shown the name of Srish Ch. Debnath.

10. Initially, by the judgment dated 08.09.2006 delivered in T.S.82/2004, the original court, the Civil Judge, Junior Division, Court No.1, Agartala, West Tripura, dismissed the suit on observing that the plaintiff could not prove his occupation since 04.12.1967, inasmuch as he failed to prove any document, as pleaded, executed by one Srish Ch. Debnath on 04.12.1967. Neither the plaintiff has cited Srish Ch. Debnath or any person from his family as witness for demonstrating hostile possession for more than 30 years on and from 04.12.1967.

11. From the prayer of allotment it is evident that the plaintiff has been possessing the R.S. plot Nos. 1305, 1308, 1313 from some time in the year 1996 as per the records of buzarat (Exbt.A, Exbt.B and Exbt.C). Hence the claim of continuous possession for 30 years, adverse or otherwise, was rejected by the original court by the said judgment dated 08.09.2006. The said judgment dated 08.09.2006 delivered in Title Suit No.82/2004 was challenged by the plaintiff by filing an appeal in the court of the District Judge, West Tripura, Agartala, being Title Appeal No.76/2006, which was however heard by the Additional District Judge, West Tripura, Agartala, Court No.2, on transfer and disposed of by the judgment dated 31.10.2009, remanding the matter to the trial court by formulating an additional issue, which reads as follows:

“Whether the plaintiff is in possession since the year 1967 and 1996?”

12. Thereafter, the matter was reheard after allowing the plaintiff and the defendants’ opportunity to adduce evidence. The plaintiff adduced five new documents and examined one additional witness, whereas the defendants also adduced one additional document and adduced one witness. Thereafter, the original court dismissed the suit by the judgment dated 20.11.2010.

13. On the basis of those materials on record, the original court, the court of the Civil Judge, Junior Division No.1, Agartala, West Tripura, while dismissing the suit, by the judgment dated 20.11.2010, has observed as under :

“f. I am to opine that where the plaintiff is relying on Ext.1 which is also attested khatian and wants the benefit of the same to be accepted to prove his possession, he is not willing to admit attested khatians submitted by defendant which were marked as Ext.A & B. However, even if I am to admit that after Srish Chandra Debnath, plaintiff came in possession of the suit land, it is to be determined whether the possession was from year 1967 by denying right, title and interest of the defendants. The plaintiff in addition to the earlier evidence has adduced the consumer pass book as Ext-5, the application for telephone connection as Ext-6, the vouchers of cement purchased as Ext-7 series and certified copy of electoral roll as Ext-8 and certified copy of khatian No. 4049 of first settlement marked as Ext-9 but none of these documents establish that plaintiff is in possession from 1967 as the electrical consumer pass book i.e. Ext.5 is of the year 1991, the telephone connection of the year 91 and certified copy of electoral roll of 1971 or that they are related to the

suit land and the defendants have erased their objection in this regard. I accept the submission made by the defendants that none of these documents show that plaintiff is in possession of the suit land since 1967 or related to the suit land. Moreover, if the plaintiff was really in possession of suit land from the year 1967 and had acquired right, title by way of adverse possession, he would not have sought for allotment of the suit land from the defendants in his name.

g. It is to be noted that a person claiming right, title on adverse possession has no equity in his favour, he has to prove his case, that is, plaintiff must prove the fact that he is in possession of suit land for a clear period of 30 years, otherwise, no decree can be passed in his favour because title on adverse possession is not a legal plea rather it is a plea of mixed question of law and fact and the fact part must be proved by clear, cogent and convincing evidence which in present case plaintiff has failed to do rather, the defendants were able to prove the fact that plaintiff has sought for allotment from the defendants in the year 1998 and 2002 during cross-examination and this fact goes against the plaintiff as this fact is inconsistent with the plea of adverse possession because to claim title on the basis of adverse possession, it is inherent that in the plea there must be denial of title and prayer seeking for allotment is somewhat admission of title of defendants."

14. In this regard, the examination-in-chief filed by the plaintiff has become very relevant, otherwise the finding as returned by the original court might be misunderstood. In para 9 of the examination-in-chief filed under Order XVIII, Rule 4 of the CPC, it has been stated as under :

"That I apply for allotment of the portion of the suit land measuring .063 and in the year 2002 stating that as per law of the land I am not eligible for title by adverse possession, but no response from the Government was obtained."

15. It would be evident from the record that the defendants have completely denied the claim of the plaintiff and submitted that the plaintiff did not adversely possess the suit land and as such he cannot claim the title by prescription. In support of their contentions, the defendants adduced three witnesses, namely Smt. Sanchita Roy (DW.1), Sri Sanjoy Chakraborty (DW.2) and Sri Chuni Chanda (DW.3).

16. Being aggrieved by the judgment dated 20.11.2010 the plaintiff filed an appeal under Section 96 of the CPC, being Title Appeal No.06/2011 in the court of the District Judge, West Tripura, Agartala. By the impugned judgment dated 28.03.2012, the Additional District Judge, Court No.3, West Tripura, Agartala, to whom the appeal was transferred, dismissed the appeal by affirming the findings returned by the trial court and for that purpose he relied on a decision of the apex court in **R. Hanumaiah & Anr. Vs. Secretary to the Government of Karnataka, Revenue Department & Ors.**, reported in **2010 AIR SCW 4544**, where the apex court had occasion to observe as under :

"..... possession for a period exceeding thirty years will have to be established to succeed in a declaratoroy suit for title against government. This follows from Article 112 of Limitation Act, 1963, which prescribes a longer period of thirty years as limitation in regard to suits by government as against the period of 12 years for suits by private individuals. The reason is obvious. Government properties are spread over the

entire State and it is not always possible for the government to protect or safeguard its properties from encroachments. Many a time, its own officers who are expected to protect its properties and maintain proper records, either due to negligence or collusion, create entries in records to help private parties, to lay claim of ownership or possession against the government. Any loss of government property is ultimately the loss of the community. Courts owe a duty to be vigilant to ensure that public property is not converted into private property by unscrupulous elements."

17. The first appellate court has also laid the elementary aspects for claiming title on adverse possession. According to the impugned judgment, the possession must be of a trespasser, it must be adverse to the owner's knowledge, it must be continuous over the period of limitation and the foremost, it must be continuous or in extentu. If those elements do exist simultaneously then it can be held that the person claiming title on adverse possession has proved *animus possidendi*.

18. Mr. A.L. Saha, learned counsel appearing for the appellant-plaintiff, has stated that the original court did not consider the unregistered deed as executed by one Srish Ch. Debnath in the year 1967 illegally. According to Mr. Saha, learned counsel, as per the unregistered deed, the possession was hostile. He has further stated that if the unregistered deed with the entry in the Khatian No.4049 against the plot No.1033 is read together it would conclusively be proved that the land was under the adverse possession of the plaintiff.

19. This submission of Mr. Saha, learned counsel appearing for the appellant-plaintiff cannot be accepted by this court for obvious reason that the deed whereby one Srish Ch. Debnath had purportedly handed over the possession to the plaintiff has not been admitted in the evidence and the reason behind non-admission, cannot be gathered from the records. The said deed, according to the plaintiff, was an unregistered deed and as such to prove the said deed or to admit the same in the evidence, the plaintiff was under obligation to navigate it through in observance of the procedure as laid down under Section 67 of the Evidence Act. It has further appeared that Srish Ch. Debnath has not appeared as the witness and as such it can safely be assumed that there had been no venture even to admit the said deed in the evidence and hence any claim of adverse possession on the basis of the said Khatian No.4049 (Exbt.2) or on the basis of the said deed witnessing the purported handing over of the possession, cannot be entertained. Hence, there is no infirmity or perversity in the finding returned by the courts below.

20. Mere continuous possession does not make the possession itself adverse. For purpose of proving the adverse possession, the following aspects as catalogued by the apex court in **Karnataka Board of Wakf Vs. Government of India**

& Ors., reported in **(2004) 10 SCC 779**, are to be pleaded and established :

"Physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature. Plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who claims adverse possession should show: (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession."

21. That apart, the statutory provision of the Limitation Act have undergone a change when compared with the terms of Articles 142 and 144 of the schedule appended to the Limitation Act, 1908 and in terms whereof it was imperative for the plaintiff not only to prove his possession of thirty years preceding the date of institution of the suit. A change in the legal position has been registered in view of Articles 64 and 65 of the Limitation Act, 1963. In Article 65 of the Limitation Act, the starting point of limitation does not commence from the date when the right of ownership arises to the plaintiff, but does it commence from the date when the defendant's possession becomes adverse. For this purpose, a reference may be made to **Vasantiben Prahladji Nayak & Ors. Vs. Somnath Muljubhai Nayak & Ors.**,

reported in **(2004) 3 SCC 376**. Therefore, the starting point of limitation for purpose of adverse possession is of paramount and foremost requirement. Unless that is proved, the plea of adverse possession cannot be entertained by the court. In this matter, the plaintiff has utterly failed to prove the starting point of adverse possession as well as the continuity of adverse possession beyond the period of limitation as prescribed under Article 112 of the schedule appended to the Limitation Act, 1963.

22. Having held thus, this court does not find any merit in this appeal and accordingly the same is dismissed.

Prepare the decree accordingly and thereafter send down the LCRs.

JUDGE

ROY