

**THE HIGH COURT OF TRIPURA**  
**AGARTALA**

**CO (RSA) No.2 of 2005**

- \* **1(a). Smt. Parbin Necha Khatun,**  
wife of late Darad Miah,
- 1(b). Smt. Bipasha Talukdar,**
- 1(c). Smt. Mousumi Talukdar,**  
daughter of late Darad Miah,
- 1(d). Sri Bishal Talukdar,**  
son of late Darad Miah,
- 2. Md. Siraj Miah,**  
daughter of late Rabindra Chakraborty,
- 3. Md. Rafik Miah,**  
son of late Rabindra Chakraborty,

-all are sons of late Dhan Miah,  
residents of Nayapara,  
P.O. & P.S. Dharmanagar,  
North Tripura

..... Cross-objectors

[As per order dated 29.01.2015 passed  
in CM Appl. No.8 of 2015, arising from  
this cross-objection, the original cross-  
objector No.1 Darad Miah has been  
substituted by his legal representatives  
No. 1(a), 1(b), 1(c) and 1(d)]

**- Vs -**

- 1. Sri Prabir Singha,**
- 2. Shri Pradip Singha,**
- 3. Shri Pradyut Singha,**

-all are sons of late Promode Ranjan Singha,  
residents of Rajbari,  
P.O. Rajbari, P.S. Dharmanagar,  
North Tripura District

4. **Smt. Charubala Singha,**  
wife of late Promode Ranjan Singha,
5. **Smt. Usha Rani Singha,**  
daughter of late Promod Ranjan Singha,
6. **Smt. Priti Rani Singha,**  
daughter of late Promode Ranjan Singha,
7. **Shri Pranab Singha,**  
son of late Promode Ranjan Singha,  
  
-all are residents of Rajbari,  
P.O. Rajbari, P.S. Dharmanagar,  
North Tripura
8. **M/S. I.T.P. Ltd.,**  
R.N. Mukherjee Road, Kolkata-700001,  
notice to be served upon the Manager,  
Peara Chara Tea Estate,  
P.O. Pearachara, P.S. Churaibari,  
Sub-Division: Dharmanagar,  
District: North Tripura

.....Respondents

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

For the cross-objectors	:	Mr. D.K. Biswas, Advocate
For the respondents	:	Mr. S.M. Chakraborty, Senior Advocate Ms. A. Chakraborty, Advocate
Date of hearing and delivery of judgment and order	:	30.06.2017
Whether fit for reporting	:	No

**Judgment and Order (Oral)**

This cross-objection arises from the appeal, being RSA  
42 of 2005 which was dismissed by the order dated 26.03.2015 for

non-prosecution. By the order dated 26.03.2015, this cross-objection was also dismissed for non-prosecution mechanically. The cross-objector filed a review petition being Rev. Petn. No. 28 of 2015 for recalling the said order dated 26.03.2015. The said review petition was allowed by the order dated 16.03.2015 and this cross-objection has been restored to file by setting aside the order dated 26.03.2015. This cross objection is directed against the common judgment dated 22.03.2005 delivered in Title Appeal No.04 of 2005 [and Title Appeal No.06 of 2005] on affirmance of the judgment dated 16.12.2004 delivered in T.S. 03 of 2004. Even though, this cross-objection is of 2005, but the substantial questions were framed by the order dated 09.06.2017. The substantial questions as were framed for hearing of this cross-objection are as under:

- (i) Whether the Record of Rights can be accepted as the proof of title when the title documents are in existence?**
- (ii) Whether the finding on the possession is supported by tenable evidence or not?**

For purpose of appreciating the substantial questions of law the essential fact are laid at the outset.

**02.** The respondents filed a suit being T.S. 03 of 2004 for perpetual injunction in respect of the suit land as described in Schedules- A, B and C of the plaint. The plaintiffs have stated that they became the joint owners of the suit land by inheritance through Tribeni Singh, Tarini Kr. Singha, Ruhini Kr. Singha and Promode Ranjan Singha [all dead]. Those predecessors of the plaintiffs succeeded the suit property from one Surendra Singha,

their father. During their lifetime, the suit land was portioned amongst those four successors of Surendra Singha. After death of Promode Ranjan Singha the suit land along with other land was recorded in the name of the plaintiffs and the proforma-defendants No.4, 5, 6 and 7 and their name was recorded under Khatian No.2427/4 of Mouja Dharmanagar. The plaintiffs and the proforma-defendants amicably the said land they inherited on 15.12.2002 and as per the said mutual partition the plaintiffs No.1, 2 and 3 became the absolute owner in possession of the land shown in the Schedules A, B and C respectively. The plaintiff No.1 has been maintaining the possession of the suit land described in the Schedule B and C for and on behalf of the plaintiffs No. 2 and 3 as they were the Government employees and they could not look after the said land. The plaintiff No.1 by erecting the bamboo-fencing around the said suit land has been maintaining the possession. The original principal defendants No.1, 2 and 3 entered, armed with dao, lathi etc., in the suit land by breaking the boundary fencing with a view to occupy the said land. The plaintiff No.1 and his workers offered resistance. On hearing their alarm, the people from the neighbourhood appeared there. Being frightened, the said defendant and their persons fled from the said land and at the time of leaving the place they used filthy language to rebuke the plaintiff No.1. They had threatened him with dire consequences. They had also stated that they would come back soon to occupy the land. On 16.01.2004 again those original defendants No.1, 2 and 3 entered forcibly in the suit land by breaking the bamboo-fencing on the

eastern boundary. When they had assaulted plaintiff No.1 the matter was reported to the Officer-in-Charge, Dharmanagar Police Station but without any result.

**03.** In that perspective, the said suit was instituted but the original defendants No.1, 2 and 3 by filing the written statement had stated that the predecessor in interest of the said defendants began to possess the said land measuring 0.99 acre along with other landed property with effect from 01.01.1956. After death of their father those respondents became the owner in possession of the said suit land and they have been enjoying the peaceful possession within the knowledge of one Amboubi Kshetrani who was the owner of the said land. But the defendants have admitted that the land measuring 1.39 acre was recorded in the name of Tribeni Mohan Singha and three others showing Amboubi Kshetrani as their permissive possessor against the land measuring 0.40 under Khatian No.2245, jer 5618 in C.S. Plot No.10902 corresponding to old C.S. Plot No.9278. One Bisheswar Chatterjee was shown as the permissive possessor against the land measuring 0.99 acre comprised in C.S. Plot No.10903 corresponding to old C.S. Plot No.9278P under Mouja Dharmanagar town at the stage of buzarot, the draft stage. The defendant relied on the said khatian of the draft stage as those entries were challenged by Amboubi Kshetrani. According to the defendants, Amboubi Kshetrani was the owner of land measuring 1.39 acre comprised in C.S. Plot No.9278. Out of the said land 0.40 acre was under possession of Amboubi Kshetrani

and later on purchased by the defendant No.1 by the registered sale deed. The land measuring 0.99 acre has been under possession of the defendant No.1. Further, the said land was under his hostile possession for more than the prescribed period of limitation. According to the defendants, the plaintiffs do not have any right, title or interest in possession over the suit land and the other land. It is the defendant No.1 who is in possession of the suit land with effect from 01.01.1956 openly and adversely against one Amboubi Kshetrani.

**04.** Having framed the issues and thereafter recorded the evidence, by the judgment dated 02.12.2004 the suit was decreed against the defendants. On observing as such, from the evidence on record, it appeared that on 01.07.2003 and 16.01.2004, the principal defendants tried to dispossess the plaintiffs from the suit land. The defendants, could not establish their possession by evidence. By their evidence, they could not satisfy the court that they did not venture to dispossess the plaintiffs from the dates as stated above. The pro-defendant No.8 could not rebut the claim of the plaintiffs in this respect.

**05.** Being aggrieved by the said judgment, the principal defendants filed the appeal, being Title Appeal No.4 of 2005 and M/S. ITP Limited, represented by the proforma respondent No.8 which had interest over the land along the boundary of the suit land filed another appeal respectively being Title Appeal No.04 of 2005 and Title Appeal No.06 of 2005.

**06.** By the common judgment dated 22.03.2005, the Appeal being TA No.06 of 2005 was allowed whereas the appeal being T.A. No.4 of 2005 filed by the present appellants was dismissed. The first appellate court had occasion to observe as under:

**"The cross appellant has preferred the present appeal against the impugned judgment and decree with a prayer for setting aside the impugned judgment and decree and also for dismissal of the title appeal No.04 of 2005 preferred by the appellant in this case. It reveals from the plaint that the respondent has not sought any redress against the cross-appellant as well as proforma respondent No.4 to 7. But the learned court below passed the decree against the proforma defendant No.4 to 7 as well as cross-appellant proforma defendant No.8. So, the said finding of the learned court below is unwarranted and beyond the pleadings and also beyond the law. Apprehending that in that case the title appeal No.03 of 2005 is allowed accepting the plea of the appellant they right to possess the suit land as recorded in column No.24 of the exhibit 1 and 2 shall be infringed. So, he preferred the appeal. I reveal that the judgment and decree against the cross-appeal is beyond the pleading of the respondent i.e. beyond the averments of the plaint before the court seeking relief and as such the finding of the learned court below against the cross-appellant is unwarranted and beyond the principle of law and as such granting decree against the cross-appellant the learned court below has committed serious error and mistake. So, the said finding of the learned court below should be set aside as the same is not maintainable in law. Considering the peculiar facts and circumstances of the suits and appeal it reveals that the suit should be decided without cost all through."**

**07.** Against the said finding, the present appeal has been filed by the principal defendant-appellants. During pendency of this cross-objection, the principal defendant No.1 died and in his place the legal heirs have been substituted. According to the defendant-cross objectors, the plaintiff-respondents No.1, 2 and 3 failed to adduce any deed of title in support of their title and they have only

produced one finally published khatian [Exbt-1 series] where under column 13 the names of the predecessor of the appellants are appearing as the rayat.

**08.** Regarding possession over the suit land, the first appellate court returned a concurrent finding. The cross-objection filed by the defendant No.8, the respondent No.8 herein was allowed as without any pleading or relief prayed in the suit, injunction was granted against the proforma defendants No.4, 5, 6, 7 and 8. To that extent the judgment was interfered with and injunction was confined to the original defendants No.1, 2 and 3.

**09.** Mr. D. K. Biswas, learned counsel appearing for the appellants has submitted that Khatians No.2427/1, 2427/2, 2427/3 and 2427/4 cover the land measuring 0.099 acres, which is the suit land. Mr. Biswas, learned counsel has further submitted that the defendants also adduced the title deed No.1-4050 [Exbt.-C series] which was executed by Behari Singh and others in favour of Ambubi Kshetrani measuring one and half drone and corresponding khatian bearing No.1834 [Exbt-B series] for a land measuring 0.400 acre. Mr. Biswas, learned counsel has contended thus that the plaintiffs though claimed title over the suit land but they could not prove their title and merely submitted the finally published khatian which cannot be treated as the proof of title. Mr. Biswas, learned counsel has further submitted that the trial court has virtually discarded the evidence of the principal defendants. The principal defendants claimed their possession over the suit land and led evidence clearly



laying the description of the land. The defendant No.1 had categorically stated that the predecessors of the plaintiff did not have any title over the suit land. In the khatian No.2427 as introduced by the plaintiff, there are as many as 27 co-sharers and out of them only few co-sharers are made party in the said suit. The said defendant has admitted that several co-sharers died, but he has denied that the suit land was amicably partitioned by family arrangement.

**10.** The defendant No.1 has categorically stated that the suit land measuring 0.099 acre was under their possession from 01.01.1956. Ambubi Kshetrani was recorded as the forceful possessor of the said land measuring 0.400 acre under Khatian No.2245 jer 5618 opened in the name of Tribeni Mohan Singh and others and one Biswanath Chattarjee was shown as the permissive possessor against remaining land measuring .099 acre.

**11.** But the story of the defendant was not supported by their own witness namely Sri Dwijendra Sharma (DW-2) who stated that he saw the defendants in possession of the suit land for last 25(twenty five) years and the suit was filed in the year 2004 and the defendant No.1 had claimed that he was in possession with effect from 01.01.1956. This witness therefore was believed by the trial court. Hari Charan Das (DW-3) has also stated in the similar way. Sri Raju Rabi Das (DW-4) has stated that he has been seeing the defendant No.1 in possession since his birth.

All these oral witnesses are against the entries made in the finally published khatian.

**12.** Mr. Biswas, learned counsel however has submitted that the principal defendants were in possession as such there is no question of dispossessing or question of making any attempt to dispossess the plaintiffs from the suit land as the plaintiffs were never in possession. Even defendant No.8 in his written statement has claimed as under:

**"That, the pro-defendant No.8 possessed the said access land quantum 0.99 acre denying the right, title interest of plaintiffs and all other person/persons, body/authority, proclaiming own right, title interest in the suit land. But during the last re-survey operation wrongly record of right prepared in respect of suit land showing proforma defendant No.8 as permissive possessor. Practically plaintiffs got no right title interest in suit land, but a wrong Khatian in respect of suit land prepared in the name of plaintiffs, beyond the knowledge of pro-defendant No.8. Possession of Pro-defendant No.8 over more than 12 years adversely against the interest of plaintiffs and others. As such, right title interest of pro-defendant No-8 should be declared in respect of suit land and khatian should be prepared in his name."**

**13.** Though Mr. Biswas, learned counsel has relied on this part of the written statement of the defendant No.8 but that actually backfires to the case of the principal defendant-appellants as that takes out the shaft of the claim of possession from the principal defendant-appellants. Since there was no relief and no counter-claim in this respect, no issue in this regard was framed-whether the defendants No.1, 2 and 3 or the defendant No.8 were adversely claiming the possession. On the basis of the entry in the

khatian [Exbt-1 series] the trial court has believed the claim of possession by the plaintiffs by taking a safer presumption under Section 43(3) of the TLR & LR Act. The defendants No.1, 2 and 3 failed to show any document of possession though they have claimed they were in possession over the suit land for last 50(fifty) years. As such there was no perversity in appreciation of the evidence as claimed by the appellants herein nor is there any infirmity in the judgment of the courts below. The first appellate court has correctly affirmed the judgment of the trial court inasmuch as the decree of perpetual injunction can simply be granted under Section 38 of the Specific Relief Act when the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of, property, in the occasions as catalogued under sub-section 3 of Section 38 of the Specific Relief Act. In the present case, the injunction as granted by the trial court to prevent a multiplicity of the judicial proceedings appears to be absolutely necessary.

**14.** Thus, this court does not find any merit in this cross-objection and accordingly, the same is dismissed.

**JUDGE**

Moumita