

HIGH COURT OF TRIPURA
AGARTALA
RSA 54 of 2019

- 1(a) Smt. Rangamayee Choudhury,**
wife of late Bhandari Choudhury, resident of South Machmara,
P.S. Pecharthal, District- Unakoti, Tripura
(presently Krishna Tilla, P.S. Kanchanpur)
- (b) Sri Ramendra Choudhury,**
son of late Bhandari Choudhury, resident of South Machmara,
P.S. Pecharthal, District- Unakoti, Tripura
(presently Krishna Tilla, P.S. Kanchanpur)
- (c) Smt. Madhubala Choudhury (Sarkar)**
wife of Sri Sudhangshu Sarkar, daughter of late Bhandari Sarkar,
resident of Bagaicherra, P.S. Pecharthal, District- Unakoti, Tripura
- (d) Smt. Fulbala Choudhury,**
daughter of late Bhandari Choudhury, resident of South Machmara,
P.S. Pecharthal, District- Unakoti, Tripura
(presently Krishna Tilla, P.S. Kanchanpur)
- 2 (a) Smt. Parashi Choudhury,**
wife of late Haridhan Choudhury, resident of South Machmara,
P.S. Pecharthal, District- Unakoti, Tripura
- (b) Sri Gopal Choudhury,**
son of late Haridhan Choudhury, resident of South Machmara,
P.S. Pecharthal, District- Unakoti, Tripura
- (c) Sri Dulal Choudhury,**
son of late Haridhan Choudhury, resident of South Machmara,
P.S. Pecharthal, District- Unakoti, Tripura
- (d) Sri Rakhal Choudhury,**
son of late Haridhan Choudhury, resident of South Machmara,
P.S. Pecharthal, District- Unakoti, Tripura
- (e) Sri Lalit Choudhury,**
son of late Haridhan Choudhury, resident of South Machmara,
P.S. Pecharthal, District- Unakoti, Tripura
- (f) Smt. Bidhu Rani Choudhury (Sarkar),**
wife of Sri Prantosh Bhowmik, daughter of late Haridhan Choudhury,
resident of Ambarcherra, P.S. Pecharthal, District- Unakoti, Tripura
- (g) Smt. Mallika Choudhury,**
daughter of late Haridhan Choudhury, resident of South Machmara,
P.S. Pecharthal, District- Unakoti, Tripura
(presently Krishna Tilla, P.S. Kanchanpur)
- (3) Sri Monoranjan Choudhury,**
son of late Chakradhan Choudhury, resident of Dhanicherra
South Machmara, P.S. Kanchanpur, District- Unakoti, Tripura.

.... APPELLANTS

VERSUS

- 1. Sri Birendra Reang,**
son of Rangamani Reang, resident of village- Joymanipur,
P.S. Kanchanpur, District- North Tripura
- 2. The State of Tripura,**
represented by Sub-Divisional Magistrate,
Kumarghat, Unakoti District

.... RESPONDENTS

- 3. Sri Sudin Kapali,**
son of late Dilip Kapali, resident of village- Narayanpur, Ramguna,
P.S. Pecharthal, District- Unakoti, Tripura
[legal heirs of lt. Gita Rani Choudhury (Kapali)]
- 4. Sri Parimal Choudhury,**
son of late Chitta Ranjan Choudhury, resident of South Machmara,
P.S. Pecharthal, District- Unakoti, Tripura
(legal heirs of lt. late Chitta Ranjan Choudhury)

... PROFORMA-RESPONDENTS

For Appellant (s)	:	Mr. H. Deb, Advocate
For Respondent (s)	:	Mr. Ratan Datta, Advocate
Date of hearing and delivery of judgment order	:	29.09.2020
Whether fit for reporting	:	Yes

HON'BLE MR. JUSTICE ARINDAM LODH
JUDGMENT & ORDER (ORAL)

1. Heard Mr. H. Deb, learned counsel appearing for the appellants as well as Mr. Ratan Datta, learned counsel appearing for the respondents.
2. In short, this case has a chequered history. The appellants had instituted the present suit claiming that they had acquired right, title by way of adverse possession since the predecessor of the plaintiffs had been possessing the land w.e.f. the year 1955. However, it is revealed from the records that on 05.09.1957 a proceeding under Section 145 Cr.P.C. was initiated by one Rangamani Reang, father of the respondent Birendra Reang and 3 others against Chakradhar Choudhury, the predecessor of the plaintiff and five others and, vide judgment dated 06.06.1961, the learned Munsiff, Dharmanagar held that the predecessor of the present plaintiffs were in possession of the suit land. Subsequently, a title suit bearing No. T.S. 75 of 1961 was filed by the legal heirs of late Rangamani Reang seeking

declaration of title in their favour over the suit land but, vide order dated 20.09.1963, the learned Additional Subordinate Judge, Tripura allowed the plaintiffs to withdraw the suit with leave to file a fresh suit on payment of Rs. 65/- as cost which was duly complied by the plaintiffs. Subsequently, the defendant, Birendra Reang instituted a restoration proceeding under Section 187(3) of the TLR & LR Act, 1960 against the predecessor of the plaintiffs in the Court of Sub Divisional Officer, Kanchanpur, who vide his order dated 25.09.1997 concluded thus:

“In view of the above, I being satisfied opine that as there is no transfer of land by regd. Instrument of land by regd. Instrument from tribal, then the possession of OPs stands without consent of tribal owner and illegal. So, the possession of OPs does not come under consideration of bar of 1.1.69 and can be taken as illegal possession and in contravention of Sec. 187(3) of the TLR & LR Act, 1960 (2nd amendment, 1974)

Hence, it is ordered that the suit land under possession OPs viz. (1) Chitta Rn. Choudhury (2) Monoranjan Choudhury (3) Bhandari Choudhury and (4) Haridhan Choudhury surveyed in present V.S. plot Nos. 1104, 1101, 1102, 1457, 1153, 1162, 1113, 1115, 1116, 1118, 1106, 1105, 1107, 1108, 1109, 1110, 1112, 1120, 1454 & 1454 are measuring 6.11 acres of Mouja- Dakshin Machmarra be restored and possession be handed over to tribal 1st party.

This order will take effect henceforth.

A land measuring 0.91 acres surveyed in present CS plot Nos. 1103, 1111 & 1114 classified as homestead are exempted as the OPs got no other alternative”.

3. Thereafter, a Revision petition under Section 95 of the TLR & LR Act was filed before the Principal Secretary, Revenue Department, Government of Tripura challenging the decision of the Sub Divisional Officer, Kanchanpur, as aforesaid.

4. The Principal Secretary, Revenue Department after hearing the parties dismissed the revision petition filed by the present plaintiff-appellants and upheld the order of restoration of the land in favour of the defendants vide order dated 27.03.1998.

5. The next round of litigation between both the parties was started before the Hon’ble Gauhati High Court, Agartala Bench (as it then was) as the present plaintiffs filed a writ petition vide no. WP(C) 417 of 1999. In the said writ case, the learned Single Judge Bench of the Hon’ble Gauhati

High Court vide its order dated 16.06.2010 had dismissed the writ petition, and had observed thus:

“The writ petitioners in this case claim ownership of the land on the basis of a transfer made by the predecessor-in-interest of respondent No. 4 and previous ownership of the land by a tribal is clearly admitted. But the petitioners have failed to produce any documents, lawful or otherwise, to show that the transfer of land took place in their favour at any point of time before 1.1.1969 or even thereafter. In such circumstances, considering the objects and reasons for which the provisions has been made for restoration of the land to the dispossessed tribal, I see no justification to interfere with the impugned orders. For the foregoing discussion and reasoning, I find no merit in the instant proceeding and the same is hereby dismissed. No cost.”

6. Being aggrieved by the said order passed by the learned Single Judge, the present plaintiff-appellants had preferred a writ appeal before the Division Bench of the then Hon’ble Gauhati High Court, Agartala Bench being numbered as W.A. 28 of 2010. The Division Bench after hearing the parties by its order dated 25.06.2012 dismissed the writ appeal and affirmed and upheld the judgment and order passed by the learned Single Judge upholding the decision of the Sub Divisional Officer, Kanchanpur and the Principal Secretary, Revenue Department, Government of Tripura, directing restoration of the land in favour of the present defendant-respondents.

7. Thereafter, the present title suit being T.S. 35 of 2015 was instituted by the plaintiff-appellants in the year 2015 wherein the plaintiff-appellants had shifted from their earlier stand that they had acquired title over the suit land by way of purchase Deed and, in the present suit, they had claimed that they acquired title over the suit land by way of adverse possession. The learned Civil Judge, Junior Division, Kailasahar, Unakoti, after considering the pleadings of the parties stated in the plaint as well as in the written statement had framed issues and decided the suit of the plaintiff-appellants that they failed to substantiate the claim of adverse possession and vide judgment dated 03.11.2017 dismissed the suit of the plaintiff-appellants.

8. Being aggrieved by the said judgment dated 03.11.2017 the plaintiff-appellants had preferred title appeal before the court of learned

District Judge, Unakoti, Kailasahar which was subsequently transferred to the court of learned Additional District Judge, Unakoti, Kailasahar. The said appeal was numbered as T.A. 17 of 2017. The learned Additional District Judge accordingly heard the parties and after considering the argument and evidence on record held that the plaintiff-appellants had failed to fulfill the essential requirements of claiming title by way of adverse possession and, dismissed the appeal accordingly. Hence, the present second appeal before this court.

9. Mr. Deb, learned counsel appearing for the appellants has submitted that both the courts below had committed error in law as well as in facts of the case. Mr. Deb, has further submitted that Section 187(B) of the TLR & LR Act came into force w.e.f. 01.01.1969 and by that time, the plaintiff-appellants had acquired title by way of adverse possession since they had been possessing the suit land w.e.f. 15.02.1955.

10. On the other hand, Mr. Ratan Datta, learned counsel appearing for the respondents has submitted that the TLR & LR Act came into force w.e.f. 21.09.1960. As such, the plaintiff-appellants cannot claim acquisition of title by way of adverse possession after 21.09.1960. Mr. Datta, has further submitted that initially the stand of the plaintiff-appellants was that they acquired title by way of purchasing the suit land from the respondents, but, they failed to substantiate the said this plea that they had purchased the suit land from the respondents before or even after the introduction of the TLR & LR Act.

11. I have given my thoughtful consideration to the rival submission of the learned counsel appearing for the parties to the *lis*.

12. I have heard this matter for examining as to whether the second appeal in hand merits to draw any substantial questions of law. The appellant has proposed the following substantial questions of law for the purpose of admitting the appeal:

“(i) Whether Chakradhan Choudhury the predecessor of the Appellant Plaintiffs acquired title over the suit land by way of adverse possession, possessing the suit land since from 15.02.1955 after the expiry of statutory period of 12 years since from 15.02.1955 i.e. on 16.02.1967 and prior to enactment of Section 187, by amendment of Tripura Land Revenue & Land Reforms Act on 01.01.1969 prohibiting transfer of land by Tribal to Non-Tribal?

(ii) Whether as legal heirs of said Chakradhan Choudhury the Appellant Plaintiffs can possess the suit land, as owner by way of adverse possession after the enactment of the provision of Section 187 by amendment prohibiting transfer of land after 01.01.1969 as said Chakradhan Choudhury as well as his legal heirs, possessing the suit land from the time of said Chakradhan Choudhury for more than 12 years prior to 01.01.1969?

(iii) Whether the acquisition of title by the appellant plaintiffs from the time of Chakradhan Choudhury by way of adverse possession, would be extinguished due to enactment of Section 187(1) of Tripura Land Revenue & Land Reforms Act by amendment enforcement from 01.01.1969?

(iv) Whether the land belonging to tribal, was alienable to non-tribal till 01.01.1969 and prior to 01.01.1969 the non-tribal could acquire title over the land belonging to Tribal, by way of adverse possession?”

13. From the records, it reveals that it is admitted position that the plaintiff-appellants had entered into possession over the suit land w.e.f. 15.02.1955, but, the TLR & LR Act was introduced in the year 1960. The position of law in this regard is settled as held in the case of *Pancharaj Reang vs. Sumitra Das* [R.S. A. 35 of 2007] reported in (2014) 1 TLR 450 relying upon the decision of the Apex Court in *Amarendra Pratap Singh vs. Bahadur Prajapati and others*, reported in (2004) 10 SCC 65. It was held that in view of the restrictive provision of Section 187 of the TLR & LR Act, 1960, no court can declare any possessory right over a tribal land on the basis of prescription of the Limitation Act in favour of a non-tribal person. In the said case, the adverse possession was claimed on the basis of possession and transfer since 30.01.1967 i.e. after coming into force of TLR & LR Act, 1960 making transfer of land (including acquisition of title by way of adverse possession by a non-tribal over a tribal land) by a tribal to a non-tribal person is restrictive w.e.f. 21.09.1960.

14. It is the claim of the plaintiff-appellant, in the instant case, that they took over the possession of the suit land w.e.f. 15.02.1955 which means that they may claim adverse possession only upto the period of

20.09.1960, but, not after 21.09.1960 when the TLR & LR Act, 1960 came into force. Possessing the land adversely for five years will not entitle a person to claim acquisition of title by way of adverse possession as per prescription in the Limitation Act. In my view, to claim acquisition of title by way of adverse possession by a non-tribal over the land of a tribal, he has to aver and prove that he possessed the land beyond statutory period of limitation as prescribed in the Limitation Act before enactment of TLR & LR Act, 1960 because restriction has been imposed only after the introduction of this Special Act by the State Legislature. Furthermore, there is no debatable question of law that needs to be re-visited and answered.

15. Having held so, in my opinion, none of the substantial points of law, as proposed to be formulated and urged before this court involves substantial questions of law, and thus, merits no consideration for admission. Furthermore, both the courts below held that the plaintiff-appellants failed to establish the plea of adverse possession which do not call for interference by this Court as I do not find any cogent reasons to interfere with the concurrent findings on fact in exercise of jurisdiction under Section 100 of the Code of Civil Procedure, 1908. I do not find any merit in this appeal for the reason that the issue in regard to the plea, as raised by the plaintiff-appellants, has already been settled by this Court. As such, there is nothing new to be settled.

16. Recently, the Apex Court in the case of **Nazir Mohammed v. J. Kamala & Ors.** [Civil Appeal No. 2843-2844 of 2020 decided on 27.08.2020] [reported in MANU/SC/0619/2020] held that “*the condition precedent for entertaining and deciding a second appeal being the existence of a substantial question of law, whenever a question is framed by the High Court, the High Court is to show that the question is one of law and not just a question of facts, it also has to show that the question is a substantial question of law*”

17. Taking the queue of the decision in *Nazir Mohammed (supra)*, in my opinion, before admitting a second appeal, the High Court must be satisfied that there is existence of substantial question of law which would be evident from the memorandum of appeal which must state precisely the substantial questions of law involved in the appeal. It is only when the court is satisfied that the appeal involves substantial question(s) of law, then, the court would formulate substantial questions of law and admit the appeal, else, there is no purpose of admitting the appeal.

18. Accordingly, the appeal stands dismissed at admission stage as the question raised merits no consideration to formulate substantial question of law. Pending application(s), if any, also stands disposed of.

19. The judgment and decrees passed by the learned courts below are upheld and affirmed.

Send down the LCRs forthwith.

JUDGE

