

**(1996) 07 GAU CK 0021**

**In the Gauhati High Court**

**Case No : Second Appeal No. 22 of 1988**

Gita Bhattacharjee and Others

APPELLANT

Vs

State of Tripura and Another

RESPONDENT

**Date of Decision : 18-07-1996**

**Acts Referred:**

Tripura Land Revenue and Land Reforms Act, 1960 — Section 11(3), 11(4), 26, 43(1), 43(2)

**Citation : (1997) 1 GLR 99**

**Hon'ble Judges : D.N. Baruah, J**

**Bench : Single Bench**

**Advocate : S. Bhattacharjee, for the Appellant; U.B. Saha, G.A., for the Respondent**

## **Judgement**

D.N. Baruah, J.—This Second appeal is directed against the Judgment and Decree dated 20.7.88 confirming the Judgment of the Trial Court.

2. Heard Mr. S. Bhattacharjee, learned Counsel appearing on behalf of the Appellants and Mr. U.B. Sana, learned Govt. Advocate appearing on behalf of the Respondents.

3. The Plaintiff Kamode Ranjan Bhattacharjee (since deceased) brought a suit in the year 1985 against the Respondents-Defendants for right, title and interest in respect of the land described in schedule "C" to the plaint. The case of the Plaintiff is that he took settlement of 10 gandas of land from the successors of late Amanuddin under-raiyat at a premium of Rs. 100/-. In the year 1955 the land belonged to the jotedar late Amanuddin who was recorded in the Jote No. 4 under Kayemi Taluk No. 1 at Mouja Rupaspur in Kamalpur town. After the death of Amanuddin his successors became the jotedars and the Plaintiff paid rent to the Jotedars and took rent receipts from time to time. It has been averred by the Plaintiff that since 26.9.55 A.D. he was and had been possessing the land in exercise of his riyati right by catching fish, growing seasonal crops and by constructing house on the said land. During the settlement operation in the year

1960 the impugned land was also surveyed in C.S. Plot No. 1187 and 1188 under Khatian No. 524 and the land measuring 2 gandas, 4 dhurs and 2 gandas, 2 karas and 5 dhurs recorded in favour of the Plaintiff-Appellant. It is alleged that the Defendant took over possession of the land of the C.S. Plot No. 1188 on 23.4.70 A.D. by constructing a temple shed thereon. The Defendant managed to get a deed of gift executed by two of the successors of late Amanuddin. The Plaintiff also averred that he had been possessing the land adverse to the interest of the Defendant and had acquired right, title and interest over the land described in schedule "C" and "B" in plot Nos. 1187 and 1188 measuring 2 gandas, 4 dhurs and 2 gandas, 5 dhurs respectively. However, the Defendant died to demolish the hut and also made an attempt to take forcible possession in respect of the said 9 dcm. of land situated thus, the Plaintiff-Appellant filed the suit.

4. The case was contested by the State of Tripura, Defendants-Respondents, Their case is that was barred under the provisions of Tripura Land Revenue and Land Reforms Act, 1960 (for short TLR & LR Act, 1960). The deceased-Plaintiff being unsuccessful in the settlement case, preferred an appeal and a Second appeal but being unsuccessful although filed the present suit. This was, therefore, barred. On the pleadings the Trial Court framed as many as 10 (ten) issues. After recording evidence and on hearing the parties, the Trial Court dismissed the suit. Plaintiff being aggrieved preferred an appeal before the First Appellate Court and the First Appellate Court dismissed the appeal observing, inter alia, that as per the provision of Sub-section (2) of Section 44 of the TLR & LR Act Civil Court could not entertain the suit relating to the entries in (lie record of right finally published, revised, corrected or modified under the provision of Chapter-V and Chapter-VIII of the said Act. So the Plaintiff could not come to the Civil Court for correction of the record of right or for a decree for declaration of Plaintiffs right, title and interest or for declaring of this raiyati right under the Defendants over the disputed land. The suit was, therefore, not maintainable. Hence the Second Appeal.

5. The question raised before this Court by the learned Counsel for the Appellant is that the First Appellate Court committed manifest error of law by dismissing the appeal and confirming the judgment of the court below holding, inter alia, that the suit was not maintainable. In fact, according to the learned Counsel for the Appellant the suit was maintainable under the provisions of Section 11(3) of the T.L.R. & L.R. Act. The First Appellate Court totally misconstrued the provisions of Section 11(3) and also of Section 44 of the T.L.R. & L.R, Act. Mr. Saha, learned Government Advocate, on the other hand has vehemently opposed the submission. According to him the Courts below rightly dismissed the suit as not maintainable. He has further submitted that if any property or any right over the property is claimed by a person or by Government and the said claim is disputed, person aggrieved may approach the Collector and if the Collector rejects the contention within six months there-after, he can come to the Civil Court. But if he chooses to file the appeal u/s 95 of the Act then his right to

come before the civil Court is lost and the suit would be barred under the provisions of Sub-section (2) of Section 44 of the T.L.R. & L.R. Act. He has also submitted that as per Sub-section (3) of Section 43, any entry in the records of right is published shall, until the contrary is proved, be presumed to be correct. Therefore, according to Mr. Saha, the Courts below rightly dismissed the suit and no interference is called for.

6. On the rival contention of the parties it is to be seen whether the suit is maintainable or not. Before deciding the point of controversy it will be apposite to look to some of the provisions of the T.L.R. & L.R. Act as referred to by the learned Counsel for the parties. u/s 11(3) where any property or any right in or over any property is claimed by or on behalf of the Government, or by any person as against the Government and the claim is disputed, such dispute shall be decided by the Collector whose order shall, subject to the provisions of the T.L.R. & L. R. Act, be final. Under Sub-section (4) of Section 11, any person aggrieved by an order under Sub-section (3) or in appeal or revision therefrom may institute a civil suit to contest the order within a period of six months from the date of such order and the decision of the Court shall be final. u/s 43(1), when a record of right has been prepared, the survey officer shall publish a draft of the record in such manner and for such period as may be prescribed and shall receive and consider any objection which may be made during the period of such publication, to any entry therein or to any omission therefrom. Under Sub-section (2) of Section 43, after consideration of all objections and disposal of the matter in accordance with the rules, the survey officer shall cause the record to be finally published in the prescribed manner. Under Sub-section (3) of Section 43, every entry in the record of rights as finally published shall, until the contrary is proved, be presumed to be correct. Sub-Section (2) of Section 44 prohibits the Civil Courts from taking cognizance of any suit or application concerning any land if it relates to alteration of entry in the record of rights finally published, revised, corrected or modified under any of the provisions of Chapter V or Chapter VIII of the T.L.R. & L.R. Act consequent upon the notification issued u/s 26.

7. From the provisions referred to above, it is clear that u/s 11(3) when there is any dispute regarding the property or any right in or over the property, such dispute shall be decided by the Collector whose order shall, subject to the provisions of the Act, be final. Sub-section (4) of the said Section, however, confers right on a person aggrieved against the decision of the Collector to go to the Civil Court. But Sub-section (4) also says that any person aggrieved by an order passed in appeal or revision or aggrieved by an order passed under Sub-section (3) of Section 11 may approach the Civil Court. Here in the present case, the deceased Plaintiff Appellant filed a revision before the Government. However, the revision has been styled as an application u/s 95 of the Act. But mere quoting the section cannot change the character. It is a revision as contemplated under Sub-section (4). Therefore, in my opinion, after the dismissal of the revision definitely the deceased Plaintiff Appellant had right to approach the Civil Court. The Courts below, in my opinion, have overlooked that aspect of the

matter and came to an erroneous decision holding, inter alia, that the suit was not maintainable.

8. In view of the above, I find sufficient force in the submission of Mr. Bhattacharjee. The contention of the learned Government Advocate that the deceased Plaintiff Appellant has lost his right to approach the Civil Court cannot be accepted. As the First appellate Court has dismissed the appeal on the ground of maintainability of the suit, in my opinion the entire matter should go back to the First appellate Court on remand. Accordingly, I allow the appeal on remand to First Appellate Court to decide the matters in issue after formulating the points raised by the parties. In the facts and circumstances, however, I make no order as to costs. The First appellate Court shall decide the case on merit after giving all the opportunity of hearing to the parties. The First Appellate Court while disposing of the appeal on merit shall not be influenced by any of the observations made earlier by it.

9. Send down the records of the Learned Courts below.