

(2014) 11 TP CK 0073
In the Tripura High Court
Case No : RSA No. 42 of 2006

Jagadish Chandra Chakraborty Vs The State of Tripura

Date of Decision : 28-11-2014

Acts Referred:

Citation : (2014) 11 TP CK 0073

Hon'ble Judges : Utpalendu Bikas Saha, J

Bench : Single Bench

Advocate : S.M. Chakraborty, Sr. Advocate and A. Sengupta, Advocate for the Appellant; A. Ghosh, Advocate for the Respondent

Judgement

Utpalendu Bikas Saha, J.—The instant second appeal is preferred against the judgment dated 22.8.2006 passed by the learned Additional District Judge, Belonia, South Tripura in Title Appeal No. 12 of 2006 affirming the judgment dated 10.4.2006 passed by the learned Civil Judge (Junior Division), Belonia, South Tripura in Title Suit No. 17 of 2001.

2. Heard Mr. S.M. Chakraborty, learned senior counsel assisted by Mr. A. Sengupta, learned counsel for the appellant as well as Mr. A. Ghosh, learned counsel appearing for the respondents.

3. The facts needed to be discussed are as follows:

The plaintiff-appellant filed the suit in the court of the Civil Judge (Junior Division), Belonia, South Tripura for declaration of title by adverse possession and also for recovery of vacant possession of the suit land. The said suit was numbered as T.S. 17 of 2001.

4. The plaintiff's case is that the father of the plaintiff, namely, Ambika Charan Chakraborty, purchased the land measuring 1 kani 3 gandas and 1 kara from one Nagendra Kr. Shil son of It. Gopal Krishna Shil on a consideration money of Rs. 500/- only under a registered deed of sale vide registered Deed No. 123 of 1953. Just contiguous to the east of the said purchased land, there was a plot measuring about 10 decimals of land which was handed over by the said occupiers/vendors Nagendra Kr. Shil to the father of the plaintiff-appellant i.e.

Ambika Charan Chakraborty. But the appellant was shown as an unauthorized occupant over the suit property. A proceeding under TPP Act was drawn up in the year 2001 A.D. and it was dropped as it was not maintainable. The father of the appellant got possession of the suit land in the year 1953 when he purchased the jote land nearer to it. Two brothers of Ambika Charan Chakraborty also got possession of the land and peacefully kept the said possession for a period more than 30 years. Thus they acquired right, title and interest of the suit land, but the court below did not appreciate these facts and dismissed the suit without costs.

5. Being aggrieved by the said judgment, the appellant preferred an appeal before the learned Addl. District Judge Belonia, South Tripura. Learned Additional District Judge after considering the submission of the learned counsel for the parties and taking note of plaint as well as written statement and the issues framed dismissed the appeal. Hence the instant second appeal is filed against the concurrent findings of the courts below.

6. The instant second appeal was admitted on the following substantial questions of law:

a) Whether the adverse possession admitted by the State, the true owner while preparing the khatian has got any evidentiary value in deciding the adverse title of a person over a khas land?

b) Whether the dis-possession of a person from a land under his long, continuous, open, hostile possession for more than the prescribed period of limitation affects his right to seek declaration of adverse title over a land from which he has been dispossessed?

7. Mr. Chakraborty, learned senior counsel while arguing the matter submits that before eviction of the appellant from the suit land, he had acquired the title by way of adverse possession, therefore, he was entitled to recovery of possession, but the said aspect was not considered by the courts below. More so, when a person is dispossessed from a land which was in his long and continuous hostile possession for more than the prescribed period of limitation, he is entitled to recover the possession and consequent thereto, also entitled to title over the suit land.

8. Mr. Ghosh learned counsel for the respondents while refuting the submission of Mr. Chakraborty submits that the appellant was never in possession of the suit land hostile to the title to the respondents for more than prescribed period of limitation. Therefore, his claim is totally baseless. He has also submitted that both the learned Courts below considering the evidence on record as well as issues framed, finally came to the proper conclusion while dismissing the suit as well as appeal respectively. He again submits that the instant appeal is against concurrent findings and when an appeal is filed against the concurrent finding of facts, the Court should not disturb the same in a second appeal. He also submits that before filing the suit, the plaintiff appellant was dispossessed from the land

by the respondents and land is now within their possession. Thus continuity of possession has been lost. More so, for adverse possession, hostile assertion of title against the title of the true owner is necessary. It has to be proved that the person who is claiming adverse possession is continuously possessing the land more than the statutory period as prescribed to the limitation Act which was totally absent in the instant case at the time of filing of the suit.

9. This court has gone through the submission of the learned counsel for the parties as well as the judgments passed by the courts below. According to this court, substantial questions of law is in no way related to the facts of the case in hand. More so, the instant appeal is against the concurrent findings of facts and in such a position, it would not be proper for this court to interfere with the judgments of the courts below. Accordingly, the appeal is dismissed being devoid of merit. No order as to costs.