

In the Tripura High Court
Case No : RSA No.31 of 2023

Smti. Labanga Nath

APPELLANT

Vs

Sri Gopal Chandra Nath

RESPONDENT

Date of Decision : 05-08-2026

Acts Referred:

LR Act, 1960

Hon'ble Judges : S. Datta Purkayastha, J

Bench : Single Bench

Advocate : Mr. Sankar Lodh, Advocate; Mr. G.K. Nama, Advocate

Final Decision : Appeal allowed

Judgement

YES	NO
	?

HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA

JUDGMENT & ORDER

The judgment dated 12.09.2023 passed by learned Additional District Judge, North Tripura, Dharmangar in case No. Title Appeal 07 of 2021 and related decree thereof are under challenge in this appeal, whereby the learned First Appellate Court allowed the appeal and dismissed the suit of predecessor of the appellants (hereinafter referred to as plaintiff). The plaintiff died during pendency of this appeal. **[2]** The instant appeal was admitted on the following substantial question of law:

[i] Can adverse possession commence in favour of a person in the midst of his continuation of the possession of any land? [ii] Can the defendants claim adverse possession without surrender of the land first when their plea is that they or their predecessor entered into the Khas land as per advice of Rehabilitation Committee for rehabilitation purpose?

[3] The suit is for declaration and recovery of possession of suit land described

in four Schedules of the plaint of total area (0.10+0.04+0.11+0.08) i.e. 0.33 acre consisting of four different RS Plots. The claim of the plaintiff is that he got allotment of the suit land in the year 1966 A.D. (1373 B.S.) based on his previous possession of the said land. Khatian was also mutated in his name. But in the year 1968, father of the respondents (hereinafter respondents are referred to as defendants) was given permission to cultivate some portion of land (A-Schedule land) of the plaintiff for his survival with condition that as and when required he would hand over the possession thereof to the plaintiff again. But, in the 1 part of May, 2011, the defendants started disturbing the plaintiff in maintaining possession of lands under other three Schedules for which he also approached the SDM, Dharmanagar under Section 145 Cr.P.C. in respect of Schedule-A and Schedule-B land. But, on 15.06.2011, he was dispossessed by the defendants from the total suit land. Thus, he approached the Civil Court. **[4]** The defendant No.1 contested the suit asserting that his father came to India in the year 1958, from erstwhile East Pakistan and as per advice of rehabilitation committee he started residing within the suit land clearing the jungle and constructing hut therein. In the year 1961, he applied for allotment of land measuring 2 kanis under his possession by submitting his application dated 19.12.1961. But, meanwhile, the plaintiff most illegally managed to get allotment of the land including the land measuring 0.33 acre, though it remained in his possession and he continued to maintain the same by denying the right, title, interest of the plaintiff therein. After his death in the year 1994, the defendant No.1 started possessing the suit land in similar manner. According to him, in the year 2009, at the instance of the plaintiff, demarcation was done in the suit land and in the said demarcation report, possession of the defendant was specified. Thereafter, the plaintiff filed said proceeding under Section 145 of Cr.P.C. which was also dismissed and afterwards, with mala fide intention the instant suit was filed. **[5]** Both sides led their evidences and learned Civil Judge (Jr. Division), Dharmanagar thereafter decreed the suit directing the defendants to be evicted therefrom which was upset by learned First Appellate Court as stated above. **[6]** Mr. Sankar Lodh, learned counsel for the appellants referring to the report of Tehsildar and his deposition as DW-4 submits that said Tehsildar has categorically stated that the original plaintiff was the permissive possessor of the suit land and it is the evidence of the defendant side, but learned Trial Court wrongly appreciated his evidence and erroneously observed that his report was contradictory. Referring to the paragraph No.21 of the impugned judgment, Mr. Lodh, learned counsel argues that the observation of the learned First Appellate Court that the adverse possession commenced after completion of ten years of the period of allotment granted in favour of the original plaintiff, was completely erroneous, inasmuch as, in no way adverse possession can commence in the midst of continuance of previous possession. According to learned counsel, when the defendant entered into the suit land as permissive possessor, such nature of possession would continue until the land is once handed over to the original owner and then again reoccupied forcefully. **[7]** It is also submitted by him that learned First Appellate Court has misappreciated the evidence of PW-1 wherein in

one place, during cross-examination he stated that the defendant No.1 was possessing the suit land forcefully without further mentioning since when he was possessing the same forcefully. According to learned counsel, PW-1 meant to submit that when he asked for handing over the possession of the suit land to their father and the defendant refused it, he started possessing the said land forcefully. Mr. Lodh, learned counsel further submits that nowhere the PW-1 stated that since very inception the defendant was possessing the suit land forcefully. [8] Mr. Lodh, learned counsel relies on the following decisions of the Hon'ble Supreme Court in cases of-

(i) ***Annasaheb Bapusaheb Patil and others vs. Balwant alias Balasaheb Babusaheb Patil (Dead) by LRS. And Heirs and others; (1995) 2 SCC 543-*** It is observed by Hon'ble Supreme Court in this case that where possession could be referred to a lawful title, it will not be considered to be adverse. The reason being that a person whose possession can be referred to a lawful title will not be permitted to show that his possession was hostile to another's title and one who holds possession on behalf of another, does not by mere denial of that other's title make his possession adverse so as to give himself the benefit of the statute of limitation. Therefore, a person who enters into possession having a lawful title, cannot divest another of that title by pretending that he had no title at all.

(ii) ***T. Anjanappa and others vs. Somalingappa and another; (2006) 7 SCC 570-*** At paragraph No.12 of the said judgment the Hon'ble Apex Court observes that the concept of adverse possession contemplates a hostile possession i.e. a possession which is expressly or impliedly in denial of the title of the true owner. Possession to be adverse must be possession by a person who does not acknowledge the other's rights but denies them. The principle of law is firmly established that a person who bases his title on adverse possession must show by clear and unequivocal evidence that his possession was hostile to the real owner and amounted to denial of his title to the property claimed. For deciding whether the alleged acts of a person constituted adverse possession, the animus of the person doing those acts is the most crucial factor.

(iii) ***Karnataka Board of WAKF vs. Government of India and others; (2004) 10 SCC 779-*** The Hon'ble Supreme Court in said case at Paragraph No.11 observes that in the eye of law, an owner would be deemed to be in possession of a property so long as there is no intrusion. Non-use of the property by the owner even for a long time won't affect his title. But the position will be altered when another person takes possession of the property and asserts a right over it. Adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of true owner. It is a well- settled principle that a party claiming adverse possession must prove that his possession is peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive,

hostile and continued over the statutory period. [9] Mr. G.K. Nama, learned counsel for the respondents firstly argues that despite seeking relief of declaration of title in the suit property, no title deed was proved by the plaintiff. It is also submitted by him that in the year 2009, the plaintiff himself filed a petition under Section 145 Cr.P.C. and another petition for demarcation of the suit land and in the said demarcation, possession of the defendant was established and said proceeding under Section 145 Cr.P.C. was also dropped but those facts were suppressed by the plaintiff in his plaint. [10] Learned counsel also submits that not only PW-1 but PW-2 also admitted in cross-examination that at the time of merger of Tripura with Union of India, the defendant No.1 came into possession of the suit land and such entry into the suit land was prior to the date of allotment in favour of the original plaintiff. He also refers to the evidence of PW-3 wherein he confirmed the fact in his cross-examination that since 1960 the defendants were in possession of the suit land. [11] According to Mr. Nama, learned counsel, for all these reasons, the claim of the plaintiff that he was dispossessed from the suit land in the year 2011 was an artificial cause of action. It is further submitted that initial title of the plaintiff as allottee of the suit land was admitted by the defendant and after such admission, he denied such title and claimed hostile possession and therefore, learned First Appellate Court rightly decreed the suit and moreover, the witnesses of the plaintiff themselves proved the forceful possession of the defendant in the suit land. Mr. Nama, learned counsel, lastly submits that the report of Tehsildar or his testimony cannot be relied upon by the Court as he is not the competent authority to decide the factum of possession. Learned counsel also relies on the following decisions of Hon'ble Supreme Court in cases of-

(i) ***Kalika Prasad and another vs. Chhatrapal Singh (dead) by L.R.s; (1997) 2 SCC 544***- In this case, the appellant-plaintiff filed a suit for declaration of title and for possession of agricultural lands covered under the schedule of the plaint. The respondent pleaded adverse possession. The trial Court, therefore, recorded a finding that the respondent had perfected the title by adverse possession for having remained in possession for more than 12 years. On appeal, the District Judge reversed the decree on the ground that the respondent had come into possession under a power of attorney and, therefore, he remained to be in possession as an agent on behalf of the principal. The Madhya Pradesh High Court restored the judgment of the Trial Court observing that the respondent had remained in uninterrupted possession and thereby he perfected his title by prescription. The plaintiff then approached the Hon'ble Apex Court and filed appeal against said order of the MP High Court and the Hon'ble Apex Court uphold the judgment passed by the High Court dismissing the appeal observing that the respondent having remained, without any interruption, for well over 12 years, it would be obvious that he remained in possession in assertion of his own right, that too after the abolition of the estate. Thereby, he perfected his title by prescription since any person who got superior right had taken no action to have him ejected from the lands.

(ii) ***State of H.P. vs. Keshav Ram and others; (1996) 11 SCC 257-*** It is observed by the Hon'ble Apex Court that at any rate an entry in Revenue papers can form the basis for declaration of title in favour of the plaintiff. [12] The Court has examined the pleadings of the parties and also the evidences led by them. [13] It is admitted position that the original plaintiff got allotment of the suit land. It is only the case of the defendants that keeping their predecessor in possession of the suit land, the plaintiff managed to get the allotment of the land. According to the defendant No.1, in the year 1961, their father applied for allotment of total 2 kanis of land including the said land but same was not allowed by the competent authority rather, much bigger area than said 2 kanis of land, 1.24 acres was allotted to the plaintiff. Khatian was duly mutated in the name of plaintiff too as evident from the related Khatian (Exbt.1) and unless said allotment is cancelled by the competent authority, same stands good. Therefore, whether order of allotment was produced and proved before the Court or not and whether title of the plaintiff in the suit land is proved or not become redundant when factum of allotment is admitted by the parties. Entry in the said Khatian has also its own presumptive value of correctness under Section 43 of TLR & LR Act, 1960. [14] In the 16 column, said Khatian shows that total 1.24 acre of land was allotted to the plaintiff out of which disputed portion is only 0.33 acre of land. Possession of the predecessor of the defendant is reflected only with reference 0.10 acre of land from suit RS Plot No.3590 i.e. A schedule land and not against disputed 0.33 acre of land and even in respect of said 0.10 acre of land as possessed by the predecessor of the defendants, it is reflected that he has been in possession against illegal transfer and not as a forceful occupier. If he would be in possession of the entire suit land receiving the same through rehabilitation department, certainly his possession would be reflected regarding whole area of the suit land at the time of preparation of said ROR by the settlement authority. Though it is stated in the written statement that the defendant No.1 filed one prayer before the DM & Collector under Section 95 of TLR & LR Act for remedies but when it was filed and what was its ultimate result are not disclosed by him and even what was the prayer made therein is also not stated by him in the suit. He has proved one copy of communication made by SDM, Panisagar to DM & Collector, North Tripura dated 25.11.2014 (Exbt.C) sending one enquiry report with enclosed documents to the latter in respect of the petition of Gopi Chandra Nath but detailed information is not available therein and it is also not clear how he has got said copy of communication. [15] From Exbt.B i.e. a petition of the predecessor of the defendant submitted before the SDM, Dharmanagar, it appears that he applied for allotment of total 2 kanis of land but there is nothing that he later on pursued the same for getting said allotment and from the said application also it is not clear whether the present suit land falls within his claimed land or not. [16] One Tehsildar namely, Sri Niranjana Nath of Ramnagar Tehsil was examined from the side of defendants as DW-4 who only proved said copy of communication of SDM (Exbt.C) in his evidence and in his cross-examination, he confirmed that on enquiry, he discovered that Gopi Chandra Nath i.e. present defendant No.1 was the

permissive possessor of the plaintiff. Though both sides have placed their substantial part of their argument in respect of a report of Tehsildar, Ramnagar Tehsil dated 19.08.2011 and even, learned First Appellate Court in the impugned judgment has considered said report and at Paragraph No. 18 observed that said report was contradictory and was not convincing. But what appears from the record is that said copy of report was never taken into evidence during trial by the defendants and therefore, same ought to have been kept out of consideration by learned First Appellate Court. Said Tehsildar when deposed against defendants being the witness of the defendant No.1 himself, said evidence is binding on the defendant No.1. **[17]** As per the story of the defendants, their father was permitted to reside within the suit land by the rehabilitation department. Therefore, the entry of the predecessor of the defendants in the suit land even as per their own assertion was not hostile. When it became hostile or when the adverse possession actually commenced is not established by them. Mere continuous possession without hostile animus does not constitute adverse possession. The finding of learned First Appellate Court that as per terms of the allotment order after ten years of the allotment, the plaintiff acquired transferrable right in the suit land and therefore, adverse possession commences therefrom, is totally erroneous and untenable. A third case thereby has been made out by the learned First Appellate Court which the defendant even did not claim. Acquiring of transferable right in a land by the allottee has no connection in commencement of adverse possession by a third party. Therefore, such observation of learned First Appellate Court is illegal. Substantial question of Law No.1 is answered accordingly. **[18]** The defendant No.1 in his cross-examination only states that he has acquired title over the suit land being possessor of the same but did not state anything about adverse possession. **[19]** DW-2 namely, Harendra Nath and DW-3 namely, Indrajit Debnath also did not utter a single word regarding adverse possession of the defendants in the suit land. Though it is pointed by Mr. Nama, learned counsel, in the cross-examination of the plaintiff that he has stated in one place that the defendant is in possession of the suit land and that the father of Gopi Chandra Nath came into possession of the suit land being a refugee and in another place he stated that defendant No.1 has been possessing the suit land forcefully, but nowhere he has stated that the father of defendant No.1 was possessing the suit land forcefully when he entered into the suit land. No further question was also put to him to take clarification as to when the defendant No.1 started possessing the suit land forcefully, when it is admitted case of the plaintiff that he has been dispossessed from the suit land by defendant No.1 and his other co-sharers. In absence of any further materials in evidence, it cannot be interpreted that the plaintiff had admitted forceful possession of the father of the defendants in the suit land since inception. There is also no cross suit or counter-claim submitted by the defendant No.1 claiming his right, title and interest in the suit land by way of adverse possession. Considering all these aspects, the judgment passed by learned First Appellate Court appears to be perverse and is liable to be set aside. Substantial question of Law No.2 is answered accordingly. **[20]** In view of the above, the appeal is

allowed. The impugned judgment and decree passed by learned Additional District Judge, North Tripura, Dharmangar in Title Appeal No.07 of 2021 are set aside and the judgment and decree passed by learned Trial Court are restored. Registry is to prepare the decree accordingly. Send down the LC record along with a copy of this judgment. Pending application(s), if any, shall stand disposed of. **JUDGE**

FOOTNOTES

1. *Rudradeep*