

(2017) 06 TP CK 0001

In the Tripura High Court

Case No : 55 of 2007 along with L A APP NO 08 of 2010

Sri Guna Sindhu Choudhury, S/O. Lt. Gajendra Rn.
Choudhury, & Ors.

APPELLANT

Vs

Sri Subir Chandra Das, S/O. Jatindra Ch. Das, & Ors.

RESPONDENT

Date of Decision : 07-06-2017

Acts Referred:

[Code of Civil Procedure, 1908](#), [Section 100](#), [Section 96](#), [Order 41 Rule 27](#) - Second appeal - Appeal from original decree
[Registration Act, 1908](#), [Section 17](#), [Section 49](#) - Documents of which registration is compulsory - ct of non-registration of documents required to be registered
[Tripura Land Revenue and Land Reforms Act, 1960](#), [Section 43\(3\)](#)

Citation : (2017) 06 TP CK 0001

Hon'ble Judges : T. Vaiphei

Bench : Single Bench

Advocate : S. Deb Gupta, P. Roy, P. Roy Barman, S. Bhattacharji, K. Nath

Final Decision : Dismissed

Judgement

1. Both these appeals, involving a common question of law and the same parties, were heard together and are now being disposed of by this common judgment. The second appeal is directed against the judgment and decree dated 23-4-2007 passed by the learned Additional District Judge, North Tripura, Kailashahar in Title Appeal No. 36 of 2006 upholding the judgment and decree dated 20-6-2006 passed by the learned Civil Judge (Junior Division), Kailashahar, North Tripura in Title Suit No. 35 of 2005 dismissing the suit instituted by the appellant. LA Appeal No. 8 of 2010 is directed against the judgment dated 30-3-2010 in Civil Misc. (LA) No. 12 of 2008 apportioning the amount of compensation between the appellants and the respondents at 20% and 80% respectively for acquiring the same land.

2. To simplify the controversies involved in both the appeals, I will first deal with the second appeal and thereafter make an attempt to dispose of the LA Appeal on the basis of my decision in the second appeal. The appellants instituted a suit for declaration and permanent injunction against the respondents before the learned Civil Judge (Junior Division), Kailasahar seeking the following reliefs:

1. The plaintiffs, having perfected their title to the first schedule land by right of adverse possession, are entitled to the land acquisition award, i.e. the suit award mentioned in the second schedule below and to its benefits;

2. Perpetual injunction restraining principal defendant No. 1 from receiving the said award money of the second schedule below.

3. It is the case of the appellants that one Dinesh Chandra Das became the owner of the land measuring 0.11 decimal appertaining to C.S. Plot No. 275 under Khatian No. 72 by way of purchase from Patangini Roy on 14-07-1975. The said Dinesh Chandra Das was the relative of the appellants and after purchase of the land, he had to leave for Bangladesh and at that time, the said Dinesh Chandra Das had executed an unregistered deed of sale at a consideration of Rs.3,500/- and handed over the possession. The appellant thereafter took over possession of the said land and has been enjoying the possession since 20-3-1975 without any interruption from any quarter. In the year 2002, the Government of Tripura acquired a land measuring 0.06 acre, which was a part and parcel of the suit land. The award was prepared in the name of the said Dinesh Chandra Das as there was no sale deed conforming to the provisions of Section 17 read with Section 49 of the Indian Registration Act; thus there was no change in the name of Rayat in the Khatian. The respondent No. 1 on the strength of a fake Death Certificate managed to obtain a survival certificate in his favour and attempted to grab the entire awarded amount. It may be noted that the suit earlier instituted by the appellants being Title Suit no. 25 of 2003 was withdrawn by them on the ground of formal defects. Meanwhile, the Land Acquisition Collector modified the award in favour of the respondent No. 1. Aggrieved by this, the instant suit was instituted by them.

4. The respondent No. 1 contested the suit by filing his written statement wherein he claimed that the suit was not maintainable as the previous suit filed by him, namely, Title suit no. 25 of 2003 had been dismissed and that he had duly collected the survival certificate. According to the respondent No. 1, he is the son of the said Dinesh Chandra Das and the latter never sold the suit land but allowed the appellants to reside on that land by constructing a hut as the permissive possessor. The respondent No. 1 asserted that the appellants in collusion with the respondent No. 5 have been trying to grab the suit land. These are the sum and substance of the case of the respondents.

5. The trial court, on the pleadings of the parties, framed the following issues:

(i) Is there any cause of action?

- (ii) Is the suit maintainable in its present form?
- (iii) Are the Plaintiffs entitled to get the decree as prayed for?
- (iv) To what other relief/reliefs the parties are entitled?

6. Though the trial court decided Issue No.1 and 2 in favour of the appellants, it decided Issue No.3 against them by holding that the respondent No. 1 was the sole legal heir of the said Dinesh Chandra Das and that the Land Acquisition Collector rightly awarded the compensation in favour of the respondent No. 1. Trial Court, therefore, held that the appellants were not entitled to the decree prayed for and accordingly answered that the appellants were not entitled to any relief. Aggrieved by the decision of the trial court, the appellants preferred Title Appeal No. 36 of 2006 before the learned Additional District Judge, North Tripura District, Kailashahar. The appellants also filed an application under Order 41, Rule 27 CPC for adducing additional evidence in the form of the Xerox copy of the order dated 9-11-2006 and Memo dated 10-11-2006 of the Sub-Divisional Magistrate, Langtharai Valley, Chailengta, Dhalai, Tripura declaring as cancelled the survival certificate obtained by him and the death certificate of the said Dinesh Chandra Das as not genuine and sham in nature. The application was accepted by the appellate court, yet it dismissed the appeal holding that the appellants failed to prove their continuous possession over the suit land and were, therefore, not entitled to the reliefs so claimed. Consequently, the appeal was dismissed by the appellate court in its judgment dated 23-4-2007. Dissatisfied with the judgment, this second appeal is now preferred by the appellants.

7. While admitting the appeal, this Court formulated the following substantial question of law:

"Whether for non-consideration of provisions of Section 43(3) TLR & LR Act, 1960 while taking note of exhibit-5, the record of right, both the trial court and the appellate court has (sic) committed any illegality?

8. Mrs. S. Deb Gupta, the learned counsel for the appellants, submits that the appellate court, on the basis of the evidence adduced by the appellants, have clinchingly established that they have been possessing the suit land since 20-3-1975 by asserting their right, title and possession over it against all including the said Dinesh Chandra Das; the courts below committed illegality in ignoring such glaring evidence established by the appellants. She maintains that the courts below misdirected themselves by taking into account the wholly irrelevant fact as to whether the title had validly devolved upon the successor in possession for determination of adverse possession; both the courts below have fallen into gross error by taking into consideration such an irrelevant question. The trial court, submits the learned counsel, has misread Khatian No. 19 (Exhibit-5) which clearly shows that the appellants are in possession of the suit land and has in the process come to the wrong conclusion. The learned counsel further contends that the settlement authority have recorded the name of the

appellant No. 1 in the Khatian (Exhibit-5) and presumption under Section 43(3) of the Act is, therefore, in his favour; this aspect of the matter is lost sight of by the courts below. The learned counsel, therefore, submits that the courts below committed illegality in not decreeing the suit as claimed by the appellants. In support of her contentions, the learned counsel relies on *Bondar Singh and another v. Nihal Singh and others*, (2003) 4 SCC 161. Refuting the contentions of the learned counsel for the appellants, Mr.P. Roy Barman, the learned counsel for the respondents, reminds this court about the limited jurisdiction of this Court sitting in a second appeal which is confined only to examination of the question as to whether the impugned judgment suffers from perversity and no others. He submits that the concurrent findings of fact recorded by both the courts below cannot be reopened by this Court in the absence of perversity. That apart, contends the learned counsel, there is no substantial question of law involved in this appeal. It is also his contention that the evidence brought on record by the appellants cannot even remotely prove adverse possession, much less, his possession over the suit land. He, therefore, maintains that the courts below have correctly dismissed the suit, and this appeal must also meet the same fate. To fortify his submissions, the learned counsel places reliance on *Syeda Rahimunnisa v. Malan Bi (Dead) by Legal Representatives and another*, (2016) 10 SCC 315, *Damodar Lal v. Sohan Devi*, (2016) 3 SCC 78 and the decision of this Court in *Arup Acharjee v. State of Tripura and others*, (2015) 2 TLR 736.

9. The law is now well-settled that the first appellate court under Section 96 CPC is the final court of facts. In other words, the High Court in exercise of its jurisdiction under Section 100 CPC cannot interfere with the findings of facts recorded by the first appellate court under Section 96 CPC. Having said that, it must also be reiterated that the findings of fact arrived at by the first appellate court can nevertheless be challenged in a second appeal on the ground that such findings are based on no evidence or are perverse, but even in that case, a substantial question of law shall have to be formulated by the High Court. It may also be noted that even if the finding of fact is wrong, that by itself will not constitute a question of law. The wrong finding should stem out of a complete misreading of evidence or it should be based only on conjectures or surmises. Safest approach on perversity is the classic approach on the reasonable man's inference on facts. To him, if the conclusion on the facts in evidence made by the court below is possible, there is no perversity. If not, the finding is perverse. Inadequacy of evidence or a different reading of evidence is not perversity.- See *Damodar Lal v. Sohan Devi*, (2016) 3 SCC 78.

10. Before proceeding further, it may be apposite to reproduce below the findings of the appellate court in upholding the findings of the trial court:

"The plaintiffs in their pleadings stated that since 28-03-1975, they are adversely possessing the suit land and in this connection, they paid Rs.3,500/- to Dinesh Chadra Das while Dinesh Chandra Das left for Bangladesh. It is also the story of the plaintiffs that Dinesh Chandra Das died at Bangladesh. After going through

the entire pleadings of the plaintiffs, I find that nowhere in the pleadings, the plaintiffs have elaborately stated that what was the compelling situation for not executing any sale deed by Dinesh Chandra Das at the time of leaving India.

During cross-examination of PW-1, I find that PW-1 during his cross-examination specifically stated that Dinesh Chandra Das was the occupier of the suit land during his lifetime. This admission of the plaintiffs in cross-examination clearly goes to show that till death, the suit land was under the possession of Dinesh Chandra Das. It is also admitted fact that in the year 1988, Dinesh Chandra Das received some amount of compensation from the competent authority. From Exhibit-B, I find that Dinesh Chandra Das received an amount of Rs.2,529/- for the land measuring 0.020 acres in connection with Acquisition Case No. 11/KAI/88. This fact also goes to show that during the year 1988, Dinesh Chandra Das was alive and he received compensation of the land acquired from the land purchased by him. This fact further goes to prove that the plaintiffs were not in possession of the suit land and their possession was not uninterrupted.

9. Considering the aforesaid discussions, I hold that the plaintiffs failed to prove their continuous possession over the suit land and, as such, they are not entitled to get any relief."

(Underlined for emphasis)

11. In my opinion, the findings of fact so arrived at by the appellate court could not be satisfactorily assailed by the learned counsel for the appellants. Such findings are definitely based on the evidence brought on record by none other than the appellants themselves as correctly observed by the courts below. The fact that the said Dinesh Chandra Das had received compensation for the acquisition of a part of the suit land in 1988 or of the admission made by the appellant No. 1 in his cross-examination that the suit land was under the possession of the said Dinesh Chandra Das are quite inconsistent with the case of the appellants that they had acquired title to the suit land by adverse possession. As already noticed, the settled law is that a person claiming adverse possession must show that his possession is adequate in continuity, in publicity and in extent with the animus of holding the land adverse to the true owner. The legal position is best described in the language of the Apex Court in *Konda Lakshmana Bapuji v. Govt. of AP*, (2002) 3 SCC 258. This is what it said:

"53. The question of a person perfecting title by adverse possession is a mixed question of law and fact. The principle of law in regard to adverse possession is firmly established. It is a well-settled proposition that mere possession of the land, however long it may be, would not ripen into possessory title unless the possessor has animus possidendi to hold the land adverse to the title of the true owner. It is true that assertion of title to the land in dispute by the possessor would, in an appropriate case, be sufficient indication of the animus possidendi to hold adverse to the title of the true owner. But such an assertion of title must be clear and unequivocal though it need not be addressed to the real owner. For

reckoning the statutory period to perfect title by prescription both the possession as well as the animus possidendi must be shown to exist. Where, however, at the commencement of the possession there is no animus possidendi, the period for the purpose of reckoning adverse possession will commence from the date when both the actual possession and assertion of title by the possessor are shown to exist. The length of possession to perfect title by adverse possession as against the Government is 30 years."

12. Though the afore-quoted observations are rendered in the context of a Government land, the underlying principles therein are equally applicable to private land, the only difference is that for claiming adverse possession against the Government, the length of possession is thirty years whereas it is twelve years of adverse possession in the case of private lands. In the instant case, no evidence could be established by the appellants that they have been in possession of the suit land for over 12 years nor could they establish that they had animus possidendi for the whole statutory period of 12 years. In so far as Sub-section (3) of Section 43 of the TLR & LR Act is concerned, there is no quarrel with the proposition of law that every entry in the record of rights as finally published shall, unless the contrary is proved, be presumed to be correct. The appellants are relying on the Khatian (Exbt.5) wherein the name of the appellant No. 1 was shown in the comment column to show their continuous possession over the suit land but nothing is mentioned therein as to under what capacity his name was recorded or since when. At the most, this can be used as an evidence to show that they are permissive possessors of the suit land while the said Dinesh Chandra Das continued to remain as the owner of the suit land during his lifetime. In my opinion, there is absolutely no perversity in the findings of both the courts below in holding that the appellants have not acquired title to the suit land by adverse possession and dismissed the suit, for which the interference of this Court is not called for. The question of law raised by the appellants is, therefore, not substantial to entertain this appeal under Section 100 CPC.

13. The result of the foregoing discussion is that there is no merit in this second appeal, which is accordingly dismissed, but by directing the parties to bear their respective costs. Transmit the LC record. LA Appeal No.8 of 2010:

14. In this appeal, the appellant, who is the respondent No. 1 in the connected RSA No. 55 of 2007, is aggrieved by the judgment dated 30-3-2010 passed by the learned Land Acquisition Judge, North Tripura, Kailashahar in Civil Misc. (LA) No. 12 of 2008 apportioning the compensation awarded by him between the appellant and the respondents at 20% and 80% respectively, i.e. the appellant was awarded 20% of the compensation while the respondents were awarded 80% of the compensation. The acquired land is a part of the suit land in the previous case. Though the respondents have failed to prove title to the suit land by adverse possession or otherwise in the connected RSA No. 55/07, the Land Acquisition Judge has recorded the findings that there was some sort of

constructions made by the respondents before the entry of the appellant on the suit land and, therefore, awarded 80% of the awarded amount in favour of the respondents for the house standing thereon, which was constructed by them, while the appellant was held entitled to the remaining 20% of the awarded amount. As no dispute is raised by the appellant about the constructions raised by the respondents on the suit land, I do not find any reason to interfere with the decision of the Land Acquisition Judge in this behalf.

15. Consequently, this LA appeal has no merit and is, therefore, dismissed. There shall, however, be no order as to costs.