
(2015) 06 TP CK 0028

In the Tripura High Court

Case No : Regular Second Appeal No. 18 of 2004

Subhashi Bala Nath and Others

APPELLANT

Vs

Manik Lal Malakar and Others

RESPONDENT

Date of Decision : 08-06-2015

Acts Referred:

Citation : (2015) 06 TP CK 0028

Hon'ble Judges : Deepak Gupta, C.J

Bench : Single Bench

Advocate : S. Deb, Senior Advocate and A. Chakraborty, for the Appellant; D.C. Saha, Advocates for the Respondent

Final Decision : Allowed

Judgement

Deepak Gupta, C.J.

1. This regular second appeal is directed against the judgment and decree dated 17th January, 2004 delivered by the learned District Judge, South Tripura, Udaipur passed in Title Appeal No. 12 of 2003 whereby he upheld the judgment dated 2.6.2003 and decree dated 10.6.2003 passed by the learned Civil Judge(Sr. Division), South Tripura, Udaipur dismissing the suit of the plaintiff.

2. The undisputed facts are that the plaintiff (Lt. Jamini Kr. Nath) is the original owner of the land measuring 1.10 acres in C. S Khatian No. 378 of Mouja - East Jalefa, P.S. Sabroom, District - South Tripura. The case as set up by the plaintiff appellant was that during the survey proceedings draft survey report was issued in which the defendants, were shown to be in possession of the suit land. The plaintiff filed objections before the surveyor with regard to this objection report. The case of the plaintiff further is that taking advantage of the entry made in favour of the defendants, the defendants forcibly took possession of the suit land on 13.4.1997. According to the plaintiff, prior to that date he was in possession of the suit land. It is also not disputed that on 20.2.1998, the objections of the plaintiff before the revenue authority were dismissed on the ground that the

defendants were already in possession of the suit land and therefore, the entry was correct. Thereafter, the plaintiff filed the suit for recovery of possession based on title on the ground that he had been dispossessed only in 1997.

3. The defendants in their written statement did not deny the ownership of the plaintiff over the suit land. However, the case of the defendants was that they were in possession of the suit land since 01.7.1970 when their predecessor-in-interest had cleared the jungle on his own cost and labour which then stood on the suit land. It was further alleged that this was done with the knowledge of the plaintiff and the adverse possession of the defendants had ripened into true ownership with the knowledge of the local people. It was further alleged that the adverse possession had matured into good title on 01.7.1992.

4. Both the Courts below dismissed the suit mainly relying upon the entries contained in the final Khatian in which it is entered that the defendants are in possession of the suit land since the year 1970. Aggrieved by the judgment and decree, the plaintiff-appellant has filed the present appeal. Though various questions of law have been framed earlier, in my view, the only question of law which arises in this case is as follows :

"Whether any presumption of truth can be attached to an entry made in a revenue record which is de hors the Tripura Land Revenue and Land Reforms Act, 1960 and which entry is not required to be made as per the Act."

5. As far as the evidence is concerned, other than the statement of the defendants, the statement of the other witnesses with regard to their adverse possession is of no help to them because both the witnesses who appeared as defendants' witnesses stated that they did not know what was written in the affidavit. It was clearly stated by them that the affidavit was prepared by the counsel and was never even read over to them and they did not know what was written in the affidavit. Such an affidavit is meaningless in the eye of law. At the same time it cannot be ignored that even these witnesses of the plaintiff have stated that they were living at a fair distance from the land in question and therefore, that leaves us only with the statements of the plaintiff and defendants and no other evidence.

6. Adverse possession is a piratical right. It is a right not based on morality but based on technicality. Basically it is a right which flows out of the law that if the remedy to recover possession has been lost then the person in adverse possession has become the rightful owner of the land. It is by now well settled law that the persons who claims that his adverse possession has matured into title must prove not only that he is in possession of the land but also prove that his possession was open and hostile to the true owner and only after the expiry of 12 years in the case of private land and 30 years in the case government land the adverse possession will mature into title. The defendants have virtually led no evidence to show that he is in possession of the land since the year 1970. The only reliance is placed on the final Khatian which was prepared in which it is

mentioned that the defendants were in possession of the land since the year 1970.

7. Reference may here be made to Chapter V of the Tripura Land Revenue and Land Reforms Act, 1960 (for short TLR and LR Act) which deals with the maintenance of land records. Section 42 deals with the preparation of record of rights. Section 43 deals with publication of record of rights which reads as follows :

"43.(1) When a record of rights 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 objections which may be made during the period of such publication, to any entry therein or to any omission there from.

(2) When all objections have been considered and disposed of in accordance with the rules made in this behalf, the survey officer shall cause the record to be finally published in the prescribed manner.

(3) Every entry in the record of rights as finally published shall, until the contrary is proved, be presumed to be correct."

Sub-Section (1) prescribes that when the record of rights has been prepared, the survey officer shall prepare a draft and shall receive and consider objections against the draft. After all the objections have been considered and disposed of in accordance with the rules then the final record of rights is prepared and every entry contained in the record of rights as finally published is presumed to be correct unless the contrary is proved.

8. The question is what is the impact of the entry showing the defendants to be in possession since the year 1970? Here it would be pertinent to mention that the order passed by the survey officer on the objections filed by the plaintiff is not a decision on merits but it only holds that since the defendants are admittedly in possession of property, therefore, the objections are dismissed. While disposing of the objections the survey officer was not deciding the issue as to from which date the defendants were in possession of the property. The survey was conducted some time prior to 1996 because the objections to the draft survey report were filed in the year 1996. We can reasonably presume that the survey may have carried on for 2 years but not longer than that. The question is how the revenue officer can decide that any party is in possession of the property from a date much prior to the survey being conducted. The requirement of law is that at the time of survey the revenue officer visits the village, ascertains who is in possession and thereafter publishes the draft record of rights. It is not the job of the revenue officer to determine the date from which a particular party is in possession of the property. The Revenue Courts cannot usurp the powers of the Civil Court.

9. It has been urged by the learned counsel for the respondents that even earlier

there were entries in the record of rights showing the defendants to be in possession of the property. Unfortunately, no such record has been produced on record and the only record which has been relied upon by the defendants is the final survey report of 1997. I am of the view that this report would only show the possession from the date when the survey was carried out and not earlier. If possession prior to the survey being carried out is to be relied upon by any party then the party must prove this by leading evidence oral or otherwise or by producing earlier revenue records. This has not been done in this case. Therefore, I am of the considered view that no presumption of truth can be attached to that portion of revenue record which has not been recorded in accordance with the TLR and LR Act because there is no requirement of the Act to record the years of possession. In this view of the matter, the appeal is allowed.

10. Mr. S Deb learned senior counsel has also prayed for a mesne profit. I am of the view that there is no cogent entry with regard to the profits which could be earned from the Revenue. The only averment is that of a plaintiff that he should be awarded mesne profits @ Rs. 2,000/- per annum. There is no proof as to what was the actual income from the land.

11. In view of the above discussions, the appeal is allowed and the judgment dated 2.6.2003 and decree dated 10.6.2003 delivered by the learned Civil Judge(Sr. Division), South Tripura, Udaipur in Title Suit No. 8 of 2000 as well as the judgment and decree dated 17.01.2004 delivered by the learned District Judge, South Tripura, Udaipur passed in Title Appeal No. 12 of 2003 are set aside. The suit of the plaintiff is decreed for possession of the following suit land.

"Within District - South Tripura, Pargana -Pravabatirpur, P.S. Sabroom, Mouja - Purba Jalefa, C.S. Khatian No. 378 and R.S. Khatian No. 626 of same mouja with C.S. Plot No. 2226/2725 and R.S Hal Plot No. 4557 4568 area 1.10 acres Chankhola, tilla/viti land.

Bounded by:- North - Nepal Dey, South - Manik Malakar and others, East - Gopal Paul, West - Road."

12. Send down the LCRs forthwith.