

HIGH COURT OF TRIPURA
A G A R T A L A
RSA. No. 06 of 2020

1. Md. Akbor Ullah @ Akbar Ali

.....*Appellant(s)*

-V-E-R-S-U-S-

[On the death of the original plaintiff Karibun Nessa)

1. Md. Rahamat Ullah, S/O Lt. Ajmat Ullah,
2. Md. Mukchand Ali, S/O Rahamat Ullah,
3. Mosst. Ajijun Nessa, W/O Sri Arjad Ali, D/O Rahamat Ullah,
4. Mosst. Amina Begum, W/O Sri Ashik Ali, D/O Rahamat Ullah,

5. Mosst. Moni Begam,

6. Mosst. Chamina Begam,

***as per Hon'ble Courts order dated 24.08.2020, passed in connected I.A. No. 02 of 2020, the address of the respondent No.6 has been made in the following way:-

7. Md. Abdul Kayum,

..... *Plaintiff-Respondents*

B E F O R E
HON'BLE MR. JUSTICE T. AMARNATH GOUD

For Appellant(s) : Mr. D. Deb, Advocate.
For Respondent(s) : Mr. S. Lodh, Advocate.
Date of hearing and
delivery of judgment and order : **05.08.2022**
Whether fit for reporting : **YES/NO**

JUDGMENT & ORDER

Heard Mr. D. Deb, learned counsel appearing for the appellant. Also heard Mr. S. Lodh, learned counsel appearing for the respondents.

[2] This second appeal has been filed under Section-100 of the CPC against the judgment and decree dated 19.09.2019, decree signed on 20.09.2019 by the learned District Judge, Unakoti Tripura, Kailashahar, in connection with T.A. No.03 of 2018, dismissing the appeal affirming the judgment dated 28.02.2018 and decree dated 09.03.2018 passed by the learned Civil Judge (Senior Division) Court No.1, Unakoti Tripura, Kailashahar in connection with case No. T.S. 09 of 2016 declaring the right, title & interest of the plaintiff over the suit land and recovery of possession of the suit land.

[3] This appeal has been preferred against the concurrent findings of two Courts below. At the time of admitting the appeal, the following substantial questions of law were formulated by this Court:

“1. Whether the allotment order issued by the Collector in favour of the respondent-plaintiff contraband sub-rule 7 of the Rule-15 of the Allotment Rules, 1962, as amended on 1982?

2. Any other substantial question of law shall be considered at the time of hearing?

[4] The fact of the case in brief is that the defendant-appellant has preferred this appeal against the judgment and decree dated 19.09.2019 passed by the learned District Judge, District Unakoti Tripura in Case No. T.A. 03 OF 2018 directed against the judgment and decree dated 28.02.2018 passed by the learned Civil Judge, Senior Division Court No.1, Kailashahar, Unakoti Tripura in case No. T.S. 09 of 2016. The original one Karibun Nessa wife of Rahamat Ullah as plaintiff filed the suit vide No. T.S.09 of 2016 in the Court of learned Civil Judge, Kailashahar, Unakoti, Tripura against the defendant-appellant herein for declaration of her right, title and interest over the suit land described in the schedule of the plaint and for recovery of possession of the said land by evicting the defendant-appellant by removing all obstructions. The said suit was decreed by the learned trial court in favour of Karibun Nessa and the defendant appellant preferred appeal vide No. T.A. No. 03 of 2018 being dismissed by the First Appellate Court.

[5] After dismissal of the appeal vide No. T.A.03 OF 2018, the defendant-appellant has got information that the sole plaintiff Karibun Nessa died on 14.08.2019 leaving behind her husband, two sons and four daughters who being the legal heirs of the sole plaintiff have been impleaded in the present second appeal as plaintiff-respondents No.1 to 7 respectively.

[6] The suit land was originally government khas land. The predecessor of the plaintiff-respondents being in possession applied for allotment and accordingly, the suit land was allotted in favour of the predecessor of the plaintiff respondents by allotment order No.335, dated 30.07.1983. The predecessor of the plaintiff respondents was in possession of the suit land by construction of house and planting trees and developed the suit land. The defendant-appellant being the brother of the predecessor

of the plaintiff-respondents being in difficulties approached the predecessor of the plaintiff respondents for permission to use the construction over the suit land for temporary period and accordingly, the predecessor of the plaintiff-respondents allowed him on condition to vacate the said land as and when the same will be required.

[7] Accordingly, the defendant-appellant without having any right, title and interest started to possess the suit land as permissive possessor and on 06.01.2015 when the predecessor of the plaintiff-respondents requested the defendant to vacate the suit land the defendant refused and started to raise a latrine over the suit land. He claimed that the plaintiff / respondent had never been possessed the suit land neither before nor after the alleged allotment but he has been possessed the land since for more than 30 years. The Plaintiff / Respondent being poor landless lady has no ability to construct pucca building but the appellant / defendant has ability to do so, thus, he constructed pucca building there on the suit land and has been possessed the same for last more than 30 years. The plaintiff / respondent having knowing that the defendant / appellant has been possessed the suit land for long time, illegally got allotment of the land in her favor. Therefore, having come to know about the alleged illegal allotment in favor of the Plaintiff/ Respondent, made prayer for cancellation of said allotment order before the DM & Collector, Unakoti on 28-12-2015 and the same is still pending for disposal.

[8] Mr. D. Deb, learned counsel appearing for the appellant in supported of his case has submitted that Courts below committed wrong and illegalities in deciding both the suit and the first appeal. The judgment and decree of both the suits and the first appeal are bad in law and are not warranted by the facts and circumstances of the case. Both the Courts below without proper exercise of jurisdiction and without considering the

facts and circumstances of the case passed the judgment and decree both in the suit and the first appeal.

[9] Mr. Deb, learned counsel has further contended that the First Appellate Court ought to have considered that the learned trial Court did not properly appreciate the evidences both oral and documentary adduced by the parties and thereby ought to have allowed the first appeal setting aside the judgment and decree of recovery of possession passed by the learned trial Court. The Courts below failed to appreciate the provisions of allotment and cancellation of allotment as prescribed in the TLR & LR Act and the allotment rules and thereby, the Court below very wrongly and illegally passed the judgment and decree in favour of the plaintiff respondent and the learned First Appellate Court affirmed the decree of the learned trial Court which cannot stand in law.

[10] The Courts below ought to have considered the issues in favour of the defendant-appellant as he has been possessing the suit land since long before the alleged allotment as had been provided to the plaintiff i.e. the predecessor of the present respondents which is contrary to the provisions of Sections-14 and 15 of the TLR&LR Act. According to Rule-15, Sub-Rule-7 of the Tripura Land Revenue & Land Reforms Allotment Rules of 1962 as amended by 1982 rules wherein allotment would be cancelled for violation of the allotment rules by the allottee. In the present case the allottee admittedly has stated without using the allotted land allegedly allowed the defendant-appellant to possess the suit land which is the violation of the allotment Rules and as such the learned First Appellate Court ought to have allowed the appeal setting aside the judgment and decree of recovery of possession of the suit land passed by the learned Trial Court.

[11] The learned trial Court has decided the primary issues against the appellants and observed thus:

“In the result, the suit of the plaintiff is decreed on contest with cost and it is hereby declared that plaintiff has allottee right, title and interest over the suit land.”

The plaintiff is also entitled to get recovery of possession of the suit land by ousting the defendant and by removing all obstruction of the defendant.

Accordingly, the defendant is directed to hand over the possession of the suit land to the plaintiff by removing all obstruction within 30 days from today.

The suit is disposed of on contest with cost.

Make necessary entry in the relevant Trial Register. Prepare decree accordingly and put up before me for signature within 15 (fifteen) days from today latest on 15.03.2018.”

[12] Being aggrieved and dis-satisfied with the judgment passed by the learned trial Court, the appellant filed an appeal before the learned Appellate Court and the learned Court dismissing the appeal filed by the appellants observed as under:

“.....[23] The Ld. Trial Court rightly and justifiably passed the impugned judgment and decree declaring rights, title and interest of the plaintiff / respondent over the suit and directing the defendant / appellant to hand over the possession of the suit to the plaintiff / respondent removing all sort of constructions there from the suit land on his own costs. There is nothing warrant to interfere with the judgment and decree passed by the learned Trial Court.

[24] For what has been discussed and held above, there is no merit in the appeal. The impinged judgment and decree passed by the learned Trial Court is hereby confirmed. The appeal is hereby dismissed.”

[13] Here in the case at hand, the plaintiff / respondent has brought her suit for recovery of possession of the suit land based on title. In such a suit, it was for the plaintiff to prove her title and satisfy the Court that he she, in law, is entitled to dispossess the defendant from his possession over the suit property and for the possession to be restored with her. Here in the

case, it has been noticed that the plaintiff has proved her title vide allotment order Ext. 1 and also possession over the suit land vide khatiyans Ext. 2 and 4. According to, as held in *A. Raghavamma and another v. Chenchamma and another*, reported in *AIR 1964 SC 136*, there is an essential distinction between burden of proof and onus of proof; burden of proof lies upon a persons who has to prove the fact and which never shifts. Onus of proof shifts. Such a shifting of onus is a continuous process in the evaluation of evidence. In a suit for possession based on title once the plaintiff has been able to create a high degree of probability so as to shift the onus on the defendant it is for the defendant to discharge his onus and in the absence thereof the burden of proof lying on the plaintiff shall be held to have been discharged so as to amount to proof of the plaintiff's title.

[14] In the case, the plaintiff / respondent by producing allotment order Ext. 1 has proved her title and by producing khatiyans Ext. 2 and 4 has also proved her possession over the suit land. Allotment order is document of title and it can be accepted as document of title. The Khatiyans Ext. 2 and 4 are revenue record and it raises a presumption in regard to possession. Presumption of possession and / or continuity thereof both forward and backward can also be raised under Section-110 of the Evidence Act. Thus, what this Court notices is that the plaintiff has discharged her burden of proving her title and previous possession over the suit land but the appellant-defendant failed to rebut the proof of title and previous possession of the plaintiff over the suit land. Thus, it can be said that the learned Trial Court was very much justified in passing the impugned judgment and decree declaring the rights, title and interest of the Plaintiff over the suit and recovery of possession of the same from the defendant as in the case the defendant had not claimed adversary possession.

[15] Now, the question that comes for consideration is that whether the suit of the plaintiff was barred by Section-188 of the TLR & LR Act inasmuch as the plaintiff brought her suit during pendency of application under Section-95 of TLR & LR Act in connection with suit land. It is admitted fact that the appellant-defendant filed his application under Rule-12(1) of TLR & LR (Allotment rules) 1980 read with Section-95 of the TLR & LR Act, 1960 on 28-12-2015 and the suit of the plaintiff was instituted on 14-03-2016. In such a situation, now, the question is whether the suit of the plaintiff was barred by Section-188 of TLR & LR Act and Section-9 of the CPC as alleged by the learned Counsel for the appellant-defendant.

[16] Before, advertng to main dispute for decision, it will for better convenience to note the provisions of Sections-26, 44, 95, 188 of the TLR & LR Act, 1960 and Rule-12(1) of Allotment Rules 1980.

“Section 26 says that whenever the State Government thinks it expedient soto do, he may, by notification in the Official Gazette, direct the revenue survey of any local area with a view to the settlement of the land revenue and to the preparation of a record of rights connected therewith or revision of any existing settlement or record of rights.

Section 44. (1) When a notification under section 26 directing the revenue survey of any local area with a view to settlement of the land revenue and to the preparation of a record of right connected therewith or the revision of any existing settlement or record of right in any local area has been published after the enforcement of the Tripura land Revenue and Land Reforms (Fifth Amendment) Act, 1979, no civil court shall entertain any suit or application for the settlement or determination of land revenue or the incidence of any tenancy to which the record of right relates, and if any suit or application in which any of the aforesaid matters is in issue, is pending before a civil court on the date of publication of the ‘notification in the official gazette, it shall be stayed and it shall, on the expiry of the period for filing application for revision under section 45 or when such application has been filed within time on expiry of the period prescribed under section 94 for filing an appeal under section 93 against the order disposing of such application or when an appeal has been filed under the section within time as the case may be on disposal of such appeal abate so far as it relates to any of the aforesaid matters.

(2) No Civil court shall entertain any suit or application concerning any land if it relates to altercation of any entry in the record of right finally published, revised corrected or modified under any of the provisions of this chapter or chapter VIII of this Act consequent upon the notification issued under Section 26 after the enforcement of the Tripura Land revenue and Land reforms (fifth Amendment) Act, 1979.

Section-95, State Government or Collector may, at any time, either on his own motion or on the application of any party, call for the records of any proceedings before any revenue officer subordinate to him for the purpose of satisfying himself as to the legality or the propriety of any order passed in which no appeal lies under this Act for the purpose of satisfying himself as to the legality and propriety of any order passed by revenue officer, and pass such order in reference thereto as he thinks fit.;

Provided that he shall not vary or reverse any order affecting any right between private persons without having given o the parties interested notice to appear and be heard.

Section-188, No suit or other proceeding shall, unless otherwise expressly provided in this Act, lie or be instituted in any civil court with respect to any matter arising under and provided for by this Act.

Rule 12 of TLR & LR (Allotment of land) Rules, 1980---Any allotment of land under sub-section (1) of section 14 and in accordance with these rules, shall be further subject to the following conditions and also the conditions specified in the allotment order as in Appendix 'B'.

(I) The land will be heritable but not alienable without the written consent of the Collector granted on the recommendation of the Advisory Committee that may be set up by the Government;

Provided that the land may be mortgaged to the Government, or a Co-operative Society or a Bank of such Institutions as may be notified in the Official Gazette by the state Government from time to time.

(ii) The allottee may surrender the land in the manner specified in the allotment order.

(iii) The allottee shall bring the whole area under cultivation within the time specified in the allotment order.

(iv) The allottee shall be liable to pay premium, land revenue and taxes as specified in the allotment order.

(v) The allottee shall be entitled to plant trees on his land to enjoy the products thereof and to fell, utilize or dispose of the timber of trees on his land.

(vi) The allotment will be liable to be cancelled for breach of any of the provisions of the Act, the rules or any of conditions of allotment."

[17] The conjoint reading of Section-26 and Section-44 above shows that when notification has been issued under Section-26 directing revenue survey of the local area for settlement of land and for preparation of record of rights connected therewith or the revision of any existing settlement or record of rights in any local area, a civil suit is prohibited from entertaining any suit or application for the settlement or determination of land revenue or the incidence of any tenancy to which to which record of rights relates, and if any suit or application, in which any of the matters in issues, is pending before a civil court on the date of publication of the notification in the official Gazette, such suit or application shall have to be stayed. Section-44 (2) provides that a Civil Court to entertain any suit or application concerning any land if it relates to alteration of any entry in the record of rights finally published, revised, corrected or modified under any of the provisions of Chapter IV and Chapter VIII of the TLR & LR Act consequent upon the notification issued under Section-26 after the commencement of the TLR & LR (first amendment) Act, 1979 (*Jyotirmay Gosh & Anr v. Sudhangshu Das & 12 others*).

[18] In *Jyotirmay Gosh case (Supra)*, the Honorable High Court of Tripura also held that Section-188, which says that no suit or other proceeding shall, unless otherwise expressly provided in this Act, lie or be instituted in any civil suit with respect to any matter arising under and provided for by the Act. What are matters arising under and provided for by the provisions of TLR & LR Act are those matters, which are adumbrated in Section-44, namely, the settlement or determination of land revenue or the incidence of any tenancy to which record of rights relates or alteration of any entry in the records of rights finally published, revised, corrected or modified under any provisions of this Chapter-V or Chapter-VIII of the Act consequent upon notification issued under section26 after

commencement of the TLR and LR Act. Section-44 is exhaustive enough to cover virtually any matter in connection therewith for which the jurisdiction of civil court is excluded. Moreover, in any suit or application in which any of the aforesaid matter is in issue, the same shall, on the circumstances specified therein, abate. Thus, under section 188, the jurisdiction of the ordinary civil courts to entertain any suit, application either to stay or set aside any decision given or any order passed under the Act or with respect to any matter for which a proceeding ought to have been taken there under, is, therefore, ousted.

[19] In the present case, the plaintiff / respondent had brought her suit before the Ld. Trial Court praying for declaration of her rights, title and interest over the suit land and also for recovery of possession of the suit land ousting the defendant/Appellant and removing all sorts of construct there over with costs of the defendants and also granting all other relief (s) as deemed fit and proper and the costs of the litigation.

[20] Situated thus, the relief(s) claimed by the plaintiff/ respondent in her plaint do not relate with or about alteration of any entry in the record of rights finally published, revised, corrected or modified under any of provisions of Chapter-V or Chapter-VIII of TLR & LR Act consequent upon the notification under section 26 after the enforcement of the TLR & LR Act. I find the suit of the plaintiff / respondent has nothing to do with the settlement of land revenue, or preparation of records of rights or any entry thereof. Thus, it made clear that the suit of the plaintiff was not barred by Section 188 of the TLR & LR Act or by Section-9 of the CPC as contended by the Ld. Counsel for the Appellant / defendant. The claim of relief of the plaintiff can no way be entertained by the Revenue Court and the so called relief sought in the plaint can be granted only by the regular civil court.

[21] In the instant case, this Court minutely perused the record and scanned the evidence and taking into account both the legal as well as factual aspect of the case and finds no reason at all to interfere with the concurrent findings of the two Courts below.

[22] Admittedly the respondents are in possession of the land by way of a legitimate right conferred on them by the Government. That without the same being cancelled by the concerned authority as per law, the said land cannot be allotted by Government to third parties by following due procedure. In the present case appellant herein is a third party. During the subsistence of the authorization in favour of the respondents, the appellant has no *locus standi* to question the authorization issued in favour of the respondents. It is not for this Court to decide the validity of the allotment of land by the Government in favour of the respondents in this second appeal. If there is any violation of conditions or attraction of disqualifications, it is for the appropriate authorities to look into the matter.

[23] At the threshold the suit was liable to be dismissed and the same is dismissed on one of such grounds. This Court has no hesitation to confirm the orders passed by the Courts below dismissing the present appeal filed by the appellant on the same ground.

[24] In view of the discussions made above, the appeal is found to be devoid of any merit and hence, the same stands dismissed. Draw the decree accordingly and send down the LCRs thereafter. As a sequel, miscellaneous applications pending, if any, shall stand closed.

JUDGE