# IN THE HIGH COURT OF TRIPURA AGARTALA

#### **RSA No.45 of 2016**

- 1. **Smt. Nilima Bhattacharjee,** wife of late Samiran Bhattacharjee of Algapur Road, Dharmanagar, North Tripura

#### -Versus-

1. The State of Tripura,

represented by the Secretary, Department of Revenue, Government of Tripura, Secretariat Building, P.O. Secretariat Complex, P.S. NCC, Agartala, District- West Tripura

- The District Magistrate & Collector, Government of Tripura, North Tripura, Dharmanagar
- 3. **The Sub-Divisional Magistrate,**Government of Tripura, Dharmanagar, North
  Tripura
- 4. **The Executive Officer,**Dharmanagar Nagar Panchayat, at present
  Dharmanagar Municipal Council,
  Dharmanagar, North Tripura

......Respondent(s)

For the Appellant(s) : Mr. S.M. Chakraborty, Sr. Adv.

Ms. A. Pal, Adv

For the Respondent(s) : Mr. D. Chakraborty, Sr. Adv.

Mr. H. Laskar, Adv.

Date of hearing : 18.02.2020\*

Date of delivery of : 15.07. 2020

Judgment & O

rder

Whether fit for reporting :  $\begin{array}{c|c} YES & NO \\ \hline \checkmark & \end{array}$ 

#### HON'BLE MR. JUSTICE S. TALAPATRA

### **JUDGMENT & ORDER**

This is an appeal under Section 100 of the CPC from the judgment and decree respectively dated 07.09.2016 and 20.09.2016 delivered in Title Appeal No.10 of 2016 by the District Judge, North Tripura, Dharmanagar. By the said judgment, the judgment and decree respectively dated 23.02.2016 and 02.03.2016 delivered in Title Suit No.09 of 2014 by the Civil Judge, Senior Division, North Tripura, Dharmanagar has been reversed on observing that the plaintiffs have perfected their 'possessory right' over the Schedule-A land 'by adverse possession' on continuously and uninterruptedly possessing the said land and denying the right, title and interest of the defendant-respondents for more than 30 years. It has been also

<sup>\*</sup>Pronouncement of the judgment is delayed for lock down of the court.

observed in the said judgment that the said land is admittedly a Government Khas land and the plaintiffs have established their 'illegal' possession denying the right, title and interest of the original owner i.e. the Government of Tripura for more than 30 years but that does not mean that the plaintiffs have established their title over the suit land. If the plaintiffs vacated the land, the land would have gone to the Government of Tripura. So the plaintiffs are not entitled to get any relief in the form of direction to the defendants to prepare the record of right in the name of the plaintiffs as the holder of title. Thus, the relief of declaration of prescriptive title has been denied. Being aggrieved thereof, the plaintiffs have challenged that part of the finding in the present appeal.

In the midst of the hearing, the appellants sought leave of this court to reframe the substantial questions of law framed by the order dated 02.02.2016. For purpose of reference only, the substantial questions of law as framed at the time of admission are reproduced hereunder:

- (i) Whether the appellants were entitled to get a decree declaring the title over the suit land?
- (ii) Whether the finding of the appellate court suffers from perversity?

By the said order dated 02.12.2016, leave was granted for proposing any other substantial question of law at the time of hearing.

for the appellants has sought to rephrase the substantial questions of law as framed on 02.02.2016. On 18.02.2020 this court has framed the following substantial question of law, by discarding the earlier ones, which reads as under:

Whether after declaring the adverse possession, denial of the title by prescription as has been done in the impugned judgment is tenable in the perspective fact?

Bhattacharjee and another vs. the State of Tripura [the judgment and order dated 17.01.2014 delivered in W.P.(C) No.10 of 2014] that no doubt, a person acquires a possessory title by lapse of time, if possession is found hostile to the original owner. It is the person, who claims the hostile possession is to prove it. No doubt, the documents placed on records show that the petitioner and his father was before him in continuous possession of the land. It has been further observed in Ajit Kr. Bhattacharjee (supra) that 'the writ court is not required to declare title by adverse possession and

thereby, to direct the state-respondents to create record of right in the name of the petitioner to showing him as title holder to the land is not automatic that by lapse of time, a person will acquire title belonged to another and the public authority is bound to prepare khatian in the name of the person in occupation. The petitioner has no doubt a case to claim his right to possess the land or in the alternative, a possessory title and that he may claim before appropriate civil court and not by filing a writ petition under Article 226 of the Constitution. The writ court cannot decide the right to possesses or cannot direct the respondents to prepare khatian in the name of the petitioner."

herein] to approach the civil court of the competent jurisdiction for the appropriate relief, if he is so inclined to. It appears that as a sequel to that observation, the suit had been filed by the plaintiffs being Title Suit No.09 of 2014 seeking a series of reliefs *inter alia*, the declaration of title in favour of the plaintiffs in respect of the land as described in the Schedules-A1 & A2 of the plaint by way of adverse possession, inasmuch as the possession of the land was under the control of the plaintiffs beyond the period of limitation as prescribed

by Article 112 of the Schedule appended to the Limitation Act, 1963. Further declaration has been sought in respect of the memorandum under No.73/F.2/SDM/DMN/REV/12 dated 10.01.2012 claiming the suit land as Government Khas land and in view of the provisions of Section 27 of the Limitation Act, the right to recover has been extinguished and thus, the true owner cannot initiate any legal action to recover the land as described in Schedule-A1 and Schedule-A2 land from the plaintiffs.

The essential facts which may appear necessary for determination of the challenge are that Akshay Kr. Bhattacharjee, the predecessor of the plaintiffs had entered in the Schedule-A land measuring 0.162 acres in the year 1954 and developed the said land 'openly, adversely and in hostile assertion' against the defendants. He and his family started living there by constructing huts. When the record of rights was published in the year 1966, the said land was recorded in Khatian No.3233 against CS Plots No.7089 and 7090 showing the name of Akshay Kr. Bhattacharjee as illegal occupant. The said Khatian being Khatian No.3233 was finally published on 11.02.1970. The plaintiff No.1 is possessing a part of Schedule-A land which has been shown in the Schedule-A1 and the remainder of the

land, out of Schedule-A, is under possession of the plaintiff No.2, has been shown in the Schedule-A2. Shedule-A1 and Schedule-A2 are the parts of Schedule-A land. There is no dispute in this regard. An eviction proceeding being case No.4/Evic/78 was launched by the defendant No.3. On 09.12.1986 and 13.01.1994, the plaintiffs were requested by the Survey and Settlement Directorate, Government of Tripura to submit a prayer for allotment, if they did so desire and to attend the Dharmangar Halka office on 27.12.1986. The appellants attended the said venue and claimed acquisition of the ownership by prescription due to their uninterrupted hostile possession for over 40 years. On 06.12.1994, the defendant No.4 had sent a letter vide No.F.39-40/NAA/DMN/88-89/942 apprising that they might give allotment to the plaintiffs. The suit land [Schedule-A1 and Schedule-A2] falls within the notified area of Dharmanagar Municipal Council. Further, 2[two] eviction proceedings being case No.3/1995 and 4/1995 were drawn up against the plaintiff-appellants and on 05.05.1995, the respondent No.3 issued the show cause notice being No.2480/SDO/DMN/REV/EVIC/95 for eviction of the plaintiffs under Section 15 of the TLR & LR Act, 1961. The respondent No.4 on 26.12.2006 issued a provisional allotment order. On 10.01.2012, the respondent No.3 issued a letter vide No.73/F.2/SDM/DMN/REV/12

claiming that the land in question was Government Khas land. The plaintiffs [the appellants], on the contrary denied the right, title and interest of the Government inasmuch as by operation of the provisions of Section 27 read with Article 112 of the schedule appended to the Limitation Act, the State Government had lost the right to evict the plaintiffs. But despite approaching the revenue authority for creating the record of right in favour of the plaintiff No.2 by mutation, they did not give any heed to such prayer. By filing the written statement, the defendants have denied the said claim of title by efflux of time.

Based on the rival pleadings as many as 9[nine] issues were framed for adjudication of the dispute in the suit including whether the plaintiffs are in possession over the suit land since 1954 adversely denying the title of the Government of Tripura in respect of the suit land. Having all the records duly scrutinized, the trial court dismissed the suit on holding that 'the plaintiffs could not establish the factum of their adverse possession of the suit land and that they did not acquire right, title of interest over the suit land by way of adverse possession, in my view plaintiffs are not entitled to get the relief of decree of declaration of their right, title and interest over the

suit land and confirmation of their possession. Plaintiffs are also not entitled to get the decree of mandatory injunction to direct the defendants to prepare record of rights in the name of plaintiffs in respect to the Schedules-A1 and A2 suit land respectively. Plaintiffs are also not entitled to get any other relieves."

Be that as it may, against the said judgment dated 23.02.2016 the plaintiffs have filed the appeal under Section 96 of the CPC being Title Appeal No.10 of 2016 in the court of the District Judge, North Tripura, Dharmanagar.

The said appeal was disposed of, by the judgment dated [8] 07.09.2016 on observing that the judgment and decree dated 23.02.2016 and 02.03.2016 respectively passed by the Civil Judge, Sr. Division, Dharmanagar, North Tripura in Title Suit No.09 of 2014 by dismissing the suit, is liable to be set aside. Thereafter, it has been succinctly held that the plaintiffs have perfected their possessory right over the Schedule-A land [comprised of the land Schedules-A1 described and A2] adverse by possession continuously and uninterruptedly denying the right, title and interest of the defendants for more than 30 years and thus, they have accrued possessory right over the Schedule-A land by adverse possession.

[9] The plaintiffs had only challenged the said finding for the simple reason that even though their adverse possession has been acknowledged but the relief as sought in the suit for declaring title by prescription has not been expressly provided. Even no direction has been given to record the name of the plaintiffs in the record of right inasmuch as the defendants have lost their possessory right to evict and recover the suit land from the plaintiffs. It is noteworthy that the defendants who are substantively affected by the judgment dated 07.09.2016 preferred not to challenge the said judgment. However, Chakraborty, learned senior counsel Mr. appearing respondents has made a robust attempt to challenge the judgment taking a recourse through Order XLI, Rule 22 of the CPC, but the plaintiffs have challenged the said judgment on the solitary substantial question of law as rephrased and noted before. The first appellate court having analyzed the evidence as recorded, has noticed that in the year 1978, a show cause notice under Section 15(1) of the TLR & LR Act was issued by the defendant No.3 in connection with Case No.4/Evic/78 concerning the Schedule-A land and that was served on the plaintiffs asking them to vacate the said Khas land. They were further directed to appear before the defendant

No.03 on 18.09.1978. The plaintiff No.2 had appeared and clearly stated that from the first half of 1954 their father, Akshay Kr. Bhattacharjee had entered into the said land adversely and showing hostility and the said land was recorded during the survey operation as CS Plot No.7089 and 7090 in the Government Khas Khatian No.3233. The said record of right was published on 30.06.1966 clearly showing their father, Akshay Kumar Bhattacharjee as forcible occupier. On 09.12.1986, a notice was issued from the Survey and Settlement Directorate, Government of Tripura in connection with the case No.299 recording the land described in Schedule-A in the suit asking them to attend the Dharmanagar Halka Office on 27.12.1986 with Citizenship card, Khas Khatian, ration card and income certificate for consideration of making allotment in their favour. The plaintiff No.2 along with one Samiran Bhattacharjee, since deceased, [represented by his wife, the appellant No.1] had appeared and claimed title on adverse possession, but the defendants did not take any action and nothing was communicated as regards the outcome of the said process to the plaintiffs. A similar notice was received again on 13.01.1994 to submit the prayer for allotment for the land measuring 0.140 acres. Again the plaintiff No.2 and Samiran Bhattacharjee attended the proceeding and claimed their right by

prescription for their possession over 40 years denying the ownership of the defendants instated of accepting the offer of allotment. Even Dharmanagar Municipal Council through the defendant No.4 sent one letter dated 06.12.1994 recommending allotment of the land in favour of the plaintiffs, to the office of the defendant No.3 but nothing came out of such recommendation. Despite the attempt to evict the plaintiffs, they held firm of their possession of the said land. It has been also noted by the first appellate court that on 26-12-2006, the defendant No. 4 sanctioned provisional allotment of the holdings, of the houses of the plaintiffs bearing No.218/W-11 in CS plot No. 7089, 7090 and 7099-7096 of Khatian No.3233 and also issued a pass book for collection of property tax by fixing annual rental of Rs.164/-. Holding is created for purpose of realizing the municipal tax. Even on 10.01.2012 the defendant No.3 issued a letter to the plaintiffs vide No. 73/F.2/SDM/DMN/REV/12 claiming the land in question as Govt. Khas land, but the plaintiffs denied the said claim of right, title and interest. On the contrary, they have asserted that the right, right and interest have been perfected in their favour by operation of law. Finally, the first appellate court having recorded the documents, as produced by the plaintiffs viz. the certified copy of the order dated 17.01.2014 passed in WP(C)10 of 2014 [Annexure-1], the certified

copy of the writ petition No.10 of 2014 along with its Annexures [Exbt.3], the certified copy of order dated 18.01.2014 passed in WP(C)No.11 of 2014 [Exbt.3] and the notice dated 05.02.2014 [Annexure-4] and the testimonies of Sri Ajit Kr. Bhattacharjee [PW-1], Smt. Nilima Bhattacharjee [PW-2], Sri Birendra Kr. Das [PW-3] and Smt. Bijay Laxmi Sen [PW-4] and the evidence of the defendants such as one insurer namely, Manik Ranglong [DW-1] and one document viz. the representation of the plaintiff No.1 dated 12-10-2013 addressed to the defendants, has observed as follows:

"Exhibit-1, 2 and 3 show that the plaintiffs are in possession of the suit land continuously without break as illegal possessor. Exhibit-1, 2 and 3 also shows that the Govt. of Tripura attempted to evict them but failed. Hon'ble High Court in WP(C) No.10 of 2014 by order dated 17-01-2014 has specifically mentioned that the petitioner (plaintiffs) has no doubt a case to claim right of possession of the land or in alternative the possessory title that he may claim before appropriate civil court. So, it is clear that the plaintiffs are possessing the suit land since 1966 uninterruptedly as illegal possessor and the defendants also attempted to evict them but failed to evict them. So, the continuous possession of the plaintiffs shall be considered to be adverse possession denying the right, title and interest of the defendants/Govt. of Tripura. Thus, in this case the plaintiffs are able to make out a case of possessory right on adverse possession denying the right, title and interest of the original owner i.e. the Govt. of Tripura. So, the plaintiffs are entitled to get possessory right through adverse possession over the suit land against the defendants. So, though the plaintiffs has got no title over the property the plaintiffs have established their right of possession over the suit land as adverse possession. Admittedly the land is a Govt. Khas land and the plaintiff established his illegal possession denying the right, title and interest of the original owner i.e. Govt. of Tripura for more than 40 years but that does not mean plaintiffs have established their title over the suit land. If the plaintiffs vacate the land the land will go to the Govt. of Tripura. So, plaintiffs are not entitled to get any relief giving direction to the defendants to prepare record of right in the name of the plaintiffs as owner. So, I refrain to pass that relief to the plaintiffs."

Thereafter, the first appellate court has declared the possessory right by setting aside the judgment and decree dated 23.02.2016 and 02.03.2016.

[10] Mr. Chakraborty, learned senior counsel appearing for the appellants has submitted that this finding is quite strange and completely against the principle of acquisition of title by prescription. He has also stated that there is no dispute relating to the possession maintained by the plaintiffs and their predecessor since 1954. Even the finding of fact has not been challenged by the defendants by filing any appeal. In this factual perspective, the only issue whether the denial of declaration of title by prescription and to open the record of right in favour of the plaintiffs can be sustained. Mr. Chakraborty, learned senior counsel has referred a decision of the apex court to nourish his contention that the inference as drawn by the first appellate court cannot maintained. In Ravinder Kaur Grewal and others vs. Manjit Kaur and others, reported in (2019) 8 SCC 729 where the apex court having expressly overruling its previous decision in Gurdwara Sahib vs. Gram Panchayet Village Sirthala, reported in (2014) 1 SCC 669 has held that the declaration of title can be sought by a plaintiff and that can be

granted on the basis of adverse possession. Adverse possession can be used as a shield by a defendant. But the proposition of law that the same cannot used as send by the plaintiff has been expressly over ruled. After survey of catena of precedents held it has been held that adverse possession is heritable and there can be adverse possession by two or more persons as the right is transmissible one. It has been further observed that it confers a prescriptive right. There can be tacking of adverse possession by two or more persons, as stated. Tacking is based on the fulfillment of certain conditions. Tacking may be by possession by the purchaser, legatee or assignee, etc., so as to constitute continuity of possession, that person must be claiming through whom it is sought to be tacked, and would depend on the identity of the same property under the same right. Two distinct trespassers cannot tack their possession to constitute conferral of right by adverse possession for the prescribed period. It has been further observed that a person in possession cannot be ousted by another person except by due procedure of law and once 12 years' period of adverse possession is over, [under Article 65 of the Limitation Act] even owner's right to eject him is lost and the possessory 'owner' acquires right, title and interest, possessed by the outgoing person/owner as the case may be against whom he has

prescribed. It has been further observed that a person in possession cannot be evicted by another person except by due procedure of law. It has been further observed by the apex court in **Ravinder Kaur Grewal** (supra) as under:

"In our opinion, consequence is that once the right, title or interest is acquired it can be used as a sword by the plaintiff as well as a shield by the defendant within ken of Article 65 of the Act and any person who has perfected title by way of adverse possession, can file a suit for restoration of possession in case of dispossession. In case of dispossession by another person by taking law in his hand a possessory suit can be maintained under Article 64, even before the ripening of title by way of adverse possession. By perfection of title on extinguishment of the owner's title, a person cannot be remediless. In case he has been dispossessed by the owner after having lost the right by adverse possession, he can be evicted by the plaintiff by taking the plea of adverse possession. Similarly, any other person who might have dispossessed the plaintiff having perfected title by way of adverse possession can also be evicted until and unless such other person has perfected title against such a plaintiff by adverse possession. Similarly, under other Articles also in case of infringement of any of his rights, a plaintiff who has perfected the title by adverse possession, can sue and maintain a suit."

[11] For purpose of reference, Para-64 of Ravinder Kaur Grewal (supra) for pertinence it is reproduced hereunder:

"64. Resultantly, we hold that decisions of Gurudwara Sahab v. Gram Panchayet Village Sirthala: (2014) 1 SCC 669; and decision relying on it in State of Uttarakhand v. Mandir Shri Lakshmi Siddh Maharaj: (2017) 9 SCC 579; and Dharampal v. Punjab Wakf Board: (2018) 11 SCC 449; cannot be said to be laying down the law correctly, thus they are hereby overruled. We hold that plea of acquisition of title by adverse possession can be taken by plaintiff under Article 65 of the Limitation Act and there is no bar under the Limitation Act, 1963 to sue on aforesaid basis in case of infringement of any rights of a plaintiff."

[12] Mr. D. Chakraborty, learned senior counsel appearing for the respondents has submitted hat Section 27 of the Limitation Act which deals with extinguishment of rights to property cannot take away the power of the State Government provided under Section 15 of the TLR & LR Act. Section 27 of the Limitation Act provides with lapse of the period limited to any person for instituting the suit for recovery of possession of any property, his right to such property shall be extinguished. This unique proposition of law has been dissected and stated that the land of the government occupied by any person can be the subject of eviction at any point of time by disregarding the provisions of Limitation Act as provided under Article 112, which reads as under:

Description of Suit	Period of limitation	Time from which period begins to run
Any Suit (except a suit before the Supreme Court in the exercise of its original jurisdiction) by or on behalf of the Central Government or any State Government, including the Government of the State of Jammu and Kashmir	Thirty years	When the period of limitation would being to run under this Act against a like suit by a private person.

[Emphasis Added]

[13] In this regard, the phrase 'against like suit by a private person' would colour from Article 65 provided in the Schedule of the Limitation Act. Article 65 reads as follows:

Description of Suit	Period of limitation	Time from which period begins to run
For possession of immovable property or any interest therein based on title.  Explanation- For the purposes of this article-	Twelve years	When the possession of the defendant becomes adverse to the plaintiff.
(a) where the suit is by a remainderman, a reversioner (other than a landlord) or a devisee, the possession of the defendant shall be deemed to become adverse only when the estate of the remainderman, reversioner or devisee, as the case may be, falls into possession.	OF 7	P. De la
(b) where the suit is by a Hindu or Muslim entitled to the possession of immovable property on the death of a Hindu or Muslim female, the possession of the defendant shall be deemed to become adverse only when the female dies.	CHARLES TO SERVICE STATE OF THE PARTY OF THE	
(c) Where the suit is by a purchaser at a sale in execution of a decree when the judgment-debtor was out of possession at the date of the sale, the purchaser shall be deemed to be a representative of the judgment-debtor who was out of possession.		

[14] Thus, the limitation begins to run when the possession of the occupant. The words that the defendants becomes adverse and was interpreted in **Gurdwara Sahib** (supra) as no suit can be filed

claiming a title by prescription by the person who was in the adverse possession. The adverse possession, as interpreted, cannot be the sword but it will be the shield in the hand of the defendants. The said proposition of law has been overruled by a larger Bench of the apex court in **Ravinder Kaur Grewal** (supra).

- [15] Mr. Chakraborty, learned senior counsel has finally submitted that even in 2014 one of the plaintiffs approached the defendants for allotment of the land. As such, it cannot be stated that the possession was adverse to the defendants. This analogy is not only queer in the circumstance but also unacceptable, inasmuch as, unless the true owner is acknowledged and possession is asserted adverse, no right by adverse possession can be established.
- In **Bal Krishan vs. Satyaprakash**, reported in **(2001) 2 SCC 498**, a three Judges Bench of the apex court had considered the question whether the plaintiff had perfected his title by adverse possession or would depend on whether the person claiming adverse possession has proved the classic requirement of three nec- *nec-nec vi*, *nec clam* and *nec precario*. In that case, the trial court as well as the first appellate court decreed the suit declaring the title on the basis of adverse possession. However, the High Court dismissed the

suit but the apex court restored the decree declaring title issued by the trial court having observed thus :

- "6. The short question that arises for consideration in this appeal is: whether the High Court erred in holding that the appellant had not perfected his title by adverse possession on the ground that there was an order of a Tahsildar against him to deliver possession of the suit land to the auction purchasers.
- 7. The law with regard to perfecting title by adverse possession is well settled. A person claiming title by adverse possession has to prove three "nec" -nec vi, nec clam and nec precario. In other words, he must show that his possession is adequate in continuity in publicity and in extent. In S.M. Karim vs. Bibi Sakina: AIR 1964 SC 1254; speaking for this Court Hidayatullah, J. (as he then was) observed thus:
  - '5......Adverse possession must be adequate in continuity, in publicity and extent and a plea is required at the least to show when possession becomes adverse so that the starting point of limitation against the party affected can be found.'"

Ranchi, reported in (1981) 2 SCC 103, a three Judges bench of the apex court had occasion to consider whether the adverse possession had been properly established by the plaintiff. The plaintiff had filed a suit for declaration of title and recovery of possession based on Hukumnama and adverse possession for more than 30 years. The trial court decreed the suit by declaring the 'title' on 'adverse possession'. It had been observed by the apex court that adverse possession had been established by a consistent course of conduct of the plaintiff in the case. Possession was hostile to the full knowledge of the municipality. Thus, it was inferred that the High Court could

not have interfered with the finding as to adverse possession and could not have ordered remand of the case to the Judicial Commissioner. The order of remand and the proceeding following the said order were quashed. The apex court restored decrees of declaration of title and recovery of possession and also for a permanent injunction.

[18] Having appreciated the rival contentions raised in respect of the substantial question of law, this court is of the view that there is no dispute so far the fact of possession is concerned. It is moreover, so the defendants did not challenge the finding of the first appellate court in respect of extinguishment of title by operation of Article 112 of the schedule of the Limitation Act, read with Section 27 of the said Act. Moreover, the public records are aplenty in favour of the plaintiffs that despite the bids of eviction, they stood firm by their possession at least since 1966 when the first draft publication of record of right was made public and later on, that was finally published showing Akshay Kumar Bhattacharjee from whom the plaintiffs inherited the possession of the entire Schedule-A land as 'forcible occupiers.' The defendants cannot say that a public record which showing the plaintiffs as the forcible occupier was not within

their knowledge. Even in 1978, the eviction bid failed. After returning the finding that the plaintiffs are possessing the suit land adversely for more than a period of limitation as provided under Article 112 of the Schedule of the Limitation Act, the first appellate court was unduly influenced by the said judgment of the High Court passed in the writ petition, which was filed by the appellant No.2 and declared so called 'possessory right' by denying the relief of declaration of title by prescription. Declaration of the possessory right is not under challenge even by the defendants. When the adverse possession beyond the period as provided under Article 112 of the schedule of the Limitation Act has been proved satisfactorily under Section 27 of the Limitation Act would be operated and the title of the defendants i.e. the Government of Tripura has to be considered. However, their right as the superior owner cannot be extinguished. The superior owner has limited right of realizing 'rent' etc. Thus, the plaintiffs are entitled to get the declaration of title by prescription and they are entitled to be treated as the holder of the title with all rights of Rayat for the suit land.

[19] In view of this declaration made by this court, the plaintiffs are entitled to get their name recorded as Rayat for the declaration of

the title based on adverse possession over the suit land [Schedule-A comprised of Schedule-A1 and Schedule-A2 land]. The said land shall duly be recorded by way of mutation of Khatian in favour of the plaintiffs. Hence, the finding of the first appellate court by denying the declaration of the title by prescription and the rights and interest attached therewith in respect of the suit land and denial of declaration in respect of entitlement of the plaintiffs to get the mutation of Khatian as the 'Rayat' with all their rights, are set aside. It is clearly declared that the plaintiffs' title by prescription with all right and interests has perfected and they have become the holder of the title in respect of the suit land as stated above on extinguishment of the right, title and interest of the defendants under Section 27 of the Limitation Act as the plaintiffs have successfully proved that they were in the possession over the suit land adversely for more than 40 years as required by Article 112 of the schedule of the Limitation Act. It is also declared that the plaintiffs are entitled to get the mutation of Khas Khatian No.3233 and to have a new Khatian opened in their names as the holder of the title to enjoy and to bear all obligations as Rayat under the superior ownership of the State.

Having observed thus, this appeal stands allowed.

Draw the decree accordingly.

Thereafter, send down the LCRs forthwith.

## **JUDGE**

