

**HIGH COURT OF TRIPURA
AGARTALA
RSA No.34 of 2023**

1. (a) Sri Nandadulal Chakraborty,
son of Late Shibesh Chakraborty,
Jail Road, Banamalipur, P.S. East Agartala,
District-West Tripura

(b) Smt. Gayatri Chakraborty,
daughter of Late Shibesh Chakraborty,
Jail Road, Banamalipur, P.S. East Agartala,
District-West Tripura

(legal heirs of deceased defendant Lt. Shibesh Chakraborty
to be substituted).

2. Smt. Pranati Ganguly,
daughter of Late Brajesh Chakraborty
wife of Sri Salil Ganguly,
resident of Pratapaditya Road, Noapara, Barasat,
P.S. Barasat, District-North 24 parganas, Kolkata-700125

---- Appellant(s)

Versus

1. (a) Smti. Sakti Chakraborty,
wife of Late Gouri Sankar Chakraborty

(b) Sri Suman Chakraborty,
son of Late Gouri Sankar Chakraborty,
both are resident of BK-121, Sector-II,
Bidhannagar, District-North 24 Parganas,
West Bengal-700091

(both are the legal heirs of Gourishankar Chakraborty)

2. (a) Sri Tapan Kr. Chakraborty,
son of late Harigopal Chakraborty

(b) Sri Tarun Chakraborty,
son of Late Harigopal Chakraborty

(c) Sri Tridib Chakraborty,
son of Late Harigopal Chakraborty

(d) Smt. Dipali Banerjee,
wife of Sri Naru Gopal Banerjee

(e) Smt. Anjali Laskar,
wife of Sri Mrityunjoy Chatterjee

all are resident of 49/E, Ramkrishna Sarani, Kolkata-700060

***As per Hon'ble Court order dated 08.12.2023 passed in I.A.02/2023
name of Respondent No.2(f) has been incorporated in the following
way-

*****2(f) Smt. Minati Chatterjee,**
wife of Sri Mrityunjoy Chatterjee,
resident of 49/E, Ramkrishna Sarani,
Kolkata-700060

(g) Sri Shobhan Chakraborty,
son of Late Narayan Chakraborty
& Late Rekha Chakraborty
of Flat No.32/41, Vijaya Heritage,
6th phase, Malaigiri, P.S. Kadma, Jamshedpur-831005

(h) Smt. Ruma Chakraborty,
wife of Sri Atanu Chakraborty,
daughter of Late Narayan Chakraborty
& Late Rekha Chakraborty of Flat No.944,
Pareshnath Apartment, Vijaya Heritage,
3rd Phase, Uliya, P.S. Kadma,
Jamshedpur-831005
(Respondents No.2(a) to 2(h) all are legal heirs of Snehalata
Chakraborty).

3. (a) Smt. Gita Rani Chakraborty,
wife of Late Ramgopal Chakraborty,
daughter of Late Surendra Mohan Chakraborty,
resident of P-54, Baisnab Ghata, Patuli, Kolkata-700094

(b) Sri Saktimoy Chakraborty,
son of Late Surendra Mohan Chakraborty,
resident of 48, Milanpark, Garia, Kolkata-700084

(c) Sri Rashamoy Chakraborty,
son of Late Surendra Mohan Chakraborty,
resident of Block-1/110, Baishnabghata,
Kolkata-700094

(d) Smt. Tamali Chakraborty,
wife of Late Chinmoy Chakraborty

(e) Smt. Gargee Chakravarti,
wife of Sri Sukanta Ghosh Dostidar,
daughter of Late Chinmoy Chakraborty

(f) Smt. Shruti Chakraborty,
daughter of Late Chinmoy Chakraborty,

resident of Respondents No.2(d) to 2(f),
G/1, 39 Baghajatin, Kolkata-700086

(Respondents No.3(a) to 3(f) all are legal heirs of
Asha Rani Chakraborty).

4. (a) Sri Panna Lal Chakraborty,
son of Late Hara Lal Chakraborty,

resident of 2/101, Pashchim Putiary,
Kolkata-700041

(b) Sri Jaharlal Chakraborty,
son of Late Hara Lal Chakraborty,
resident of B-59/1, Burdge Town,
Medinipur, Kolkata-721101

(c) Smt. Chhanda Chakraborty,
wife of Sri Samarjit Chakraborty,
daughter of Late Hara Lal Chakraborty,
resident of "Sangam Garden", Tantigeria,
Paschim Medinipur-721102

5. (I) Smt. Swapna Chakraborty,
wife of deceased Late Pranabesh Chakraborty,
care of Smt. Tultul Chakraborty, Arkaneer,
Sekerkote, P.S. Amtali, Pin-799130,
District-Tripura West.

(II) Smt. Bulbul Chakraborty,(elder daughter),
care of Sri Dulal Chakraborty, Krishnayan Apartment,
Krishnanagar, Agartala, P.S. West Agartala,
District- Tripura West, Pin-799001

(III) Smt. Tultul Chakraborty,(younger daughter),
Arkaneer, Sekerkote, Bikramnagar, P.S. Amtali,
Pin-799130, District-Tripura West

all are legal heirs of Late Pranabesh Chakraborty to be
substituted.

----Respondent(s)

***As per the order dated 27.08.2024 passed in I.A. 03/2023,
necessary amendment has been made as follows :

*****6(a) Shri Sanjoy Banerjee,**
care of Late Haralal Chakraborty
of Debch ya Colony, Sepoy Bazar,
P.O. & District-Paschim Medinipur,
Pin-721101

(b) Sri Amarnath Banerjee,
son of Late Beni Lal Banerjee &
Late Minati Banerjee,
resident of Saktinagar, Anjanpur,
District-Nadia, State-West Bengal

(c) Smt. Shila Chatterjee,

wife of Sri Dhiren Chatterjee,
daughter of Late Hara Lal Chakraborty
of 1038/N Mahatma Gandhi Road,
P.O. Haridevpur, Kolkata-700082
(legal heirs of Laxmi priya Chakraborty)

(d) Sri Taraknath Banerjee,
son of Late Beni Lal Banerjee
& Late Minati Banerjee

(e) Sri Loknath Banerjee,
son of Late Beni Lal Banerjee
& Late Minati Banerjee
all are residents of Saktinagar,
Anjanpur, District-Nadia, West Bengal
(No.6(a) to 6(e) all are the legal heirs
of Laxmi Priya Chakraborty)

-----Proforma-Respondent(s)

For Appellant(s)	:	Mr. D. Bhattacharya, Sr. Adv. Mr. S. Datta, Adv.
For Respondent(s)	:	Mr. A. Sengupta, Adv.
Date of Hearing	:	30.11.2024
Date of Judgment & Order	:	09.12.2024
Whether fit for reporting	:	YES

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

This appeal under Section 100 of CPC is preferred challenging the judgment and decree dated 27.07.2023 delivered by Learned District Judge, West Tripura, Agartala, Court No.1 in connection with Case No.T.A.62 of 2019. By the said judgment dated 27.07.2023 Learned First Appellate Court has affirmed the judgment dated 30.09.2019 and decree dated 11.10.2019 delivered by Learned Civil Judge, Senior Division, Court No.1, Agartala, West Tripura in connection with Case No.T.S.(Partition) 03 of 2017.

[2] Heard Learned Senior counsel, Mr. D. Bhattacharya assisted by Learned Counsel, Mr. S. Datta for the appellant-defendants and also heard Learned counsel, Mr. A. Sengupta for the contesting respondent-plaintiffs.

[3] Before proceeding with the merit of the appeal, let us discuss about the subject matter of the dispute amongst the rival parties. The respondent-plaintiffs filed one suit for partition of their ancestral homestead land in the Court of Learned Civil Judge, Senior Division, Court No.1, West Tripura, Agartala seeking partition which was registered as T.S.(P)03 of 2017. In the said suit, the respondent-plaintiffs took the plea that the suit land was originally belonged to one Debendra Kumar Chakraborty, the predecessor-in-interest of the parties in dispute of the suit. On 03.07.1989, the original owner Debendra Kumar Chakraborty died intestate leaving behind his five sons and three daughters. Out of five sons, Brajesh Chakraborty, one of the son of the original owner also died leaving behind the appellant, Smt. Pranati Ganguly as his only legal heir. Another son namely Samaresh Chakraborty died on 21.12.2004 leaving behind plaintiff, Smt. Ashima Chakraborty as his successor. Gouri Shankar Chakraborty, another son of Late Debendra Kumar Chakraborty died on 19.01.2003 leaving behind plaintiff Nos.2(a) and 2(b) as his successor. One of the daughters of original owner Snehalata Chakraborty had expired on 31.07.2012 and she was succeeded by the plaintiff Nos. 3(a) to 3(h) in the original suit. Another daughter of the original owner namely Asha Rani Chakraborty was expired on 30.07.2011 and she was succeeded by the plaintiff Nos. 4(a) to 4(f) in the original suit. Laxmi Priya Chakraborty, the daughter of Debendra Kumar Chakraborty also expired leaving behind the plaintiff Nos.5(a) to 5(e) as her legal heirs. The plaintiff No.6 namely Pranabesh Chakraborty and the defendant No.1, Shibesh Chakraborty are the remaining two living sons of the original owner Late Debendra Kumar Chakraborty and accordingly, the plaintiff prayed for a decree of partition of the suit land entitling the leaving sons and the legal survivors of the deceased sons and daughters of Debendra Kumar Chakraborty for 1/8th

share each on the suit property. However, the defendants in the original suit in their counter claim pleaded that during the life time of the original owner of the suit property Debendra Kumar Chakraborty, the claim of the plaintiff No.6 and husband of the plaintiff Nos. 1 and 2 including other married daughters of Late Debendra Kumar Chakraborty were all denied the suit property by the original owner himself and after the death of Debendra Kumar Chakraborty in the month of December, 1990 the plaintiff No.6 and husband of plaintiff Nos.1 and 2 came to the defendant-appellant No.1 and to the father of the defendant-appellant No.2 with claim over the suit property and demanded money against their respective share since they were not physical possession over the suit property before 1990 and after 03.07.1989. However, the demand of the parties for money against their respective shares of the suit property was rightly turned down by the defendant No.1 and the father of the defendant No.2 on the ground that during the old age of their parents they never looked after their father Debendra Kumar Chakraborty and his wife for which the original owner of the suit property did never allow the defendant and other so called co-sharers to stay in the joint possession in the suit property and as such, they became 'ousters' from the suit property since the death of Debendra Kumar Chakraborty. Thereafter, no demand for money or partition of the suit property was made by the plaintiff. It was also submitted that in the counter claim in such a situation none of the legal heirs of Late Debendra Kumar Chakraborty except the defendant could be considered to be joint owners in possession over the suit property and accordingly, their right to suit property by way of inheritance was extinguished on and from 03.07.1989 and at the same time, the defendants have acquired their absolute right, title and interest as well as possessory right over the suit property by way of adverse possession against the plaintiff.

[4] On the basis of the pleadings of the parties, Learned Trial Court below framed the following issues:

- "i) Whether the suit of the plaintiffs is maintainable in its present form and nature?**
- (ii) Whether the plaintiffs have cause of action for filing the suit?**
- (iii) Whether the suit property is the HUF property of the parties, if so, what will be the quantum of share of the parties?**
- (iv) Whether the plaintiffs are entitled to get the decree as prayed for?**
- (v) What other relief/reliefs the parties are entitled to?"**

[5] To substantiate the issues, both the parties have adduced both oral/documentary evidence on record before the Learned Trial Court the details of the list of witnesses of the original plaintiff and their exhibits are mentioned below along with the defendants in the original suit :

"APPENDIX

- (A) Plaintiff's Witnesses :-**
P.W.-1 Pannalal Chakraborty
- (B) Plaintiffs Exhibits :-**
 - i. The original Power of Attorney No.73 dated 07.08.2017 constituting plaintiff No.5 (a) Pannalal Chakraborty as their attorney marked Exbt.1.**
 - ii. The certified copy of Khatian No.319 marked as Exbt.2.**
- (C) Defendants' Witnesses :-**
 - D.W.-1 Pranati Ganguly**
 - D.W.-2 Biswanath Chakraborty**
 - D.W.-3 Narayan Ch. Paul**
 - D.W.-4 Sri Sanjoy Banerjee"**
- (D) Defendants' Exhibits :-**
Nil.

[6] After conclusion of trial, Learned Trial Court below vide judgment dated 30.09.2019 and decree dated 11.10.2019 as aforesaid decreed the suit. For the sake of convenience, I would like to refer herein below the operative portion of the judgment dated 30.09.2019 delivered by Learned Civil Judge, Senior Division, West Tripura, Agartala which runs as follows :

"In the result, the suit of the plaintiffs is decreed opining that the suit land being capable of being partitioned amongst the parties to the extent that plaintiff no.1,6 and defendant Nos.1 and 2 each will get 1/8th share each; plaintiff numbers 2(a) and 2(b) will jointly get 1/8th share; plaintiff numbers 3(a) and 3(h) will jointly get 1/8th share; plaintiff numbers 4(a) and 4(f) will jointly get 1/8 share; and plaintiff numbers 5(a) and 5(e) and defendant nos.3(a) to 3(c) will jointly get 1/8th share.

**The parties are at liberty to cause partition of suit land by metes and bounds amicably and in failure to do so they may approach the Court for drawing up of final decree.
The suit is disposed of on contest with cost."**

[7] Challenging that judgment, the defendants of the original suit preferred first appeal before the Court of District Judge, West Tripura, Agartala which was numbered as T.A.62 of 2019 and the Learned District Judge after hearing both the contesting parties vide judgment and decree dated 27.07.2023 was pleased to affirm the judgment and decree delivered by the Learned Trial Court. For the sake of convenience, I would like to refer herein below the operative portion of the judgment dated 27.07.2023 delivered by Learned First Appellate Court which runs as follows:

"In view of the aforesaid discussion and findings, the appeal preferred by the defendant-appellants U/S 96 of the Code of Civil Procedure challenging the judgment and decree passed by the Ld. Civil Judge (Sr. Division), Court No.1, West Tripura, Agartala on 30.09.2019 in T.S.(P) 03 of 2017 is hereby dismissed being devoid of any merit.

Accordingly, the judgment dated 30.09.2019 and the decree dated 11.10.2019 passed by Ld. Civil Judge, Senior Division, Court No.1, West Tripura, Agartala in T.S.(P)03 of 2017 are hereby upheld.

This appeal is accordingly disposed of on contest but without any cost."

[8] At the time of admission of the appeal, the following substantial question of law was formulated by this High Court by order dated 08.12.2023 which is as follows:

"Whether the judgment of First Appellate Court is perverse at law for ignoring the fact of non-compliance of provision of Order 8, Rule 6-A CPC and whether that has caused miscarriage of justice."

[9] At the time of hearing of argument, Mr. D. Bhattacharya, Learned senior counsel assisted by Learned Counsel, Mr. S. Datta appearing on behalf of the defendant-appellants first of all drawn the attention of this Court that the judgment and decree of the Learned Trial Court suffers from infirmities because the Learned Trial Court below failed to appreciate the plea of adverse possession raised by the present appellants before the Learned Trial Court and ultimately decreed the suit and the judgment of the Learned First Appellate Court is nothing but a replica of the said judgment

of the Learned Trial Court. Learned senior counsel further submitted that from the evidence of the contesting defendant appellants it is crystal clear that the defendants have adduced their evidence to substantiate the plea of their defence regarding right of 'adverse possession' but the Learned Trial Court failed to appreciate the evidence on record and came to a wrong observation and ultimately decreed the suit in favour of the respondent plaintiffs. He also in course of hearing of argument referred the evidence of the plaintiffs both in their examination-in-chief and cross-examination and also referred the evidence of the defendant appellants and submitted that both the Courts below have failed to appreciate the evidence on record properly and came to an erroneous finding for which the interference of the Court is required and urged for setting aside both the judgments and decree of the Learned Trial Court and Learned First Appellate Court by allowing this appeal.

[10] Learned counsel for the appellants further referred another IA and drawn the attention of this Court that at the instance of the attorney Pannalal Chakraborty, respondent No.4(a), who was representing the appeal on behalf of the plaintiffs, the present respondents could succeed in the appeal and prayed for allowing the application filed under Order 41 Rule 27 of CPC at the time of delivery of judgment of this appeal.

[11] Learned senior counsel during the course of his submission referred the citation of Hon'ble Supreme Court of India in **Vidya Devi alias Vidya Vati (Dead) by Lrs. versus Prem Prakash and Others** reported in **(1995) 4 SCC 496** wherein in para No.28 the Hon'ble Apex Court observed as under :

"28. Ouster" does not mean actual driving out of the co-sharer from the property. It will, however, not be complete unless it is coupled with all other ingredients required to constitute adverse possession. Broadly speaking, three elements are necessary for establishing the plea of ouster in the case of co-owner. They are (i) declaration of hostile animus (ii) long and uninterrupted possession of the person

pleading ouster and (iii) exercise of right of exclusive ownership openly and to the knowledge of other co-owner. Thus, a co-owner, can under law, claim title by adverse possession against another co-owner who can, of course, file appropriate suit including suit for joint possession within time prescribed by law."

Referring the same, Learned senior counsel drawn the attention of this Court to apply the aforesaid principle of law laid down by the Hon'ble Apex Court in deciding this appeal.

[12] On the other hand, Mr. A. Sengupta, Learned counsel appearing on behalf of the respondent plaintiffs first of all drawn the attention of this Court that this appeal is not maintainable because both the Learned Trial Court and the Learned First Appellate Court rightly and reasonably after appreciating the evidence on record delivered the judgment and decree for which there is no scope to interfere with the judgment delivered by Learned First Appellate Court. Further, Learned counsel for the respondent plaintiffs submitted that plea as taken by the appellant defendants in this appeal is not sustainable in the eye of law because the present appellants before the Learned Trial Court have failed to establish their plea of adverse possession over the suit property, so, Learned Trial Court rightly after considering the oral/documentary evidence on record decreed the suit in favour of the respondent plaintiffs and the Learned First Appellate Court also after hearing argument of both the sides was pleased to uphold the judgment and decree delivered by Learned Trial Court and urged for dismissal of this present appeal.

[13] In support of his contention, Learned counsel for the respondent plaintiffs drawn the attention of this Court referring one citation of this High Court in **Kajal Kanti Deb versus Gitesh Kumar Bhattacharjee and Others** reported in **(2014) 2 TLR 40** wherein in para Nos.6.3(ii), 6.4 & 12.1 this High Court observed as under :

"6.3.....

(ii) The High Court should be satisfied that the case involves a substantial question of law, and not a mere question of law having a material bearing on the decision of the case(that is, a

question, answer to which affects the rights of parties to the Suit) will be a substantial question of law, if it is not covered by any specific provision of law or settled legal principle emerging from binding precedents, but the Court below has decided the matter, either ignoring or acting contrary to such legal principle. In the second type of case, the substantial question of law arises not because the law is still debatable but because of decision rendered on a material question, violated the settled position of law.

6.4. Having taken note of the law settled by the apex Court, it may be concluded that a concurrent finding of fact if based on pleadings and evidence cannot be interfered in second appeal and cannot be substituted by a finding of the High Court contrary to what has been arrived by the lower Courts. Any question of law which affects the final decision in a case is a substantial question of law as between the parties and that has to be clearly formulated. The present suit was instituted for declaration and consequential relief and it was not a suit instituted under the provisions of Easements Act, so, the substantial question No.3 is totally out of the context. However, in the course of hearing since it is strenuously argued on behalf of the appellant that the evidence on record has not been looked into and not appreciated, the following substantial question of law has been formulated for hearing by order dated 16.04.2014:

"Whether the Judgment & Decree passed by the Trial Court and affirmed by the Appellate Court suffer from perversity?"

12.1. It is a settled law that a concurrent finding of fact based on the pleadings and evidence on record should not be disturbed even if it is found to be erroneous on some point or otherwise."

Referring the same, Learned counsel for the respondent plaintiffs drawn the attention of this Court that here in this case, the appellants have failed to make out any substantial question of law in their favour and as such, this present appeal is not maintainable and the same is liable to be dismissed with costs.

[14] Learned counsel for the respondent plaintiffs further referred another citation of the Hon'ble Supreme Court of India in **Sakharam since deceased through L.RS & Anr. versus Kishanrao** reported in **2022 SCC OnLine SC 2035** wherein in para Nos.8 & 9 Hon'ble the Apex Court observed as under :

"8. The above Rule makes it clear that where there are more defendants than one and any of them dies and where the right to sue survives against the surviving defendant, the suit shall proceed against the surviving defendant. Order XXII Rule 11 states that in the application of Order XXII to appeals, the word "plaintiff" shall be held to include an appellant, the word "defendant" a respondent, and the word "suit" an appeal.

9. Therefore, if the word "defendant" appearing in Order XXII Rule 2 is replaced by the word "respondent", it will be clear

that the second appeal did not abate and the right to sue survives against the surviving respondent."

[15] He further referred another citation of this High Court in **Kirpa Ram (deceased) through Legal representatives and Ors. Versus Surendra Deo Gaur and Ors.** reported in **(2021) 1 TLR 136(SC)** wherein in para No.15 this High Court has observed as under :

"15. It has been argued that the First Appellate Court had ordered that the question of jurisdiction of Civil Court would be decided first, however the appeal was decided without dealing with the said issue. It is, thus, said to have caused serious prejudice to the rights of the appellants. Similarly, the application under Order XLI Rule 27 of the Code was not decided which was again prejudicial to their rights."

Referring the aforesaid citations, Learned counsel for the respondent plaintiffs further submitted that the application filed by the appellants under Order 41 Rule 27 is not maintainable in the eye of law and in view of the principles of law as aforesaid and the same is liable to be dismissed with costs.

[16] Finally, Learned counsel for the respondent plaintiffs submitted that since there is no substantial question of law in this appeal, so, the same is liable to be dismissed.

[17] I have heard detailed argument of both the sides and gone through the judgments of the Learned Courts below i.e. the Learned Trial Court as well as the Learned First Appellate Court. In course of hearing of argument as already stated, Learned counsel for the appellants drawn the attention of the Court para-16 of the written statement filed by the appellant defendants before the Learned Trial Court and submitted that the appellant defendants took the plea of adverse possession over the suit property but the Learned Trial Court in the connected counter claim did not consider the same and in the judgment impugned herein decided that matter. He also referred the evidence on record of the defendant appellants before the Learned Trial Court and also the manner of cross-examination by

the respondent plaintiffs to the witnesses and finally submitted that the judgment of the First Appellate Court was nothing but the reproduction of the judgment of the Trial Court and there is substantial question of law in this appeal which the Learned First Appellate Court failed to decide at the time of delivering the judgment and decree.

[18] Per contra, Learned counsel for the respondent-plaintiffs fairly submitted that both the Courts below have gave concurrent findings on the subject matters in issue and the Learned Trial Court after discussing the oral/documentary evidence on record in detail delivered the judgment covering all the issues and decided and determined that the appellant defendant Nos.1 and 2 have failed to perfected their title over the suit premise by way of adverse possession successfully 'ousting' the respondent-plaintiffs from their claim since 1990 and there was no infirmity in the judgment of the Learned Trial Court for which the Learned First Appellate Court was pleased to confirm the judgment and decree of the Learned Trial Court.

[19] Here in the case at hand the suit land is admittedly the ancestral property of the parties under dispute and as such, there was least scope on the part of either of the parties to claim for 'adverse possession' over the same. It is the settled position of law that no adverse possession can be claimed among the members of one family for want of any animus among them over the disputed property. It is also the settled position of law that as per limitation act, the limitation period to file a 'partition suit' is prescribed for twelve years. Article 65 of the Limitation Act provides that the period of twelve years starts/commences when there is a notification of the adverse claim to the plaintiffs or the co-owners in public domain. In this case, the appellant-defendants did not rest their claim over the suit land against the respondent-plaintiffs by serving any notice or instituting of any

separate suit for adverse possession before filing of the original suit bearing No.T.S.(Partition)03 of 2017 by the respondent-plaintiffs. The defendant-appellants stood up their case for adverse possession for the first time by filing the written statement in Case No.T.S.(Partition) 03 of 2017 and on the basis of their counter-claim, separate T.S.(CC) 03 of 2017 was registered by Learned Trial Court. The present appellants contested the partition suit on the plea of their adverse possession over the suit land and accordingly, the appellant prayed for dismissal of the partition suit. The Learned Trial Court in delivering the judgment of the partition suit decreed the suit in favour of the respondent-plaintiffs and on the same day by another judgment also dismissed the counter-claim of the present appellant-defendants. But surprisingly, they did not challenge the judgment passed by the Learned Trial Court in the said counter-claim, rather, they only preferred appeal under Section 96 of CPC challenging the judgment of the Trial Court in partition suit bearing No.T.S.(Partition)03 of 2017 and the said fact was also admitted by Learned counsel for the appellants in course of hearing of argument. Learned First Appellate Court in deciding the first appeal relied upon the judgment of Hon'ble Apex Court in **Syed Gulam Ghouse Mohiuddin and Others Vs. Sayed Shah Ahmed Mohiuddin Kamisul Qadri** reported in **AIR 1971 SC 2184**. In this regard, Hon'ble Apex Court in **Govindammal versus R. Perumal Chettiar and Others** reported in **2006 11 SCC 600** in para Nos.10 to 14 observed as under :

"10. In the case of Mohaideen Abdul Kadir & Ors. V. Mohammad Mahaideen Umma & Ors. reported in ILR [1970] 2 Mad. 636 their Lordships held that no hard and fast rule can be laid down. But the following relevant factors may be taken into consideration : (i) exclusive possession and perception of profits for well over the period prescribed by the law of limitation ; (ii) dealings by the party in possession treating the properties as exclusively belonging to him; (iii) the means of the excluded co-sharer of knowing that his title has been denied by the co-owner in possession. There may be cases, where, owing to long lapse of time, it may not be possible for the co- owner in possession to adduce evidence as to when the ouster commenced and how it was brought home to the knowledge of the excluded co-owner. In such a case the law

will presume ouster as an explanation of the long peaceful possession of the co-owner in possession. In order to maintain the person in such possession the law presumes a lawful origin of the possession. Therefore, no hard and fast rule can be laid down from which it can be inferred that any co-sharer has ousted his co-sharer. That will depend upon facts of each case. Simply long possession is not a factor to oust a co-sharer but something more positive is required to be done. There must be a hostile open possession denial and repudiation of the rights of other co-owners and this denial or repudiation must be brought home to the co-owners. Simply because a co-sharer gave notice claiming partition of the suit properties and possession and did not pursue the matter further, that will not be sufficient to show that the co-sharer has lost his/her right. In the present case, it is only when 'B' schedule property was being sold by two brothers then alone the plaintiff woke up to realise that the step sons were not interested to give her share in the property and she rushed to file the suit. Therefore, by no stretch of imagination it can be inferred in the present case that the plaintiff had lost her right to claim partition and share in the property.

11. In the case of Vidya Devi alias Vidya vati (dead) by LRs v. Prem Prakash & Ors. reported in (1995) 4 SCC 496 the question was whether the plea of acquisition of title by adverse possession was available to the co-bhumidhar or not. In that context, their Lordships held that when no period of limitation is fixed for filing a suit for partition by a co-bhumidhar against his other co-bhumidhars in respect of a joint holding, the question of the other co-bhumidhar acquiring his title to such holding by adverse possession for over 12 years can never arise. It was further observed that if that be so, such plea of perfection of title by adverse possession of a holding by a co-bhumidhar against his other co-bhumidhar as defence in the latter's suit for partition can be of no legal consequence.

12. In the case of Mohammad Baqar & Ors. V. Naim-un-Nisa Bibi & Ors. reported in AIR 1956 SC 548 it was observed that under the law possession of one co-sharer is possession of all co-sharers, it cannot be adverse to them, unless there is a denial of their right to their knowledge by the person in possession and exclusion and ouster following thereon for the statutory period. There can be no question of ouster, if there is participation in the profits to any degree.

13. In the case of Md. Mohammad Ali (dead) by LRs v. Jagadish Kalita & Ors. reported in (2004) 1 SCC 271 this Court examined a series of decisions on the question of adverse possession and after extracting the legal propositions from various decisions, their Lordships concluded that long and continuous possession by itself, it is trite, would not constitute adverse possession. Even non-participation in the rent and profits of the land to a co-sharer does not amount to ouster so as to give title by prescription. A co-sharer, as is well settled, becomes a constructive trustee of other co-sharer and the right of a person or his predecessors-in-interest is deemed to have been protected by the trustees.

14. As against this, our attention was also invited to a decision in the case of T.P.R. Palania Pillai & Ors. V. Amjath Ibrahim Rowther & Anr. reported in AIR 1942 Madras 622, their Lordships observed that in order to constitute adverse possession, the possession must be adequate in continuity, in publicity and in extent to show that it is possession adverse to the competitor. Therefore, in cases of adverse possession also their Lordships have said that the possession should be for longer period and it is known to the competitor that it is held adverse to his knowledge. Their Lordships further held that in cases of usufructuary mortgage granted by one of several co-

sharers if a person remains in possession of the land and cultivates it for years, the requirement of continuity, publicity and extent for adverse possession are fully complied with. But that is not the case here."

[20] Further, Hon'ble the Apex Court in **Nagabhushanammal (Dead) by Legal representatives versus C. Chandikeswaralingam** reported in **(2016) 4 SCC 434** in para Nos.21 to 24 also observed as under :

"21. The other main defence in the suit is ouster and limitation. Ouster is a weak defence in a suit for partition of family property and it is strong if the defendant is able to establish consistent and open assertion of denial of title, long and uninterrupted possession and exercise of right of exclusive ownership openly and to the knowledge of the other co-owner.

22. This court in **Syed Shah Ghulam Ghouse Mohiuddin and others v. Syed Shah Ahmed Mohiuddin Kamisul Quadri and Ors : (1971) 1 SCC 597** held that possession of one co-owner is presumed to be on behalf of all co-owners unless it is established that the possession of the co-owner is in denial of title of co-owners and the possession is in hostility to co-owners by exclusion of them. It was further held that there has to be open denial of title to the parties who are entitled to it by excluding and ousting them.

23. A three judge bench of this court in **P. Lakshmi Reddy v. R.Lakshmi Reddy: AIR 1957 SC 314**, while examining the necessary conditions for applicability of doctrine of ouster to the shares of co-owners, held as follows:

"4. Now, the ordinary classical requirement of adverse possession is that it should be *nec vi nec clam, nec precario*. (See *Secy of State for India in Council v. Debendra Lal Khan : 1933 SCC OnLine PC 65*. The possession required must be adequate in continuity, in publicity and in extent to show that it is possession adverse to the competitor. (See *Radhamoni Debi v. Collector of Khulna: 1900 SCC OnLine PC 4*. But it is well-settled that in order to establish adverse possession of one co-heir as against another it is not enough to show that one out of them is in sole possession and enjoyment of the profits of the properties. Ouster of the non-possessing co-heir by the co-heir in possession who claims his possession to be adverse, should be made out. The possession of one co-heir is considered, in law, as possession of all the co-heirs. When one co-heir is found to be in possession of the properties it is presumed to be on the basis of joint title. The co-heir in possession cannot render his possession adverse to the other co-heir not in possession merely by any secret hostile animus on his own part in derogation of the other co-heir's title. (See *Corea v. Appuhamy: (1912) AC 230 (PC)*. It is a settled rule of law that as between co-heirs there must be evidence of open assertion of hostile title, coupled with exclusive possession and enjoyment by one of them to the knowledge of the other so as to constitute ouster. This does not necessarily mean that there must be an express demand by one and denial by the other."

24. This Court in Vidya Devi v. Prem Prakash: (1995) 4 SCC 496 held that:

“28. ‘Ouster’ does not mean actual driving out of the co-sharer from the property. It will, however, not be complete unless it is coupled with all other ingredients required to constitute adverse possession. Broadly speaking, three elements are necessary for establishing the plea of ouster in the case of co-owner. They are (i) declaration of hostile animus, (ii) long and uninterrupted possession of the person pleading ouster, and (iii) exercise of right of exclusive ownership openly and to the knowledge of other co-owner. Thus, a co-owner, can under law, claim title by adverse possession against another co-owner who can, of course, file appropriate suit including suit for joint possession within time prescribed by law.”

In both the aforesaid cases, Hon’ble the Apex Court observed as to how the doctrine of ‘ouster to’ be followed. It was also further clarified that to substantiate the doctrine of ‘ouster’ the following factors are to be considered for determining ‘ouster’ in the case of co-owner. They are (i) declaration of hostile animus, (ii) long and uninterrupted possession of the person pleading ouster and (iii) exercise of right of exclusive ownership openly and to the knowledge of other co-owner.

[21] Here in the given case, although, the defendant-appellants took the plea of doctrine of ‘ouster’ in course of hearing of argument but from the evidence on record and also from their pleadings, nowhere I find that the appellants could able to prove the said doctrine ‘of ouster’ stated by them against the respondent-plaintiffs. More so, they also did not prefer any appeal challenging the judgment dated 30.09.2019 and decree dated 11.10.2019 delivered by the same Trial Court in T.S.(CC) 03 of 2017. Furthermore, the appellants also could not show any valid grounds on the basis of which it could be inferred that the appellants have acquired right of adverse possession against the respondent-plaintiffs.

[22] Situated thus, considering the materials on record it appears that in absence of cogent materials on record, the present appellants have failed to show any substantial question of law to be decided in their favour

and as such, I do not find any infirmity or irregularity in the judgment delivered by the Learned First Appellate Court in T.A. 62 of 2019, affirming the judgment of the Learned Trial Court.

[23] In the result, the second appeal filed by the appellant-defendants stands dismissed being devoid of merit with costs. The judgment dated 27.07.2023 and decree dated 22.08.2023 delivered by Learned District Judge in connection with Case No.T.A.62 of 2019 affirming the judgment dated 30.09.2019 and decree dated 11.10.2019 delivered by Learned Civil Judge, Senior Division, (Court No.1) West Tripura, Agartala in connection with Case No.T.S.03(partition) of 2017 is hereby upheld and accordingly it is affirmed.

Prepare the decree accordingly.

Send down the LCRs along with a copy of the judgment.

Pending application/s, if any, accordingly stands disposed of.

JUDGE