

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
[CIRCUIT BENCH AT PORT BLAIR]

PRESENT: HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)

SA/9/2026

SMT. TOKIDASI

... APPELLANT

VS

THE HON'BLE LT. GOVERNOR AND OTHERS

... RESPONDENTS

For the appellant : Mr. Gopala Binu Kumar

For the respondents : Ms. Babita Das

Heard on : 17.03.2026

Judgment on : 23.03.2026

CHAITALI CHATTERJEE (DAS), J.

1. This Second Appeal has been filed against the judgement and decree of affirmation dated 22/1/2025 passed by the learned District Judge, Andaman and Nicobar Island at Port Blair in Title Appeal No. 9 of 2023 whereby the learned Civil Judge, Senior Division, South Andaman district decreed the suit/wide the judgement and decree dated 31/12/2021.

FACTUAL MATRIX

2. A suit for declaration of possessory right, title, interest, and permanent injunction was filed by the plaintiff/appellant against the respondent, praying for a decree declaring the

possessory right, title, interest of the plaintiff over the suit land and also directing the defendant to regularise the suit land in favour of the plaintiff under the subject scheme by way of issuing license as per the provision of 146 of Andaman and Nicobar Islands Land Revenue and Land Reforms Regulations, 1966 and the decree of permanent injunction, restraining the defendant not to disturb the peaceful possession of the plaintiff over the suit land.

3. The father of the plaintiff sometimes in the year 1971, encroached a piece of government vacant revenue land in survey number 329/P measuring an area of 0.08hect. situated at Lal Pahar, Chouldari Village under Ferrargunj, South Andaman. After such encroachment the plaintiff cleared the jungle and the bushes which was standing there on and constructed a wooden house and started residing in the suit land along with her family, which consist of five children. Subsequently, after dismantling, constructed a RRC building where they are living together.
4. During her occupation on the suit land, she also planted various fruit bearing trees, which being her source of income and her family. She made several representations since March 3, 1978, till November 1998 to the defendant No.2, which was never considered by the defendant. After that on

September 2005, she, through her advocate issued a notice under Section 80 of the Code of Civil Procedure, 1908 upon the defendant with a request to regularise the suit land in her favour. Despite receiving such notice, the defendant did not regularise the suit land in her favour and hence she had to approach the Court of law and filed the suit. It was further averred that she is enjoying the electric connection and is regularly paying electric charges to the concerned department.

5. The respondents filed the written statement denying the contention of the plaintiff and the preliminary point raised that the encroachment was committed after the period of 1978 and does not fall under the regularisation scheme of 1978 intro. A high-powered committee for regularisation of encroachment cases were considered who issued license to those encroacher upon government land to 1978. During scrutiny of each application, the committee invited claims and objections for any left out case of those encroachers, who committed encroachment upon government land prior to 1978.
6. It was the specific contention of the respondent that her father was a recorded tenant in respect of survey No. 280, 292, 296, 293, 422 and after demise of the father, it was

jointly muted in favour of the plaintiff and all seven children and plaintiff have 1/7 share of 4.0940 Hect. of the landed property and the encroachment committed by the plaintiff is a post 1978 case prayed for dismissal of the suit. The learned Trial Court dismissed the suit followed by the judgement of affirmation by the learned Appellant Court and hence this Second appeal is filed.

SUBMISSION :

7. The learned advocate of the appellant strenuously argued that since 1971, she is in possession and occupation and is entitled for regularisation of the suit land in terms of the scheme which was promulgated with a view to create tenancy upon the land as per the provision of clause 146 of the regulation known as 1978 regularisation scheme, in partial modification of the earlier scheme of 1961. The very object of the scheme was to confer tenancy, as per the provisions of the Regulations and Rules. While the document being Exhibit 9 was proved by a person from revenue department and he was not cross examined there in no occasion to discard the same and the learned Appellant Court without any basis held that merely mentioning the name in Exhibit 9, the register of encroachment of Govt. land no right accrues to regularize the land. It is also argued that in terms of Clause 5(i) of the

scheme of 1987 she was entitled for regularisation even if the applicant encroaches other patches of land at different places not contiguous to each other.

8. *Per contra* the learned advocate representing respondents argues that Clause 5(ii) was for the applicant who was in authorized possession and the appellant was in unauthorized possession. Hence she is not entitled to have the benefit of the scheme. Since she has a share in the property of her father she cannot be said to be landless and the both the learned Courts rightly dismissed the suit.

ANALYSIS:

9. So far the points of law formulated, it has to be decided whether the plaintiff is a pre-1978 or Post-1978, encroacher in respect of the Suit land and in the light of provision under clause 5 of the relevant scheme, she was eligible to receive the benefit of the scheme. On perusal of the scheme of 1978, it is seen that it was made for disposal of government land in revenue villages, unauthorisedly occupied on or before 31.12.1978 and for creation of tenancies in respect of such land. In clause (ii) of the scheme, it can be found that the decision of the administration has been partly modified and decided by the government that encroachment made in

revenue land up to 31.12.78 will be regularised in favour of those who were found to be in unauthorised possession of such land from the date prior to 31.12.78. In terms of Clause 4, the decision of the government to be implemented as a list of persons who were found by the High-Power Committee so constituted to be in unauthorised occupation of government land, and the Tehsildar shall ascertain by the Local enquiry as to whether, the person so listed still continue to occupy the same or not and the land to be measured by Tehsildar. In 4 (d) (iv) it was made that whether he had been continuously in unauthorised but active and complete possession of any part of land, including that which is proposed to be settled with him, and if so, the particulars of such land and date of effect from which he has been in such continuous position shall be recorded by the Tehsildar from the person claiming relief under the scheme.

10. In course of trial, on behalf of the revenue Authority P.W2, Vinodh Tirkey adduced evidence and brought the certified copy of encroachment register, which was marked as exhibit 9. The document disclosed that an area of 0.08.hectares was encroached by the plaintiff. The learned trial court framed the issue regarding entitlement of the plaintiff for regularisation of the suit property in her favour. The learned Trial Court

observed that the scheme was made for encroachment made in revenue lands up to 31.12.1978 will be in favour of those who were found to be in unauthorised possession of such land from the date prior to the said date. The plaintiff case was very specific that her father encroached the said land, but she has been in unauthorised possession of such land. The Exhibit 9 that is the registrar of encroachment reveals that the plaintiff is in position since 1972.

11. The document was produced and proved by a person who is a Patwari, Circle No. 10 and representative of Tehsildar, Port Blair. He was not cross examined. It was held by the learned Trial Court that plaintiff failed to prove the basis of recording of Exhibit 9 that she was in possession since 1972, when she admitted that her father encroached the suit property in the year 1971. Therefore, the Court did not put reliance on the said Exhibit 9 and came to a conclusion that pre-1978 scheme was made for landless unauthorised possession of government land, but the plaintiff was not a landless person as her father was allotted some land in the island and he was a settler. It can be further found that presently her father has expired and plaintiff has inherited her share from her property, and that has been mutated it in her favour.

12. The learned Appellate Court also held that during lifetime of her father, the appellant had right of mere chance of succession, but as soon as her father died, she acquired right of succession in the property in Exhibit A. That apart the land was allotted to her father for his family and hence the applicant also supposed to acquire her right in the said land.
13. In Clause 5 of the said scheme, it is as follows. The following further points may be taken into Tehsildar/Assistant Commissioners, and Deputy Commissioner, South Andaman District in admitting claims under this scheme,
 - i. if the area under the unauthorised possession of any claimant is more than the limits envisaged, the relief admissible under the scheme shall be limited to the prescribed limit of India as envisaged under this scheme, but out of the total land in possession of the applicant at the tenancy on such person of land under Section 146 of the Andaman and Nicobar Islands Land Revenue and Land Reforms Regulation, 1966.
 - ii. if the applicant was in unauthorised possession of any land in the A&N Island on the date of his alleged encroachment. He shall be entitled to relief under the scheme only to such extent that the total

of the area in his authorised possession of the area for which an application for allotment under the scheme is made does not exceed 200 sq.mtrs. in urban area and or 350 sq.mtrs. in non-urban area for house site or one Hecter in non-urban area for agriculture as the case maybe. Similarly, if the applicant has encroached on several patches of land at different places, not contiguous to each other or at different villages, he shall be entitled to relief under this scheme to the total of 200 sq.mtrs or three 50 sq.mtrs or 1 ha. as the case, maybe.

14. Therefore, on close scrutiny of the above scheme, it is glaringly visible that the scheme was made for any person who encroaches the revenue land up to 31st December 1978 to regularised the encroachment to the extent as indicated in paragraph 2 of the subject scheme.
15. It is admitted case that the father of the plaintiff encroached in the year 1971 and he was allowed to be a recorded tenant of revenue land in respect of lands mentioned in the written statement. The learned Trial Court held that the Exhibit 9 stands as vital evidence wherefrom presumption can be taken that the father of the plaintiff encroached the suit land and hence plaintiff was in unauthorized possession since 1972.

But dismissed the suit on the score that she was not land less as her father was settler. The Appellate Court affirmed the judgement of the Trial Court with the further observation that merely mentioning the name in Exhibit 9 it does not give any right to her for regularisation.

16. From the four corners of the judgement of Trial Court or Appellate Court nothing could be found that the respondent authorities could produce any evidence to establish that the plaintiff/appellant was a post 1978 encroacher . It was an admitted fact that her father in the year 1971, encroached an area measuring 0.08 hecets in respect of survey plot no 280, 292, 296 and 293 hence the schedule of the plaint discloses the plot no. 329/P measuring an area of 0.08 hect. After that, the plaintiff cleared the jungle and bushes and constructed the wooden house and started residing there, which was latter dismantled and constructed RCC building. Even if she inherited any share of her father's property that never happened before 1978 since when she claimed to have encroached the property and nowhere from the scheme it can be found that if a family member /encroacher have any land that would disentitle her right to be regularised. In fact on the basis of her affidavit of the plaintiff she was found to be a major lady in the year 1971 and she encroached a portion of

land. The only question remain whether the total land in possession is more than the extent of land specified by the scheme.

17. The contention of the learned advocate representing the respondent that she was a post 1978 was not supported with any document when primarily she could produce one document of encroachers register which was marked with Exhibit-9 by a person from revenue department and no cross examination was made. The only defence taken by the respondent that the High-Powered Committee was constituted to verify the status and they prepared the list of the encroachers where the name of the plaintiff never appeared but that itself cannot be ruled out the possibility of being left out because of her father's encroached land. Both the learned court found the application filed by the appellant in the year 1973 and prayed for regularisation of the land as per scheme of 1966, but that was turned down since it was filed after the expiry of the notified date, 31.10.1973 but the document itself is a glaring example of her possession in respect of land since 1973 which was not considered because of technical deficiency. It is further seen that later on also she made several communication and lastly in the year 2005 which was not disposed of.

18. In terms of clause 5 (ii) the claim of a person will be admitted, even if the applicant unauthorisedly encroached several patches of land at different places, not contiguous to each other, but such land should be of total 200 sq. mtrs. or 350 sq.mtrs. or 1 hec. as the case maybe. It is therefore, manifest from the record that Exhibit 9 stood duly admitted in the evidence of the witness and remained unchallenged by any cogent rebuttal. In such a backdrop, the finding of the learned Appellate Court that the foundational basis for issuance of the said certificate was not established, appears to be unsustainable in law. This is particularly so when the document in question was produced from the revenue department and was not subjected to any cross examination. The observation of the learned Trial Court about the presentation of the encroachment of the father of the petitioner on the strength of Exhibit 9 is palpably incorrect and nowhere the name of the father can be found from such document and further the observation of the learned Appellate Court for consideration of the Exhibit 9 also without having any legal sanctity. Therefore though the scope of interference with concurrent finding of fact while exercising of jurisdiction under Section 100 CPC is very limited but where it is found that both the learned Courts have misdirected

themselves in appreciate the question of law certainly there is a scope for interference under Section 100 in terms of the question of law as formulated.

19. Therefore the learned Appellate Court was not correct in not relying upon such exhibit which otherwise proved the contention of the appellant about the year of possession.
20. Hence, the judgement of the learned Appellate Court is liable to be set aside.

CONCLUSION

21. Therefore in view of the above discussions in the light of the legal framework this Court is of the view that the plaintiff was able to prove that she was pre - 1978 encroacher in respect of the land, in the light of the Exhibit 9 and is coming within the provision envisaged under clause 5 of the relevant scheme dated August 17, 1987 and is eligible to receive the benefit of this clause in respect of the suit land subject to the authority of land. Her encroachment of the scheduled land was never regularised so she is an unauthorized occupant and her possession cannot be authorized by her father's regularised possession.
22. Accordingly this appeal stands allowed. The judgement of the Appellate Court affirming the judgement of the Trial Court is hereby set aside.

23. Let a degree be drawn up accordingly.
24. Let the Trial Court Records along with the copy of this judgement be forwarded to the Trial Court forthwith.
25. Urgent photostat certified copy of this Judgment, if applied for, is to be given to the parties on priority basis on compliance of all legal formalities.

(CHAITALI CHATTERJEE (DAS), J.)