

**HIGH COURT OF TRIPURA
AGARTALA
RSA NO.04 OF 2021**

1. **Sri Samarjit Singha,**

2. **Sri Satyajit Singha,**

Both, sons of late Harimohan Singha,
Of village- Vidyanagar, P.S. Kailashahar,
P.O.- Paiturbazar, District- Unakoti Tripura

..... **Plaintiff-appellant(s)**

Vs.

1. **Sri Swaraj Singha,**

Son of Late Maipak Singha.

2. **Sri Samar Singha,**

Son of Sri Swaraj Singha,

Both, of village- Vidyanagar, P.S.- Kailasahar,
P.O.- Paiturbazar, District- Unakoti, Tripura.

..... **Defendant-Respondent(s)**

For the Appellant(s) : Mr. G.K. Nama, Advocate.

For the Respondent(s) : Mr. H. Deb, Advocate.

Date of hearing : 05.04.2023

Date of delivery of
Judgment & Order : 18.04.2023.

Whether fit for reporting : YES.

HON'BLE THE CHIEF JUSTICE(ACTING)

JUDGMENT AND ORDER

This present appeal has been filed against the
Judgment dated 23.08.2019 passed by the learned Additional

District Judge, Unakoti Judicial District, Kailasahar, in T.A. 21 of 2019, arising out of the Judgment dated 12.02.2019 passed by the learned Civil Judge, Junior Division, Kailasahar, Unakoti District, in T.S. 14 of 2014.

2. The brief fact of this present second appeal is that appellants here-in-after referred to as plaintiff-appellants filed the suit bearing No.T.S.14 of 2014 for declaration of right, title, and interest along with recovery of possession of the suit land and for cancellation of relinquishment deed. The plaintiff-appellants stated that about 200 years ago one Atal Singha & Maipak Singha resided in village Vidyanagar under Kailashahar Sub-Division and on basing on Tripura Land Revenue and Land Reform Act, in the year 1960 khatian were prepared in the name of ancestors of plaintiff-appellants and defendants. Said Atal Singha had two sons namely Thabal Singha and Nilo Sinha. Thabal Singha had two sons namely Late Hari Mohan Singha, who is the father of the present plaintiff-appellants herein, and Sachi Mohan Singha. Nilo Singha, S/o- Atal Singha had married one Smt Thampal Singha and Nilo Sinha expired without any issue(children) leaving behind his wife Smt Thampal Singha as the only legal heir who inherited the land of the deceased Nilo Singha. The said suit property was inherited by the plaintiff-appellants herein from their grandmother Smt. Thampal Singha

vide registered deed of WILL No III-12 dated 27.03.1999 and it was mutated in the name of Thabal Singha vide khatian No 1318/3, CS plot No 6526(p)(sabek) 5824(hal) for total land measuring 0.191 sataks as bastu (nal) class showing Nilo Sinha and Thabal Singha as 50 % shareholder of the property each. Now, after the death of Nilo Sinha his wife i.e. the grandmother of the plaintiff-appellants gifted the said 50% share of Nilo Sinha i.e. 0.96 sataks to her grandsons i.e. the plaintiff-appellants who mutated the gifted property in new khatian No 4883, CS plot No 6526(sabek), 5824/1098 for land measuring 0.095 sataks and the rest 0.96 sataks remained with the legal heirs of Late Thabal Singha i.e. the plaintiff-appellants, Sashi Mohan Singha and others. Sashi Mohan Singha is the nephew of Nilo Sinha and the defendants are the legal heirs of Late Maipak Singha who have many legal heirs and cunningly the defendants convinced the plaintiff-appellants who exchanged land for three excess which the plaintiffs did by executing a deed of relinquishment and handed over possession of their land measuring 0.080 acres out of total land measuring 0.095 sataks of Bastu class in khatian No 4883, CS plot No 6526 hal plot No 5824 on 04.12.2009 to Swaraj Singha who also in exchange executed deed of relinquishment for land measuring 0.060 acres of bagan class in khatian No 1318-2 and 1318-3

CS plot No 6526(p), 5823(hal) and another 0.04 acres from CS plot(sabek) No 6526(p) 5825(hal) and in total 0.100 acres on 08.02.2010 in favour of the plaintiffs. But subsequently, it came out that the deed is false as Swaraj Singha was not the only legal heir rather there are 12 other heirs of the said property jointly owned the land in khatian No 1318-2 CS Plot No 5626(p)(sabek) and 5823(hal) for land measuring 0.060 sataks and possessed by Sri Thabal Singha, grandfather of the plaintiffs, as per record of rights. The plaintiff-appellants also contended that defendant Swaraj Singha in collusion with some other persons showed in the deed of relinquishment dated 08.02.2010, the land in khatian No 1318-3 CS plot No 6526(p)(sabek), 5825(hal) land measuring 0.040 sataks of 'bagan' class land which at the khatian itself was the recorded land possessed by plaintiffs' grandfather Late Thabal Singha and the record of rights is in the name of Sashi Mohan Singha and others, the legal heirs of the said deceased Thabal Singha. The defendant Swaraj Singha defrauded the plaintiffs for which both relinquishment deeds are void and ineffective. The same was discovered when the defendants as plaintiffs filed a suit in the year 2012 vide No TS 49(p)/2012 by incorporating 3rd parties' property within the exchange of land between the plaintiffs and the defendants by way of twin relinquishment

deeds. The plaintiffs further mentioned that they issued notice upon the defendants on 12.12.2013 requesting to handover the possession of land measuring 0.08 sataks in khatian No 4883 CS plot No 6526(sabek) 5824/10989(hal) expressing their willingness to handover the possession of the land which they actually possessed but the defendants did not respond and retained their possession over the suit land illegally. The plaintiffs mentioned that the partition suit filed by the defendants vide No TS 49(p) of 2012 before the Court of Ld Civil Judge(Sr Division), Unakoti, Kailashahar was dismissed and subsequently, another partition suit had filed in the same Court with same cause of action vide No TS 2(p)/2013 was also dismissed. Then after notice the defendants started causing problems over the possession of the suit land and it was reported to O/C, KLS PS who submitted PR U/S 145 of CrPC, and a proceeding was started U/S 145 of CrPC vide NGR case No 299(M) 2013 and the plaintiffs and the defendants were directed by Ld SDM, Kailashahar not to enter the suit land and thus, the suit by the plaintiffs for declaration of right, title and interest and also for declaring the relinquishment deeds dated 04.12.2009 and 08.02.2010 as void.

3. The defendant-respondents here-in-after referred to as defendants in TS 14 of 2014 submitted their written

statement denying the averments of the plaintiffs and contended that plaintiff Nos. 1 & 2 are legal heirs of Late Atal Singha , S/o Late Balaram Singha and defendant Nos 1 & 2 are the legal heirs of Lt. Dala Singha, s/o Late Balaram Singha as per khatian No 1316. Defendants further stated that as per khatian No 4043 Thabal Singha and Nilo Singha are sons of Late Atal Singha and were the owner of the land of 25% each and Maipak Singha, S/o Dala Singha is the owner of 50% shareholder of the property. As per khatian No 4007 the disputed plot No 6526 is distributed between three owners as per their share i.e. Late Thabal Singha and Late Nilo Singha, 25% each and Late Maipak Singha 50% for total land measuring 0.449 satak. On 11.01.1967 the past record mentioned in khatian No 4007 was changed by money and muscle power and Late Thabal Singha by creating a fabricated document, became the only owner and 100% shareholder of disputed plot No 6526 for land measuring 0.449 satak but as per manual record finally published in the year 1990 comprising 38 plots for total land measuring 6.478 acres in khatian Nos. 1318, 1318/2, 1318/3, 1318/4, the record of right comes in the said khatians and the disputed plot No 6526 measuring 0.449 satak was divided into six shares which is equal to the measuring area of disputed plot No 6526. The defendants in

their written statement contended that as per khatian No 1316 Late Maipak Singha is the 50% owner /shareholder of plot No 6526 having share in all the six dags coming from plot No 6526 in the year 1990 and defendant No 1 is the legal heir of Late Maipak Singha and defendant No 2 is the owner of the defendant No 1 and are 50 % owner /shareholder on each and every dag coming out from all 38 nos plot. They have annexed the survival certificate and registered sale deed in this regard and as Nilo Singha was 25% share holder of disputed plot No 6526, so after his death, Thampal Singha has no right to transfer more than 25% from disputed plot No 6526 as per khatian No 4043. The defendants also denied that Atal Sinha and Late Maipak Singha are not blood-related. The defendants mentioned that in an application U/S 95 of TLR & LR Act, 1960 by defendant No 1, the Kanango submitted a report where it is clearly mentioned that the land (joint khatian) Nos 1316, 1318, 1319 had been conferred by registered WILL vide No 696 -III-12 dated 15.01.2008 which was executed by Thampal Singha as legal heir of Nilo Singha to Samarjit Singha and accordingly they prayed for mutation which was allowed but on scrutiny, it came out that 0.220 acres was transferred by her beyond her share and the then RI and Tehsildar reported for mutation in favour of Samarjit Singha & Satyajit Singha.

4. The learned Trial Court after considering all the materials available on record held that:-

' In the back drop of the contentions both sides I am of the view that the relief claimed by the Plaintiff is tenable in the eye of law and is not barred by the Section 34 of the SR Act as seeking partition in this suit is not a further relief of declaration as claimed by the plaintiffs in this suit rather any other relief.

And as such I am of view that the plaintiff is entitled to right tile and interest over the suit land and recovery of possession.

And the relinquishment deeds dated 08.02.0210 marked as exhibit-8 and the relinquishment deed dated 04.12.2009 marked as exhibit M are in my opinion are void as they are found from evidence to be arising out of the same contract and induced by fraud and such void.

Hence the issues no iii and vi are decided in positive in favour of the plaintiff

ORDER

So in fine, this Court declare the right, title, interest of the Plaintiff over the suit land.

The Defendant side is asked to put the plaintiff in possession over the suit land immediately after removing all the encumbrances therefrom."

5. Aggrieved thereby, the defendant-respondents preferred an appeal bearing No. Title Appeal No.21 of 2019 before the Court of learned Addl. District Judge, Unakoti Judicial District Kailashahar against the Judgment dated 12.03.2019 and decree dated 18.03.2019 passed by the learned Civil Judge (Jr. Division) Kailashahar, Unakoti, Judicial District in T.S. 14 OF 2014.

6. Vide Judgment and Order dated 23.09.2019, the learned First Appellate Court disposed of the said appeal in the following terms:-

" Due the above mentioned facts, circumstances and legal principles, I am of the considered view that the plaintiffs are not entitled to any relief of declaration of exclusive owner of the suit land and

recovery of possession by evicting the defendants from the suit land, which can be possible in a properly constituted partition suit making all the sharers as party and bringing all the joint property in picture and disclosing all the necessary facts about the total quantum of original land and quantum of land transferred by respective share-holder etc. As a result, the judgment and decree passed by the learned trial court is liable to be set aside.

7. Aggrieved thereby, the plaintiffs as appellants herein as preferred this present appeal praying to set aside the judgment of the learned First Appellate Court below.

8. This present appellant was admitted on 17.03.2022 and following substantial questions of law were framed:-

" (i) Whether the non-observance of the law prescribed under Section 17 of the Indian Registration Act can save the validity of the title deeds?

(ii) Whether the Ld. 1st Appellate Court below being the last Court of fact and law has the obligation to appreciate the pleadings and evidence on record properly in accordance with law?"

9. Heard Mr. G.K. Nama, learned counsel appearing for the plaintiff-appellants as well as Mr. H. Deb, learned counsel appearing for the defendant-respondents.

10. Mr. G.K. Nama, learned counsel appearing for the plaintiff-appellants submits that his clients have executed the impugned exchange deed before the Notary Public and delivered possession of the suit land, similarly, the respondents also executed another exchange deed and delivered possession as agreed. But respondent No.1 alone executed the exchange deed in respect of the joint land property recorded in khatian No.1318/2 and also in respect of the land owned by the uncle of

the appellants recorded in khatain No.1318/3, fraudulently. But the learned 1st Appellate Court below failed to appreciate the fraud committed by respondent No.1, instead the Court below made a third case holding that the suit land is the joint property of both the parties to the case. From the perusal of the exchange deed which the respondents executed and the relevant khatian i.e. Khatain Nos.1318/2 and 1318/3, it is clearly evident that the respondents have transferred in favour of the appellants the land owned by other people but the respondents have taken possession of the land owned by the appellants which learned Court below did not consider. According to the learned counsel appearing for the plaintiff-appellants, such evidence made it clear that the respondents by practicing fraud have taken possession of the land owned by the appellants. Further, the learned counsel submitted that as per the Registration Act, a transfer of property value of which is more than one hundred shall be registered. The Notary public is not the Registering authority, hence both the relinquishment deeds are void, and possessing of land based on the said void deed is also illegal.

11. On the other hand, Mr. H. Deb, learned counsel submits that judgment as passed by the learned 1st Appellate Court is just and proper and needs no interference.

12. Heard both sides and perused the evidence on record.

13. Here it is evident from the record that the defendant-respondents were in possession of the suit land from prior to the relinquishment deeds. Thus the possession of the defendant-respondents cannot be said to be an act of fraud, misrepresentation, and illegal.

14. However to the extent of declaration of documents is concerned, the appeal is allowed in terms of the lower Court Judgment as the same seems to be just and proper. But, it is obligatory for the plaintiff-appellants to ask for partition in every case. The respondents herein being the co-owners, it is a settled proposition of law that every co-owner has right over every inch, part, and parcel of the joint land. Without filing a partition suit a co-owner/co-sharer cannot be dispossessed from joint land. A co-owner can be dispossessed if there is material that the said co-owner had taken possession illegally or by force dispossessed another co-owner. As shares of everybody are involved in the said landed property, liberty is given to them to take steps, in accordance with the law.

15. With the above observation and direction, this present second appeal is partly allowed to extend indicated

here-in-above. Stay if any stands vacated. Pending application(s), if any also stands closed.

CHIEF JUSTICE (ACTING)

suhanjit

