

**HIGH COURT OF TRIPURA
AGARTALA**

RSA No.13 of 2020

- 1. Shri Sanjoy Paul,**
S/o Lt. Sunil Bikash Paul, of Gokulpur,
Udaipur, PS-RK Pur, Gomati District.
- 2. Shri Santi Rudra Paul,**
S/o Sri Jitendra Rudra Paul, of Madhyapara,
PS-RK Pur, Udaipur, Gomati District.
- 3. Shri Sundar Paul,**
S/o Sri Sunil Bikash Paul of Gokulpur,
PS-RK Pur, Udaipur, Gomati District.
- 4. Smt. Sipra Paul,**
W/o Sri Santi Rudra Paul, of Madhyapara,
PS-RK Pur, Udaipur, Gomati District.

...Appellants-Plaintiffs

Versus

- 1. Shri Subhan Paul,**
S/o Lt. Sunil Bikash Paul, of Gokulpur,
PS-RK Pur, Gomati District.
- 2. Shri Subhash Ch. Nandi,**
S/o Birendra Kumar Nandi, of Gokulpur,
PS-RK Pur, Gomati District

...Respondents-Defendants

RSA No.14 of 2020

- 1. Shri Sanjoy Paul,**
S/o Lt. Sunil Bikash Paul, of Gokulpur,
Udaipur, PS-RK Pur, Gomati District.
- 2. Shri Santi Rudra Paul,**
S/o Sri Jitendra Rudra Paul, of Madhyapara,
PS-RK Pur, Udaipur, Gomati District.
- 3. Shri Sundar Paul,**
S/o Sri Sunil Bikash Paul of Gokulpur,
PS-RK Pur, Udaipur, Gomati District.
- 4. Smt. Sipra Paul,**
W/o Sri Santi Rudra Paul, of Madhyapara,
PS-RK Pur, Udaipur, Gomati District.

...Appellants-Plaintiffs

Versus

1. Shri Subhan Paul,
S/o Lt. Sunil Bikash Paul, of Gokulpur,
PS-RK Pur, Gomati District.

...Respondent/Counter-Claimant

2. Shri Subhash Ch. Nandi,
S/o Birendra Kumar Nandi, of Gokulpur,
PS-RK Pur, Gomati District

...Proforma Respondents

For the Appellant(s)	:	Mr. D. Bhattacharya, Sr. Advocate Mr. S. Das, Advocate
For Respondent(s)	:	Mr. S.K. Deb, Sr. Advocate Mr. K. Debnath, Advocate
Date of hearing and delivery of judgment & order	:	17/04/2023
Whether fit for reporting	:	Yes

HON'BLE MR. JUSTICE ARINDAM LODH

Judgment and Order (Oral)

Heard Mr. D. Bhattacharya, learned senior counsel assisted by Mr. S. Das, learned counsel appearing for the appellants. Also heard Mr. S.K. Deb, learned senior counsel assisted by Mr. K. Debnath, learned counsel appearing for the respondent no.1.

2. The above two second appeals have been taken up together since similar substantial questions of law have been formulated on the subject in issue.

3. Both the appeals are directed against the judgment dated 08.01.2020 and decree dated 16.01.2020 passed by the learned District Judge, Gomati, Udaipur in Title Appeal 13 of 2018, whereby and whereunder the judgment dated 14.08.2018 and decree dated 23.08.2018

passed by learned Civil Judge (Senior Division), Udaipur, Gomati Tripura have been confirmed.

4. Briefly stated, the plaintiffs have claimed right, title and interest of the suit properties on the basis of sale deeds and two gift deeds. Both the Courts held that except the sale deeds executed in favour of Sipra Paul, the plaintiff no.4, no other deeds have been proved by the other plaintiffs i.e. plaintiffs no.1, 2 and 3. Challenging the findings of the Courts below, the present second appeals are preferred.

5. At the time of admission of these appeals, following substantial questions of law have been formulated:

“(i) Whether the findings of the learned courts below that non-mutation of the ‘B’ schedule land vitiates and nullifies the execution and registration of the Sale Deed bearing No.I-73 dated 11.01.1999 and Sale Deed no.I-821 dated 02.05.1995 are perverse and not tenable in law?

(ii) Whether the plaintiffs have been able to prove the documents of title in accordance with law?

(iii) Whether the finding of both the courts below as regards the execution of the gift deed is sustainable in law or not?”

6. Mr. Bhattacharya, learned senior counsel appearing for the appellants has tried to convince this Court that the findings of the Courts below that the deeds under which the plaintiffs no.1, 2 and 3 have claimed title are wrong and erroneous. Mr. Bhattacharya, learned senior counsel has submitted that the plaintiffs no.1, 2 and 3 had been able to prove the deeds of title in accordance with law.

7. On the other hand, Mr. Deb, learned senior counsel has vehemently objected to the said submission of learned senior counsel appearing for the appellants. In order to prove a gift deed, at least one attesting witness

must appear and confirm the execution of the gift deed in case the defendant denies its execution. Learned senior counsel further argues that even the contents of the sale deed have not been proved by the plaintiffs no.1, 2 and 3.

8. I have given my thoughtful consideration to the above submissions of learned counsel appearing for the parties. At the outset, I have gone through the questioned sale deeds as well as the gift deeds. It appears that finding of the Courts below that the sale deeds executed in favour of Sipra Paul, the plaintiff no.4, i.e. the appellant no.4 herein, has been proved in accordance with law. However, I find force in the submission of learned senior counsel appearing for the respondent no.1 that the sale deeds and the gift deeds executed in favour of plaintiffs no.1, 2 and 3 have not been proved in accordance with law.

9. After perusal of the concerned sale deeds(1/1 to 1/6 & 1/7, 2/1 to 2/4 & 2/5, 3/1 to 3/3 & 3/4, 4/1 to 4/3 & 4/4) as well as gift deeds(5/1 to 5/5, 5/6,5/7, 5/8,5/9 & 5/10, A, B/1 and C) it appears that the plaintiffs no.1, 2 and 3 have failed to produce any of the witnesses to prove the contents of the sale deeds executed in their favour. Even there is no explanation as to why the plaintiffs no.1, 2 and 3 could not produce the witnesses to prove the contents of the sale deed.

10. After perusal of the sale deeds and Gift deeds it comes to fore that even Section 67 of the Evidence Act has not been followed, which mandates that to prove a document, the writer of the document or in his absence any one of the witnesses should be produced who knows the handwriting of the writer/scribe in respect of the proof of the contents of the document.

11. Furthermore, *when the execution of Gift deed is denied by the defendant, then, it being a document required to be attested as per law,*

can be used as evidence by examining at least one attesting witness like that of proof of a Will embodied in the proviso of Section 68 of the Evidence Act, 1872 [K. Laxmanan vs. Thekkayil Padmini & Ors., 2009(1) SCC 354:AIR 2009 SC 951].

(emphasis supplied)

In the case in hand, the defendant no.1 i.e. the respondent no.1 herein has specifically denied the execution of the Gift deed in favour of plaintiff. So, in such a case, the plaintiffs are under obligation to prove the Gift deeds by examining at least one of the attesting witnesses of the said deeds, which they failed.

12. For the aforesaid reasons, I do not find any wrong in the findings of the Courts below that the plaintiffs no.1, 2 and 3 have failed to prove the sale deeds and Gift deeds allegedly executed in favour of them by Sunil Bikash Paul.

As a corollary, the judgments and decrees passed by the Courts below do not call for interference.

Accordingly, both the second appeals fail being devoid of any merit and thus dismissed.

JUDGE