

**HIGH COURT OF TRIPURA
AGARTALA
RFA NO.09 OF 2022**

1. Sri Jagannath Debnath,

S/o Lt. Kanulal Debnath,
Resident of village- Assam Para, Ranirbazar,
P.S.- Ranirbazar, District- West Tripura,
Pin- 799035, Age-55.

2. Sri Nitai Bhowmik,

S/o Sri Subhash Bhowmik,
Resident of village- Assampara Ranirbazar,
P.S.- Ranirbazar, District- West Tripura, Pin-799035,
Age-43.

3. Sri Samir Das,

S/o Sri Anath Bandhu Das,
Resident of village- Assampara, Ranirbazar
P.S.- Ranirbazar, District- West Tripura,
Pin-799035, Age-48.

4. Sri Dipankar Das,

S/o- Sri Anath Bandhu Das,
Resident of village- Assampara Ranirbazar,
P.S.- Ranirbazar, District- West Tripura,
Pin-799035, Age-35.

..... **Appellant(s)**

Vs.

1(a). Sri Narayan Debnath,

S/o. Lt. Kanulal Debnath,
Of Kanti Thakur Para- Gilatali,
P.S.- Kalyanpur, P.O.- Gilatali,
Dist- Khowai Tripura.

1(b). Smt. Laxmi Rani Majumder(Debnath),

D/o. Lt Kanulal Debnath,
W/o- Sri Jogesh Majumder,
Vill- Mekhlipara Tea Garden, Lembucherra,
(near the house of Babul Mishra),
P.O. and P.S.- Ranirbazar, Dist- West Tripura.

1(c). Smt. Radharani Debnath,

D/o- Lt. Kanulal Debnath,

W/o- Sri Dayatam Debnath,
Vill- Brajanagar, P.O.- Ranirbazar,
P.S.- Ranirbazar, Dist- West Tripura.

..... **Respondent(s)**

For the Appellant(s) : Mr. S.M. Chakraborty, Sr. Advocate.
Mrs. P. Chakraborty, Advocate.

For the Respondent(s) : Mr. A. Sengupta, Advocate.

Date of hearing : 09.02.2023.

Date of delivery of
Judgment & Order : 13/02/2023.

Whether fit for reporting : YES/NO.

HON'BLE THE CHIEF JUSTICE(ACTING)

JUDGMENT AND ORDER

The brief fact of the present appeal is that Smt. Parul Bala Debnath (*since deceased*) is the original plaintiff. Smt. Parul Bala Das (*since deceased*) is the owner of the suit property by way of purchase and as such suit property stood mutated in her name in Khatian Number.3047 at Mouja Mazlispur. The original plaintiff had bequeathed half of the suit property to her one son i.e defendant-appellant No.1 vide Will No.III-107 dated 02.03.2009 and the rest half in favour of her elder son namely Sri Narayan Debnath, plaintiff-respondent No.1 vide registered Will No.III-109 dated 03.03.2009. Two daughters of the original plaintiff were not given any share. Both the wills were to come into effect after the demise of the

original Plaintiff. It is stated in the plaint that on 05.02.2014 morning, the defendant-appellant No.1, (second son of the original plaintiff) along with other defendant-appellants visited the original plaintiff in her hut and requested her to allow them to use the suit property/pond for pisciculture with a proposal that they would pay Rs.12,000/(Twelve Thousand Only) per annum to the original plaintiff for using the same. Having accepted the said proposal, the original plaintiff allowed the defendant-appellants to use her pond for pisciculture for the period of 3(three) years. The original Plaintiff was informed by the defendant-appellant No.1 that execution of an agreement relating to the use of the said pond was necessary and that he had been entrusted to complete all the necessary formalities for registration of the said agreement. On 07.02.2014 the defendant-appellant No.1 placed a Deed before the original Plaintiff in her hut and having stated that it was the Deed of Agreement for using the pond for 3 years, obtained the thumb impressions of the original Plaintiff on some sheets of paper and stamp papers without reading and explaining the contents thereof over to the original Plaintiff. The original Plaintiff thought that she was putting her thumb impressions on the Agreement for starting pisciculture without having any inkling for a moment that the defendant-appellant No.1 would betray

her or that Stamp Paper with writings thereon was a Sale Deed purporting to the sale of the suit property in favour of the defendant-appellant No.1. Subsequently the original Plaintiff had been taken by defendant-appellant No.1 to the Sub-Registry Office, Agartala in the noon when Sub Registrar asked her name and address only and examined her Voter Identity Card. It is emphatically asseverated that the defendant-appellant No.1 with the assistance of other defendant-appellants has created the Sale Deed in respect of the suit property by exercising fraud upon the Original Plaintiff as well by procuring her thumb impressions thereon upon false representation. Subsequently, the original Plaintiff came to learn that the defendant-appellant No.1 with the help of the Revenue Staff got his name mutated in respect of the suit property on the strength of the fraudulent Sale Deed without the knowledge of the original Plaintiff of the said mutation proceeding. Thereafter on 05.08.2016, her elder son informed her about the said fraudulent deed, and then certified copy of the same was collected. During inquiry about the said deed in the Sub-Registry Office, it was detected that the defendant-appellant No.1 sold out the suit property in favour of defendant-appellants Nos.2, 3 and 4 by Sale Deed No-1- 1641 dated 14.01.2016. Accordingly, the certified copy of the said

deed was also collected. Thereafter on 07.10.2016 and on many other dates the original Plaintiff asked the defendant-appellants about the fraudulent Sale Deed and demanded the possession of the Suit Property to which they refused. The cause of action for this suit has been shown to have first arisen on 07.02.2014 when the Sale Deed No.1-891 came into being and thereafter on 07.10.2016 when the original Plaintiff demanded the possession of the suit property and was turned down by the defendant-appellants. The original Plaintiff has also pleaded certain ancillary facts such as no consideration as recited in the said Sale Deed had been accepted by her. Neither the defendant-appellant no.1 has the capacity to pay the consideration of Rs.5,70,000/ nor did she intend to sell the suit property. She was having some deposit in MIS in the Post Office since 2010 and that she was having only a savings account in UBI Ranirbazar Branch and that apart from that she had no other bank account(s) or investment. That from 07.02.2014 the defendant-appellants have been using the suit property for the purpose of their pisciculture business and have been earning a lot of money and therefore she was entitled to get 12,000/ (Twelve Thousand Only) per annum as Mesne Profit from the defendant-appellants till recovery of the suit property.

2. Aggrieved thereby, the Plaintiff-respondents filed a suit before the learned Civil Judge(Senior Division), Court No.2, West Tripura, bearing registration No.T.S.127 of 2016.

3. After receiving the summons, the defendant-appellants appeared and contested the suit by way of filing a common written statement thereby praying for dismissal of the suit of the plaintiff with cost. It is the plea of the defendant-appellants that the Original Plaintiff namely Parul Bala Debnath(*since deceased*) was the owner of the 19 Satak of land under Khatian No.7713, Hal Dag No.4963 and 4964 and that during her lifetime she transferred 4 Ganda 3 Kara of land (out of said 19 Satak of land) in favour of her younger son namely Jaganath Debnath i.e Defendant No.1 vide Registered Will No:-III-107 dated 02.03.2009 and has also transferred rest 4 Ganda 3 Kara of land in favour of her elder son namely Narayan Debnath i.e present Plaintiff No:-1 vide Registered Will No:-III-109 dated 03.03.2009. Subsequently having observed certain behavioral changes in her elder son namely Narayan Debnath i.e Present plaintiff-respondent No.1, the original Plaintiff being aggrieved and dissatisfied revoked the registered Will No.III-109 dated 03.03 2009 thus land measuring 4 Ganda 3 Kara stood restored in the name of the original Plaintiff. Subsequently, the original Plaintiff due to her acute crisis for

money decided to sell out land measuring 4 Ganda 3 Kara under Dag Nos.1916 and 1917. Accordingly, she executed the Registered Sale Deed No.1-891 dated 07.02.2014 transferring the land in favour of Defendant No.1, and after observing all legal formalities, the Revenue Authority issued mutation in favour of Defendant No.1. Then on the strength of his ownership over the suit land, the defendant-appellant No.1 had sold out the suit land to the defendant-appellants Nos- 2, 3 and 4.

4. The learned Trial Court after consideration of the pleading of the parties and documents submitted therewith, the following issues were framed.

- "i) Is the suit maintainable in its present form and nature ?*
- ii) Whether there is any cause of action for filing this suit?*
- iii) Whether the plaintiff has right, title and interest over the suit land ?*
- iv) Whether the Sale Deed bearing no.1-891 dated 07.02.2014 executed in favour of defendant no.1 is fraudulent, invalid and inoperative and thus liable to be canceled and delivered up?*
- v) Whether the Sale Deed bearing no.1-1641 dated 14.01.2016 executed in favour of defendant no.2,3 and 4 is invalid,non est ,illegal and thus not binding upon the plaintiff?*
- vi) Whether the plaintiff is entitled to get the decree as prayed for ?*
- vii) To what other relief/ reliefs the plaintiff is entitled to"*

5. The learned Trial Court after hearing both the parties, decreed the suit in favour of the plaintiff-respondents by a judgment dated 04.01.2021.

6. Aggrieved thereby, the appellant filed this appeal with a prayer to set aside the impugned judgment dated 04.01.2021 passed in T.S. 127 OF 2016.

7. Heard Mr. S.M. Chakraborty, learned Sr. counsel assisted by Mrs. P. Chakraborty, learned counsel appearing for the appellants as well as Mr. A. Sengupta, learned counsel appearing for the respondents.

8. Mr. S.M. Chakraborty, learned Sr. counsel appearing for the appellants submits that the defendant-appellant No.1 paid the money to the original plaintiff that is his mother and there is no denial in the cross-examination. There is no proof of fraud against his client and only based on the allegation and on the instance of the first son after the expiry of his mother, the case was filed.

To support his argument, learned Sr. counsel pressed into service, the **Para-62** of the Judgment of the Hon'ble Apex Court reported in **(2011) 12 SCC 18** titled as ***Saradamani Kandappan Vs. S. Rajalakshmi and ors.***, which is reproduced herein-under:-

"62. Whenever a party wants to put forth a contention of fraud, it has to be specifically pleaded and proved. It is significant that the plaint does not allege any fraud by the defendants. Evidence shows that before the agreement was entered, the purchaser's husband and legal advisor had examined the xerox copies of the title deeds and satisfied themselves about the title of the vendors."

Stating thus, learned Sr. counsel urged to allow this appeal.

9. On the other hand, Mr. A. Sengupta, learned counsel appearing for the respondents submits that defendant-appellant No.1 stayed with his mother i.e. the original plaintiff, and taking advantage of her old age and illiteracy he committed fraud and deprived other family members.

To substantiate his argument, learned counsel relied upon the **Paras-17, 18 and 20** of the judgment of the **Allahabad High Court** reported in **AIR 2006 ALLAHABAD 273** titled as **Ramu Mahabir Vs. Ghurhoo Samu** which is reproduced herein-under:-

"17. The point which has been indicated in the second question framed by this Court that the plaintiff vendor being old man of 70 years and illiterate villager should be accorded the same benefit as that of pardanaseen lady, the law is settled on this point. It is true that in a deed duly registered, there is legal presumption of its correctness so the original person who is challenging the validity of transaction on the ground of fraud and undue influence etc. The burden of proof of such fraud etc. rests on him. But a major exception to this rule is that the initial burden would not be on the party, who is old and illiterate challenging the transaction and will, instead be cast on the person who relies on such deed if there exists any fiduciary relationship between the parties. The possibility of this relationship and probability of dominating will over the challenging party arises either directly from the very nature of the relationship existing between the parties or some times from a peculiar handicap or disability from which that party suffers. [Section 111](#) of the Evidence Act read with [Section 16](#) of the Contract Act, the principle enshrined therein is also extendable to cases where there is a proof of a person dependent, by virtue of his physical or mental infirmity or disability on another party and the circumstances have been proved to show that the other party, taking advantage of such position, has secured a deed or instrument for his own benefit. In such cases a Division Bench of this Court in Day a [Shankar v. Smt. Bachi and Ors.](#) , has held that the burden to prove the genuineness of the deed lies on dominating party and not on a person challenging it. In this context the following paragraphs of the

decision of Daya Shankar (supra) is quite remarkable and is. quoted as below:

In Parasnath Rai V. Tileshra Kuar 1965, All LJ 1080, Gangeshwar Prasad, J. followed the decision of the Calcutta High Court in [Chinta Dasya V. Bhalku Das](#) AIR 1930 Cal 591, wherein Mitter, J. held, that rules regarding transactions by a pardahnashin lady were equally applicable to an illiterate and ignorant woman, though she may not be pardahnashin. We are unable to comprehend as to why the broad principle which has been accepted and widely applied in the numerous decisions to which we have adverted should not also embrace within its sweep the cases of males who by reasons of their apparent physical or mental incapacity or infirmity or being placed in circumstances where they are greatly amenable to the overpowering influence of another person are induced to enter into conveyances and transactions relating to their property. The basic principle is the same and where it is proved to the satisfaction of the court either that the bargain was on the face of it unconscionable or the executant was the victim of physical or mental handicap or that he was subdued by the complexity of circumstances in which another person had an upper hand, the burden must be cast squarely on the person enjoying the dominating position to show that he secured the deed in good faith.

18. In the present case, the plaintiff appellant was admittedly an old man of 70 years of age and as per the defendant's case itself there did exist a fiduciary relationship between the two. Since those days the plaintiff was dependent on the defendant and was living with him, he was obviously suffering from these handicaps and thus, the defendant was definitely in a dominating position being his nephew. The transaction is also unconscionable as being a sale deed of the entire property held by the vendor, the only source of his livelihood. By this transfer the plaintiff is also found to have excluded his all the three daughters from getting any share in the property. In such circumstances, the initial burden was on the defendant to prove that the deed was valid and had been executed in all fairness and bonafide and not otherwise influenced by any fraud or misrepresentation. The mere observation of the lower appellate court that since the defendant has come in the witness box he actually has discharged his burden by saying that he got the sale deed validly executed, will not definitely be a finding as to amount holding that the requirements of the provisions of [Section 111](#) of Evidence Act read along with provisions of [Section 16](#) of the Contract Act were in reality fulfilled. When there was no finding recorded in favour of this aspect of the matter by the trial court the detailed findings should have been recorded by the appellate court in that regard.

20. As per the plaint case the sale deed in question was got executed by the respondent defendant misrepresenting it to be a document of security indemnifying the defendant from repayment of Govt. dues. But the contents of document are otherwise stating it to be a sale deed after having received the amount shown therein as consideration. So far as the element of fraud and misrepresentation is concerned, it is obvious in the pleadings itself. Whether the pleadings are squarely to be categorized as denoting fraudulent and misrepresentation as to the character of document or as to the contents of document, is a question which is in itself unanswerable

from the contents of the deed. The facts were misrepresented to the plaintiff by the defendant and taking the plaintiff into his confidence and dominating him by his position as such, he got fraudulent deed of sale executed. These mixed facts as demonstrated from the circumstances as-well as from the contents of deed in question make the document as one obtained by playing fraud and misrepresentation as to its contents also and that renders the deed as a voidable document which requires to be cancelled in law. The lower appellate court sidetracking of these issues has interpreted this document to be a deed of gift and as per the discussions made above, without going into other merits of the evidence and attending circumstances has actually ignored all the reasonings given by the trial court in its judgment and thus, has reversed it. The question thus, so arises in this second appeal from the facts and circumstances available in the present case which is more than obvious that the judgment of lower appellate court has directly and substantially affected the right of the parties and it has been rightly interpreted as a substantial question of law arising before this Court for adjudication.

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

11. It is not in dispute that the mother, i.e. the original plaintiff was staying with the defendant-appellant No.1 i.e. her second son. In 2009, two Wills were executed vide Will No.III-107 dated 02.03.2009 and Will No.III-109 dated 03.03.2009. The Wills disclosed that the property was shared among the 2(two) sons and it is hard to believe that unless and until there is any specific reason, why the mother would devolve her entire property upon the second son. Further immediately after getting the property by way of the sale deed, appellant No.1 i.e., the second son alienated the property in favour of other defendant-appellants. This shows that the action of the second son is unfair. There is no reason why at the age of 80 years, the mother would sell away the property

for sale consideration in favour of the second son exclusively by way of sale deed. Further, the second son has not placed any proof of payment of the sale consideration which is the subject matter of the sale deed.

12. In view of the above observation and discussion this Court finds no infirmities in the findings arrived at by the learned Court below in the judgment and order dated 04.01.2021, thus, the same stands confirmed. Consequently, the present appeal filed by the appellants-herein stands dismissed. Send down the LCRs forthwith. Prepare the decree accordingly.

13. As sequel, miscellaneous application(s), pending if any, stands closed.

CHIEF JUSTICE (ACTING)

