

HIGH COURT OF TRIPURA
AGARTALA
RSA 12 of 2021

Sri Nitai Chandra Saha, son of late Rakhai Chandra Saha, resident of Hospital Road, Debinagar, P.O. + P.S. Ranirbazaar, District- West Tripura

... Defendant-Appellant

VERSUS

1.a. Smt. Asima Saha, wife of late Bhajan Chandra Saha, resident of Rabindranagar (Shantipalli), P.O. Rabindranagar, P.S. Sonamura, District- Sepahijala, Tripura

1.b. Smt. Rakhi Saha, wife of Sri Paritosh Saha, daughter of late Bhajan Chandra Saha, resident of Bridhanagar, Radhakunja Bihari Seva Dham, P.O. + P.S. Ranirbazaar, District- West Tripura

1.c. Smt. Pinki Saha, wife of Sri Tutan Saha, daughter of late Bhajan Chandra Saha, C/o Bulu Saha, resident of Santirnagar, Near Cinema Hall, P.O. + P.S. Teliamura, District- Khowai, Tripura

1.d. Smt. Puja Saha, wife of Sri Kamal Podder, daughter of late Bhajan Chandra Saha, C/o Chandan Podder, resident of Rangamati, P.O. + P.S. Amarpur, District- Gomati, Tripura

... Plaintiff-Respondents

2. Sri Narayan Chandra Saha, son of late Rakhai Chandra Saha, resident of Hospital Road, Debinagar, P.O. + P.S. Ranirbazaar, District- West Tripura

... Proforma-Defendant-Respondent

For Appellant (s)	:	Mr. N. Chowdhury, Advocate
For Respondent (s)	:	Mr. SM Chakraborty, Sr. Adv. Ms. A. Pal, Advocate
Date of hearing and delivery of judgment and order	:	26.04.2023
Whether fit for reporting	:	Yes / No

HON'BLE MR. JUSTICE ARINDAM LODH
JUDGMENT & ORDER (ORAL)

1. This is a second appeal preferred by the original defendant challenging the judgment and decree dated 01.05.2021 and 11.05.2021 passed by the learned District Judge, West Tripura, Agartala in case No. Title Appeal 49 of 2017 whereby the appeal filed by the defendant-appellant was dismissed with partly modifying the judgment and decree dated 19.08.2017 passed by the learned Civil Judge, Senior Division, West Tripura, Agartala, Court no. 1 in T.S. 67 of 2015.

2. Fact of the case, as projected by the learned District Judge, is reproduced here-in-below:

“Said original plaintiff filed the suit stating that the original owner of the suit land was his father, Late Rakhal Chandra Saha and after his death, his wife Smti. Renu Bala Saha (original defendant no.1), Late Bhajan Chandra Saha (original plaintiff), Sri Nitai Chandra Saha (defendant no.2), Sri Narayan Chandra Saha (proforma defendant no.3) and Late Gour Saha (mentally challenged son of Rakhal Chandra Saha) inherited the said property. After death of their predecessor, both Renu Bala Saha and Gour Saha resided with the plaintiff till June, 2012 when in absence of the plaintiff and his wife, the defendant no.2 forcibly took said Renu Bala Saha and Gour Saha with him and then said Renu Bala Saha and Gour Saha lived with the defendant no.2 for some period and again returned to the house of the plaintiff. Thereafter, again defendant no.2 forcibly took them with him and started conspiring with Renu Bala Saha to get her land and land of Gour Saha by way of sale or a Will in his favour. Thereafter, getting such information, son of the proforma defendant no.3 raised objection and then a meeting was held at the instance of Nagarik Committee, Ranir Bazar Nagar Panchayet in presence of local elites including uncle of plaintiff and defendant no.2 namely Sri Anil Ch. Saha, wherein some resolutions were taken that said Renu Bala Saha and Gour Saha would reside with any of her son as per her desire and for their maintenance, the income received from their property will be given to said son and after their death, property will be divided into three equal share i.e. the plaintiff, defendant no.2 and proforma defendant no.3. But during their life time, their property will not be transferred and in case of any necessity, said Renu Bala Saha would be able to sell only one kani of land for their treatment purpose. Anyway, when Renu Bala Saha would reside with the plaintiff, she transferred the suit land of 0.09 acre to the plaintiff by a Sale Deed bearing no.1-3909 dated 30.05.2007 (Ext.11) and handed over the possession of the same to him. She also executed one registered Will dated 12.6.2007 in favour of the plaintiff bequeathing 0.044 acre of land however, said will was later on revoked by her and when she was in the custody of defendant no.2, she transferred the entire suit land to defendant no.2 by a registered Gift Deed bearing no.1-7610 dated 30.11.2013 (Ext.1). According to the plaintiff, in one meeting of Nagarik Committee, the dispute between the parties were settled even in absence of plaintiff and thereafter, said Renu Bala Saha and defendant no.2 Sri Nitai Chandra Saha filed Title Suit no.9 of 2014 though meanwhile amicable settlement or family arrangement was made on 21.07.2012 regarding

the joint property and after such settlement, said Renu Bala Saha suffered cerebral stroke and therefore, she was not in complete soundness of her mental health and taking advantage of the same, the defendant no.2 got the said Gift Deed executed by Renu Bala Saha in his favour which was void ab-initio. Lastly, it was stated that after June, 2012 when her mother and brother were forcibly taken by defendant no.2, the plaintiff left Ranir Bazar area and started living at Sonamura in a rented house. Thereafter, when the plaintiff in the fourth week of December, 2013 came back to his house situated within the suit land, he was obstructed by the defendant no.2 and his family members from entering therein and thereafter, also on several occasions he tried to enter into the suit land but could not succeed due to resistance by the defendant no.2 and finally, the suit was filed for cancellation of the said Gift Deed of defendant no.2 and also for declaring right, title and interest of the plaintiff in the suit land and for recovery of possession.

3. During pendency, plaintiff amended the plaint, abandoned his claim in respect of an area of 0.044 acre which he earlier claimed on the strength of said registered Will, as said Will was meanwhile revoked by Renu Bana Saha and consequently area of suit land was reduced from 0.134 acre to 0.09 acre.

4. Said Renu Bala Saha and defendant no.2 in their joint written statement came up with the defence that the plaintiff never looked after said Renu Bala Saha and her disabled son Late Gour Saha and once the plaintiff brought Renu Bala Saha to Agartala Sub Registry Office pretending that her signature was required for obtaining a guardianship certificate for looking after said Gour Saha and on good faith, she put her signature in the stamp paper but later on, it was found that the plaintiff fraudulently obtained her signature in a Sale Deed. Thereafter, the Will was also revoked by Renu Bala Saha. But as Renu Bala Saha was very much satisfied with the service rendered by defendant no.2 towards herself and said Gour Saha, she accordingly executed the Gift Deed in favour of defendant no.2 out of love and affection which was also accepted by defendant no.2 and since then the defendant no.2 was possessing the suit land peacefully and the record of right was also created in his name. Plaintiff thereafter preferred a petition under Section 95 of TLR & LR Act before the Sub-Divisional Magistrate, Jirania for cancellation of ROR in respect of suit land which was rejected. During inquiry by revenue official, peaceful possession of the defendant no.2 was found therein. Plaintiff also filed one petition for mutation of his name based on said Sale Deed purportedly executed by Renu Bala Saha which was also rejected by mutation authority.

5. Proforma defendant no.3 i.e. another son of Renu Bala Saha in his written statement asserted that after death of his father, both the plaintiff, his mother Renu Bala Saha and Gour Saha were living in a joint mess till June, 2012 and thereafter, in absence of plaintiff, defendant no.2 took said Renu Bala Saha and Gour Saha forcibly with him and kept them in his custody and thereafter, one day Renu Bala Saha went to the house of proforma defendant no.3 and took shelter therein. Thereafter, she was residing in the house of proforma defendant no.3. Again the defendant no.2 brought Renu Bala Saha and Gour Saha back to his house and created some documents obtaining her signature therein as she was mentally incapacitated due to said cerebral stroke and even, she could not recognize her near relatives at that time. According to him, plaintiff had love and affection for Gour Saha and Renu Bala Saha and would look after them properly rather defendant no.2 even beat his mother in presence of other people. He also admitted the meeting held with local elites at Ranir Bazar and the resolution taken therein. According to him, after the plaintiff left for Sonamura, the defendant no.2 and Renu Bala Saha started possessing the suit land jointly and some false deeds were created and Khatian was also mutated in the name of defendant no.2 on the basis of such false deed. He also alleged that the plaintiff also taking the advantage of mental incapableness of Renu Bala Saha, illegally tried to grab some properties by way of Will/Sale Deed. His basic contention was that the plaintiff as well as the defendant no.2 were trying to grab the property of Gour Saha and Renu Bala Saha by creating false deeds which were required to be declared void and cancelled.”

3. The Learned Trial court had decreed the suit in favour of the plaintiff. Thereafter, the defendant no. 2 had preferred First Appeal before the learned District Judge, West Tripura, Agartala. Learned District Judge while hearing the appeal had held thus:-

“In the description of suit land given in the plaint, the boundary description of above said 0.18 acre has been given but claim of the plaintiff is confined only about 0.09 acre of suit land from said four R.S. plots. As the Gift Deed (Ext.1) was executed subsequent to the above said Sale Deed under Exbt.11, certainly right of the plaintiff is protected under Section 48 of the Transfer of Property Act as against the right of defendant no.2 acquired through the said gift deed in respect of said 0.09 acre of land. The registered Sale Deed has its own presumptive value and the Learned Trial Court has rightly drawn presumption of due execution of said Sale Deed but the question arises whether said 0.09 acre of suit land is now not properly identifiable as per description of suit land as given in the plaint. As

already indicated above, said four RS plots are now recorded in Khatian no.5845 (Ext.8) in the name of defendant no.2 with mentioning of following areas –

R.S. Plot	Class	Area
1776	Karkhana (nal)	0.04 acre
1778	Doba (nal)	0.08 acre
1779	Bastu (nal)	0.05 acre
1780	Bastu	0.01 acre

Total 0.18 acre

Therefore, even if, boundary description as wrongly given in the schedule of the plaint is ignored, it will not be possible to locate the actual suit land on the basis of plot numbers, for, these plots comprise of much higher area than 0.09 acre and it is also not mentioned in the plaint against which plot how much land the plaintiff is entitled and in which portion and therefore, actual suit land cannot be identified solely by plot numbers. Therefore, the suit land of plaintiff as acquired through said sale deed is required to be identified by appointing one survey knowing commissioner and by relaying the purchase deed of the plaintiff, more particularly it's boundary, and as per provision of Order 26, rule 18A C.P.C, same is permissible in execution proceeding. Learned Trial Court while granting decree in favour of the plaintiff has missed the notice of defect in land description of suit land given in the plaint.

10. Though Learned Counsel Mr. Nitai Chaudhuri argued that in the cross examination PW.1 admitted that he did not get possession of the suit land but from such admission it is not clear since when he was not in possession of the suit land. Therefore, it cannot be presumed that it was the admission of plaintiff that since purchase he was not in possession of the suit land. It is fact that in the Purchase Deed of the plaintiff (Exbt.1), value of the suit land was shown to be Rs.2,60,000/- and for recovery of possession of the same suit ought to have been valued at least for Rs.2,60,000/-. Though, Ld. Trial Court has partially cancelled the gift deed, but practically it is not a cancellation, rather it has the effect of a declaration that said gift deed is ineffective, inoperative and not binding upon the plaintiff so far as the suit land is concerned, therefore, no court fees is required to be collected from the plaintiff in respect of his prayer for cancellation of said gift deed. But, the plaintiff is required to pay the balance court fees on ad valorem basis upon the rest amount i.e. upon Rs.1,50,000/- (Rs.2,60,000/- minus Rs.1,10,000/-) in the Trial Court and he is directed to pay so in view of provision of section 149 of C.P.C.”

4. On the basis of those findings, the learned District Judge dismissed the appeal and passed by the following order:

“O=R=D=E=R

In view of the above, it is held that the appeal is devoid of any merit and accordingly, it is dismissed with cost to be paid by present appellant to respondent nos. 1(a) to 1(d). However, the Judgment dated 15.09.2017 passed by Learned Civil Judge (Senior Division), Court No.1, West Tripura, Agartala, in Title Suit No.67 of 2015 and consequent decree thereof are partly modified to the effect that the decree will be executable only after identifying the suit land by relaying the purchase deed of plaintiff (Ext.11) with reference to both it's

survey plot and the boundary description given in said deed by appointing a survey knowing commissioner at the cost of the plaintiff. Further condition is imposed upon the plaintiff that the decree will not be executed unless the rest amount of court fees are paid by the plaintiff in the Ld. Trial Court.”

5. While admitting this appeal, the following substantial questions of law had been formulated by this Court:

“(i) Whether for non-consideration or for mis-reading of the documents admitted in the evidence as Exbt. A(i), A(ii), B, C series and D series, is the impugned judgment rendered perverse and unsustainable? and
(ii) Whether the instrument being sale-deed No.1-3909 dated 30.05.2017 has been proved in the evidence in conformity to the provisions of Section-68 of the Evidence Act or whether that aspect of the matter being not considered in the perspective by both the courts the admission of the said in the evidence is liable to interfered with?”

6. During the course of hearing, none of the learned counsel had prayed for formulating any new substantial question of law. As such, this court has proceeded to decide the appeal on the basis of the above substantial questions of law.

7. I have perused Exhibits ‘A-1’ and ‘A-2’, which are the documents relating to creating of Record of Right. Admittedly, Record of Right under Exhibits ‘A-1’ and ‘A-2’ were created in favour of defendant no.-1, and defendant no. 2. The defendant no. 1 died, being the mother of the plaintiff as well as defendant no. 2. ‘Exhibit-B’ is the cancellation of Will which is an admitted fact and ‘Exhibit-C’ relates to some correspondences. On the basis of those Records of Right i.e. Khatians (Exhibit A-1 and !-2), the defendant no. 2 has claimed that the Sale Deed i.e. Sale Deed no. I-3909 dated 30.05.2007 was not acted upon at any point of time because the Sale Deed was not acted upon since the possession was not handed over to the plaintiff.

8. The settled proposition of law is that Khatian cannot confer title. It is the document on the basis of which there may be presumption of possession in favour of a person. Since the plaintiff was not successful in getting over the possession of the suit land, he claimed for recovery of khas possession of the same. Both the Gift Deed and the Sale Deed consist of a land over which both the mother as well as the plaintiff and the defendant no. -2 were staying. It is the specific case of the plaintiff that for a certain period of time, he was out of the suit land and taking this opportunity, the defendant no. 2 had taken over the possession of the suit land and the plaintiff was not allowed to enter into the suit land when he returned back from the place where he stayed temporarily. This fact was specifically dealt with by the learned Courts below, and came to a definite finding supporting the plea of the plaintiff on this issue. Since it is a concurrent finding on fact, in my opinion, this Court, in exercise of its jurisdiction under Section 100 of the CPC, will not interfere with such finding of the learned Courts below.

9. Mr. N. Chowdhury, learned counsel for the defendant-appellant has strenuously argued before this Court that the Sale Deed no. I-3909 dated 30.05.2007, was obtained by the plaintiffs fraudulently.

10. I have already observed that both the learned Courts below held that the Sale Deed has been proved in accordance with law. However, this Court has formulated substantial questions of law, as to whether the Sale Deed no. I-3909 dated 30.05.2007 has been proved in accordance with

Section 68 of the Evidence Act. To deal with this substantial question of law, at the outset, I would like to point out that out of typographical error it has been mentioned as *Section 68*, but it would be *Section 67* of the Evidence Act, which lays down the requirement to prove a Sale Deed.

11. I have perused the Sale Deed as well as the evidence of the Scribe, Sri Uttam Kumar Majumder, who adduced his evidence as CW-1 (Court Witness no. 1). CW-1, has specifically stated in his evidence that he read over the contents of the Sale Deed in Bengali, and the Executant i.e. the deceased defendant no. 1, being satisfied told that the Sale Deed was written as per her version. CW-1, has further stated that she put her thumb impression in every pages of the said Sale Deed in presence of him and other witnesses after acknowledging the contents of the Sale Deed, and she also stated that she has handed over the possession of the land after receiving the entire consideration money in presence of her brother-in-laws, and thereafter, the Scribe identified her thumb impression in every pages and also signed as Scriber of the said Sale Deed. Thereafter, the said Sale Deed was put for registration before the District Sub-Registrar, Sadar. She appeared before the Sub-Registrar and thus the Sale Deed was registered.

12. I view of this, in my opinion, this Sale Deed no. I-3909 dated 30.05.2007 has been proved in accordance with Section 67 of the Evidence Act and there is no error of appreciation of evidence in regard to proof of the Sale Deed no. I-3909 dated 30.05.2007 executed by deceased mother, defendant no. 1 in favour of the plaintiff.

13. Accordingly, both the substantial questions of law have been answered in favour of the plaintiff-respondents. Resultantly, the instant Second Appeal stands dismissed being devoid of merit and the judgment and decree passed by the learned first appellate court are hereby affirmed and upheld. However, there shall be no order as to costs.

Send down the LCRs.

JUDGE

