

HIGH COURT OF TRIPURA

AGARTALA

RSA No.17 of 2021

Sri Paresh Chakraborty

S/o of Lt. Rashmohan Chakraborty,
resident of Lalchari, P.O.- Balaram,
P.S.- Ambassa, District-Dhalai, Tripura,
presently residing at Kulai Thakurpalli,
P.O.-Kulai Bazar, P.S.- Ambassa,
District-Dhalai, Tripura;

---Plaintiff-Appellant

Versus

1. Sri Arun Chakraborty

2. Sri Prallad Chakraborty

Both are sons of Lt. Rashmohan Chakraborty,
resident of Netaji Nagar, P.O.- Kolai Bazar,
P.S.- Ambassa, District- Dhalai, Tripura;

---Defendant-Respondents

For the Appellant(s)	:	Mr. S. Lodh, Advocate
For the Respondent(s)	:	Mr. S. Bhattacharjee, Advocate
Date of hearing &		
Delivery of Judgment & Order	:	28.03.2023
Whether fit for reporting	:	Yes

HON'BLE MR. JUSTICE ARINDAM LODH

JUDGMENT & ORDER (ORAL)

This appeal is directed against the judgment and decree dated 17.03.2021, passed by the learned District Judge, Dhalai

Judicial District, Ambassa in Title Appeal No.2 of 2019, reversing the judgment and decree dated 14.02.2019, passed by the learned Civil Judge (Sr. Division), Dhalai Judicial District, Ambassa in TS No.14 of 2018(re-numbered), arising out of TS No.27 of 2014.

2. Briefly stated, the plaintiff, Sri Paresh Chakraborty and the defendants of the present suit are full-blooded brothers and they are the sons of Lt. Joshoda Bala Chakraborty and Lt. Rash Mohan Chakraborty. During her lifetime, Joshoda Bala Chakraborty had executed a Will on 18.02.2000 in favour of the plaintiff. On 24.02.2002, Joshoda Bala Chakraborty died. After her death, the defendants took over the possession of the suit land, which was a paddy land. The plaintiff used to cultivate the suit land through his tenants under two separate agreements. It is the case of the plaintiff that he acquired right, title, interest over the suit land by dint of a Will executed by his deceased mother, i.e., Lt. Joshoda. He also used to possess the suit land even before the death as well as after death of his mother and was enjoying usufructs out of the suit land, when suddenly he was dispossessed by his two brothers, the defendants/respondents nos.1 and 2 herein. So, the cause of action to institute the present suit was his dispossession from the suit land where plaintiff had sought for declaration of right, title, interest and recovery of possession of the suit land.

2.1. In response to summons, the defendants appeared and contested the suit by filing written statements. Thereafter, during the course of trial, the following issues were framed:-

- i. *Whether the suit is maintainable in its present form and manner?*
- ii. *Whether there is any cause of action for filing the suit?*
- iii. *Whether the plaintiff has right, title and interest over the suit land?*
- iv. *Whether the plaintiff was dispossessed from the suit land illegally by the defendant?*
- v. *Whether the plaintiff is entitled to get the decree as prayed for?*
- vi. *To what other relief(s) plaintiff is entitled?*

2.2. Evidences were adduced by the parties to the suit during the course of trial. Relevant documents were adduced and brought on record. Thereafter, having heard the arguments advanced by the learned counsel appearing for the parties, the learned trial court decreed the suit in favour of the plaintiff.

2.3 Feeling aggrieved, the defendants preferred first appeal before the learned District Judge, Dhalai Judicial District, Ambassa. Learned District Judge after hearing the defendant-appellants and the plaintiff-respondent came to a finding that the executors of the Will remained silent for a long time and they also did not bring the existence of the registered Will of Lt. Joshoda Bala Chakraborty in public, especially to the knowledge of the other survivors of Lt.

Joshoda Bala Chakraborty and thereby the said executors have failed to discharge their duties and responsibilities and suspected the genuinity of the Will. Accordingly, the learned District Judge set aside and quashed the decree passed by the trial court.

2.4 Being aggrieved by and dissatisfied with the judgment and decree passed by the first appellate court i.e. learned District Judge, Dhalai Judicial District, Ambassa, the appellant (original plaintiff of the suit) challenged the said reversal judgment and decree by way of preferring the instant second appeal before this Court.

3. At the time of admission of this appeal, following substantial questions of law were formulated by this Court:-

- I. *“Whether the first appellate court while reversing the judgment dated 14.02.2019 delivered in Title Suite No.14 of 2018 [re-registered No. from Title Suit No.27 of 2014] for its transfer from the court of the Civil Judge, Senior Division, Unakoti, Kailashahar for bifurcation of the judicial district] by the Civil Judge, Senior Division, Dhalai Judicial District, Ambassa was correct in observing that since the registered Will was executed by the testatrix by putting thumb impression on the Will, its presentation to the District Sub-Registrar for registration and execution cannot be held beyond suspicion? and*
- II. *Whether the first appellate court while reversing the judgment of the trial court has mis-read the fact, as not challenged by the defendants, as regards the*

disclosure of execution of the Will by the mother of the parties namely, Yashoda Bala Chakraborty?”

4. I have heard Mr. S. Lodh, learned counsel appearing for the plaintiff-appellant and Mr. S. Bhattacharjee, learned counsel appearing for the defendant-respondents.

5. Mr. Lodh, learned counsel has submitted that by dint of Will dated 18.02.2000, the plaintiff-appellant became the owner and possessor of the suit land, but, his brothers i.e. the defendant-respondents had taken over the possession over the suit land on the pretext that they are also the shareholders of the property left behind by their mother and they denied the existence of any Will. However, the defendant-respondents had averred that even if there was/is any Will, it was not a genuine one and there are serious suspicious circumstances because their mother was suffering from chronic arthritis for several years.

6. Mr. Bhattacharjee, learned counsel for the defendants-respondents has drawn my attention to the cross-examination, which according to him, is the admission on the part of the plaintiff-appellant that the defendant-respondents also used to reside in the same mess along with him during the lifetime of their mother and have also looked after their mother.

7. On the aforesaid background, I have carefully gone through the evidence adduced by the parties to the suit. Besides the

plaintiff-appellant, the attesting witnesses (PW-3 and PW-5) as well as the scribe (PW-2) had adduced their evidences.

8. It is settled proposition of law that while deciding the genuinity and propriety of a Will, the Court is to look upon its execution part and the subsequent registration, if any. From the evidences of PW3 and PW5, the two attesting witnesses have categorically deposed that Lt. Joshoda Bala Chakraborty was fully conscious when the Will was executed, though, her hands were trembling due to arthritis and for that reason, she put her thumb impression on the Will. They have also categorically deposed that on her dictation, the Will was written by PW2, the scribe. It was read over to her and she understood the contents of the Will and having satisfied with the contents of the Will, she put her thumb impression on the Will in front of them. Thereafter, on her request, PW3 and PW5 put their respective signatures as attesting witnesses on the Will.

PW2, the scribe in clear terms has deposed that Jashoda Bala Chakraborty herself approached him expressing her willingness to execute a Will in favour of the plaintiff. Accordingly, he had written the Will. He further deposed that at the time of execution of the Will she was free and in sound disposing mind and further, Lt. Joshoda Bala Chakraborty was in a perfect position to understand the contents of the Will. The contents being written according to her wish, it was read over to her and after being satisfied, she put her thumb

impression on the Will as her hands were trembling due to arthritis. At her request, two neighbouring witnesses were along present during the process of execution who put their respective signatures on the Will as attesting witnesses after the thumb impression was put by Lt. Jashoda following her request.

9. After meticulous perusal of the evidence on record, I am of the firm opinion that the Will has been executed in terms of Section 68 of the Evidence Act and the essentialities of Section 63(c) of Indian Succession Act, 1925 have been fulfilled.

9.1 It is also proved that Joshoda Bala Chakraborty herself presented the Will before the Sub-Registrar, and it was registered in accordance with law. So, this Court can unhesitantly arrive at a finding that the Will has been proved in accordance with the requirements of law, and the factors required to draw suspicious circumstances are wholly absent rendering the judgment and decree of the first appellate court perverse.

10. In the opinion of this Court, when the Will is registered and the plaintiff have been able to prove the execution of questioned Will coupled with the fact that the attesting witnesses appearing before Court adduce evidence as per essentialities of Section 68 of the Evidence Act and Section 63(c) of the Indian Succession Act, 1925, then, *mere non-disclosure of the fact of execution of Will by the executors or the beneficiary of the Will to other legal heirs, that is,*

non-beneficiaries to the Will, shall not alone constitute a suspicious circumstance to suspect and throw out the Will, through which the testator had expressed his/her last desire. (emphasis is supplied)

11. Resultantly, the plaintiff became the absolute owner of the suit land by dint of the Will. It is the settled legal position of law that possession follows title. Since the title of the plaintiff is proved, he is definitely entitled to remain in possession of the suit land and the defendants having no title over the suit land are liable to vacate their respective possession over the suit land in favour of the plaintiff.

12. Accordingly, the judgment and decree passed by the first Appellate Court stand set aside and quashed. The judgment and decree passed by the Ld. Civil Judge (Senior Division), Dhalai Judicial District, Ambassa is hereby restored. The defendants are directed to vacate the possession of the land in favour of the plaintiff as early as possible.

In the light of above observations and directions, the instant second appeal stands allowed and disposed.

JUDGE