

HIGH COURT OF TRIPURA
AGARTALA
RFA 15 of 2022

1. **Shri Bimal Chandra Das**
S/O Late Sital Chandra Das (Nama)
2. **Shri Shyamal Das, Age-40 years**
S/O Late Sital Chandra Das (Nama)
3. **Shri Kamal Das, Age-35 years**
S/O. Late Sital Chandra Das (Nama)

All are residents of Fulkumari, No.1 (Near Canel Chowmuhan), P.O & P.S- Radhakishorepur, District- Gomati Tripura.

---Appellant(s)

Versus

1. **Smt. Purnima Das (Bhowmik)**
W/O. Late Amulya Chandra Das
2. **Shri Santanu Das**
S/O Late Amulya Chandra Das
3. **Shri Atanu Das**
S/O Late Amulya Chandra Das

All are residents of Fulkumari, No.1 (Near Water Supply), P.O & P.S- Radhakishorepur, Udaipur, District- Gomati Tripura.

---Respondent(s)

For the Appellant(s)	:	Mr. I. Chakraborty, Advocate
For the Respondent(s)	:	Mr. S.M. Chakraborty, Sr. Advocate Ms. Ankita Pal, Advocate
Date of hearing & delivery of Judgment & Order	:	23.11.2023
Whether fit for reporting	:	No

HON'BLE MR. JUSTICE ARINDAM LODH
HON'BLE MR. JUSTICE S.D. PURKAYASTHA

JUDGMENT & ORDER (ORAL)

(Arindam Lodh, J.)

This is a regular first appeal preferred by the defendant/appellants under Section 96 of the Code of Civil Procedure, 1908 against the judgment dated 11.07.2022 and decree dated 12.07.2022, passed by the learned Civil Judge (Sr. Division), Gomati District, Udaipur, Tripura in connection with case no.T.S. (Partition) 17 of 2016.

2. Briefly stated, the plaintiff-respondents, being the legal heirs of late Amulya Chandra Das, had instituted the present suit for partition of the land described in the schedule of the plaint.

2.1. It is pertinent to mention herein that originally the entire land was belonged to one Biswambar Das (Nama) and Sital Chandra Das (Nama). They purchased a chunk of land jointly. Thereafter, both of them amicably partitioned the land (Exbt.8). Thereafter, Sital Chandra Das (Nama) during his lifetime had executed a Will (Exbt.9) in favour of his four sons, namely Amulya Chandra Das, Bimal Chandra Das, Shri Shyamal Das and Kamal Das.

2.2 In the Will, late Sital Chandra Das (Nama), the original owner of the suit land specifically described the respective shares of his four sons. Amulya Chandra Das had died after the execution of the Will by his father late Sital Chandra Das (Nama). Dispute arose when the legal heirs of Amulya Chandra Das, the plaintiff-respondents herein found that a portion of the land of the share of Amulya Chandra Das had been recorded in favour of Bimal Chandra Das, Shyamal Das and Shri Kamal Das i.e. the defendant-appellants herein. Mainly, the dispute relates to point no.2 of the property under Schedule no.3 of the Will, which reads as under:-

“2) Land measuring .09 decimal in the northern portion of previous Dag no.1003 present Dag no.2253 recorded in present Khatian no.745 posted in Touji no.556 situated within Mouja-Fulkumari.

Butted & bounded by

*2) on the north - Road
on the south - Biswambar Das
on the east - Pond
on the west - Government road.*

Within this boundary lies a total area of land measuring .09 decimal.”

3. With the aforesaid background facts, we have heard Mr. I Chakraborty, learned counsel appearing for the appellants, who were originally the defendants in the present suit and Mr. S. M. Chakraborty, learned senior

counsel assisted by Ms. Ankita Pal, learned counsel appearing for the original plaintiffs to the present suit. For brevity, the parties herein shall be referred to here-in-below as their original status in the suit.

4. Mr. Chakraborty, learned counsel appearing for the defendants has confined to his argument only to the extent of the land measuring .09 decimal mentioned in the Schedule-3 of the Will (Exbt.9). The contention of Mr. Chakraborty learned counsel is that this property measuring .09 decimal therein was not virtually owned by Sital Chandra Das (Nama), and it was originally belonged to late Biswambar Chandra Das, who transferred the said land in favour of the defendants orally and on the basis of which they prepared Khatian (Exbt.A), i.e. Record of Right. Mr. Chakraborty, learned counsel for the defendants submits that the Survey Commissioner has also confirmed the same.

5. We have gone through the records meticulously. It is found that the defendants had never challenged the Will where the disputed land measuring .09 decimal has been mentioned by the executors of the Will (Exbt.9). The defendants during the course of trial had also never attempted to implead Biswambar Das to substantiate their claim that the said land measuring .09 decimal was owned and possessed by Biswambar Das (Nama). No record is before us to accept the submission of Mr. Chakraborty, learned counsel for the appellant/defendants as regards the ownership of Biswambar Das (Nama) over the said plot of land. No issue was framed whether Biswambar Das was a necessary party to the suit. That apart, the Will was executed in the year 1985. The defendants during the course of trial did not feel it necessary to show said Biswambar Das as their witness to justify their statement that Biswambar Das had transferred the said disputed land, measuring .09 decimal to the defendants in accordance with law.

6. Moreso, Biswambar Das had never challenged the genuinity of the Will. In other words, Biswambar Das had never disputed the inclusion of the land measuring .09 decimal mentioned in Schedule no.3 of the Will (Exbt.9). Needless to say, immovable property valued at more than Rs.100/- cannot be transferred orally. The defendants had never raised or taken such plea that the transferred land was valued at a rate below Rs.100/-. Any oral transfer of immovable property valued at more than Rs.100/- is illegal and void *ab initio*.

7. It is the settled proposition of law that Khatian i.e. Record of Right being revenue record does not confer any title upon any person.

8. After perusal of the judgment of the learned trial court, we find that the learned Judge has gone through the records and arrived at a finding that the plaintiffs are entitled to get partition of the suit land. It is admitted fact that Will executed by late Sital Chandra Das (Nama) was not challenged by any point of time, neither by the defendants nor by Biswambar Das. So, the argument which is confined by learned counsel that Biswambar Das is the real owner of the land measuring .09 decimal of the Will has no relevance to decide the instant suit.

Accordingly, the instant first appeal does not call for interference and thus, stands dismissed.

Pending application(s), if any, shall also stand disposed.

JUDGE

JUDGE