

HIGH COURT OF TRIPURA

A_G_A_R_T_A_L_A

RFA. No.19 of 2022

1. Shri Sajal Kanti Dey, son of late Satyendra Bijoy Dey @ Satyendra Kumar Dey.
2. Shri Shyamal Dey, son of late Satyendra Bijoy Dey @ Satyendra Kumar Dey, age-61.
3. Smti. Parvati Dey (Deb), wife of Shri Narayan Chandra Deb, daughter of late Satyendra Bijoy Dey @ Satyendra Kumar Dey, age-55.
All are residents of Halahali, P.O. Kamalpur, District: Dhalai Tripura.

.....Appellants.

-VERSUS-

1. Shri Shekhar Dey, son of late Chittaranjan Dey, village Natun Hospital Road, Kamalpur, P.O. Kamalpur, District: Dhalai Tripura.

.....Respondent.

B_E_F_O_R_E

HON'BLE THE CHIEF JUSTICE [ACTING]

For Appellant(s)	:	Mr. T. D. Majumder, Sr. Advocate. Mr. T. Halam, Advocate.
For Respondent(s)	:	Mr. S. Roy, Advocate.
Date of hearing and delivery of judgment and order	:	23.03.2023
Whether fit for reporting	:	YES/NO

JUDGMENT & ORDER [ORAL]

Heard Mr. T. D. Majumder, learned senior counsel assisted by Mr. T. Halam, learned counsel appearing for the appellants and Mr. S. Roy, learned counsel appearing for the respondent.

[2] This appeal has been filed under Section-96 of the Code of Civil Procedure, 1908 read with Order-XLI Rule-1 of the Code of Civil Procedure, 1908 against the judgment and decree dated 28.07.2022 in T.S. No.19 of 2018

passed by the learned Civil Judge, Senior Division, Dhalai Judicial District, Ambassa.

[3] In a short campus, the case of the plaintiff-appellants was that the suit land measuring 0.23 acres comprising in 3 numbers of plots belonging to Shankar Dey who purchased it from Shri Nirmalendu Bikash Paul and Smt. Mausami Paul by a registered sale deed being No.1-485 dated 29.08.2021 for valued consideration. Suit land was mutated in the name of Shankar Dey and Khatian No.1179 in Mouza was opened in his name. Said Shankar Dey died on 01.03.2013 leaving the plaintiff-appellants as legal heirs as he died bachelor.

[4] Depending upon survival certificate duly issued by SDM, Kamalpur and the succession certificate obtained from the learned Civil Judge, Senior Division, Kamalpur, the plaintiff-appellants received the debts left by the deceased Shankar Dey who was their full blood elder brother. The plaintiff-appellants also updated khatian of the suit land in their favour through the procedure established by law. While enjoying the property as such the plaintiff would some days reside in the suit land and occasionally would stay in their old houses at Kamaolpur.

[5] Taking advantage of their absence in the suit land, the defendant-respondent has forcibly occupied the suit land on 20.11.2015 spreading rumor that WILL was executed by Shri Shankar Dey on 13.01.2013 in his favour. While the plaintiff-appellants tried to enter into the suit land the defendant respondent with his muscle man obstructed the plaintiffs from entering the suit land and denied the entry. Plaintiffs informed the matter to the concerned Kamalpur Police Station. The defendant-respondent filed a Probate Case on 12.01.2016 being T.S.(Probate) 01 of 2016 which was withdrawn with leave but no further suit is filed. Finding no other alternative, the plaintiffs filed the Title Suit, inter alia praying for a decree for right, title and interest over the suit land and recovery of the khash possession of the suit land after evicting the defendant-respondent.

[6] The respondent herein by way of submitting written statement has contended that probate suit was withdrawn as he lost the original WILL.

He pleaded that getting the suit land vacant in the year 2010 he occupied the land and having come to the land belonged to Shri Nirmalendu Bikash Paul and Smt. Mousumi Paul, the defendant with consent of Sankar Dey had given Nirmalendu Bikash Paul and Mousumi Paul Rs.8,00,000/- and in turn they handed over the original title deed No.1-534 dated 01.12.2006 so he has been possessing the said title deed dated 01.12.2006.

[7] It is further case of the defendant that Sankar Dey was brought up by Chitta Rn. Dey and during lifetime, Chitta Rn. Dey gave money to Sankar Dey who purchased a house at Halahali. On 21.04.1992 Sankar Dey and plaintiff herein sold their shares in favour of Chitta Rn. Dey vide Regd. Deed No.1-495 dated 21.04.1992. Therefore, the plaintiff-appellant cannot inherit any right, title and interest over the suit land on the strength of right, title and interest of their brother through registered title deed No.1-485 dated 29.08.2011 as the suit land was occupied by him in the year 2010 being vacant and he would know the owner of the land was Shri Nirmalendu Bikash Paul and Smti. Mousumi Paul and he purchased the land by paying Rs.8,00,000/- to them with notice to Shankar Dey and in turn the vendor handed over the title deed of them being No.1-534 dated 01.12.2006 to the defendant.

[8] Mr. T. D. Majumder, learned senior counsel assisted by Mr. T. Halam, learned counsel appearing for the appellants has submitted that the findings recorded by the learned Civil Judge, Senior Division, Dhalai is erroneous regarding possession of the suit land. The decision of the learned Judge is absolutely on wrong premises so far recovery of the khash possession over the suit after evicting the defendant as such; the decree has become a paper decree without execution.

[9] The findings of the learned Court below in respect of the possession of the suit land by the plaintiff are wrong and erroneous. The decision on the issue No.5 being decided in positive and against the defendant, the learned Court below cannot leave the decree without recovery of the suit premises evicting the defendant while entry of defendant has been admitted as on 20.11.2015 into the suit premises by the learned Court.

[10] The deceased Shankar Dey never executed any WILL in the name of the respondent, herein in his life time. He died on 01.03.2013 and the alleged forged WILL prepared before filing the case before the Court below. As per plaint the said forged WILL prepared on 13.01.2013 but after the death of Shankar Dey on 01.03.2013 and nothing has been disclosed about this WILL except filing of the case. The respondent was silent about this forged WILL from 01.03.2013 to January, 2016 i.e. about 3 years. The respondent never expressed anything about the WILL wherein he was made executor of the said WILL publicly or by public notice in any local news papers. The respondent employed his own-man deed writer of Kamalpur to prepare this instrument of false WILL by putting false signature of deceased Sankar Dey and they attesting witnesses namely Subash Chandra Dhar and Shyamol Chakraborty are the own-man of the respondent.

[11] The respondent did not take any initiative for mutation of land as he claimed as per false WILL showing to be genuine after the death of Sankar Dey. Rather the opposite party mutated the land in their name as legal heirs of deceased Shankar Dey under Mouja Kamalpur, Khatian No.1179 in the month of September, 2015 AD. The deceased was contractor and he executed so many works under PWD and he had Bank account in United Bank of India, Kamalpur. After death of Shankar Dey, the appellants herein, withdrawn the money deposited by Shankar Dey, the deceased herein.

[12] The deceased Shankar Dey purchased the land by registered deed No.1-485 of 2011 on 29.08.2011 from Sri Nirmalendu Bikash Paul and Mousumi Paul by Rs.8,00,000/-, but the respondents forged the said land by creating forged WILL and the value is shown by the respondent in his plaint Rs.2,00,000/-.

[13] It is a settled legal proposition that as a rule, relief not found on the pleadings should not be granted. Therefore, a decision of a case cannot be based outside the pleadings of the parties. Ordinarily, the reliefs are drawn on the basis of pleadings. Even in some cases, on the basis of pleadings, the court can mould the reliefs. But the foundation of

such relief must have its anchor in the pleadings. It is always the creditor who has final call in the matter, unless contrary of law and is provided otherwise by lawful agreement. Having observed thus, the impugned judgment passed in Title Suit No.19 of 2018 dated 28.07.2022 by the learned Civil Judge, Senior Division, Dhalai Judicial District, Ambassa, needs to be interfered with.

[14] In the result, the present appeal stands allowed setting aside the judgment and order of the learned Court below. The suit is decreed with recovery of possession. Draw the decree accordingly and send down the LCRs thereafter. As a sequel, miscellaneous applications pending, if any, shall stand closed.

CHIEF JUSTICE [ACTING]

A. Ghosh



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