

**HIGH COURT OF TRIPURA
AGARTALA**

RSA No.28 of 2021

Sri Niranjana Chandra Nath

S/O.- Lt. Nibaran Ch. Nath

Vill. Nayagaon

P.O. Tilthai, P.S. Panisagar

Dist. North Tripura

.... Appellant(s)

Versus

1. Smt. Nirmala Debi

W/O-Lt. Radhaballab Debnath

2. Smt. Sabitri Nath

W/O-Lt. Rameswar Nath

3. Sri. Rahul Nath

S/O-Lt. Rameswar Nath

Being minor represented by his natural guardian mother

Smt. Sabitri Nath, W/O-Lt. Rameswar Nath.

All resident of Vill. Nayagaon

P.O. Tilthai

P.S. Panisagar

Dist. North Tripura

....Principal Respondent(s)

4. Smt. Joymati Nath

W/O-Lt. Nibaran Chandra Debnath

Vill. Nayagaon

P.O. Tilthai

P.S. Panisagar

Dist. North Tripura

5.(a) Sri. Sukhamoy Nath (Husband)

S/O- Lt. Ramesh Nath

(b) Sri. Pijush Nath (Son)

S/O- Sri. Sukhamoy Nath

(c) Sri Sukhen Nath (Son)

S/O-Sri. Sukhamoy Nath

All are resident of Vill. Nayagaon

P.O. Tilthai P.S. Panisagar
Dist. North Tripura

(d) Smt. Suniti Rani Nath (Daughter)

W/O-Sri. Kishalay Nath
Resident of Vill. Laxminagar
P.O. Kherengjuri
P.S. Churaibari
Dist. North Tripura.

6. Smt. Prabati Nath

W/O-Sri Durga Chandra Nath
D/O-Lt. Nibaran Chandra Nath
Vill. Rowa
P.O. Rowa Bazar
P.S. Panisagar
Dist. North Tripura

7. Smt. Sarojini Nath

W/O-Lt. Jogendra Ch. Debnath

8. Sri Sunil Debnath

S/O-Lt. Jogendra Ch. Debnath

9. Sri Sushil Ch. Debnath

S/O-Lt. Jogendra Ch. Debnath

10. Sri Ajit Debnath

S/O-Lt. Jogendra Ch. Debnath

11. Smt. Sandhaya Rani Nath

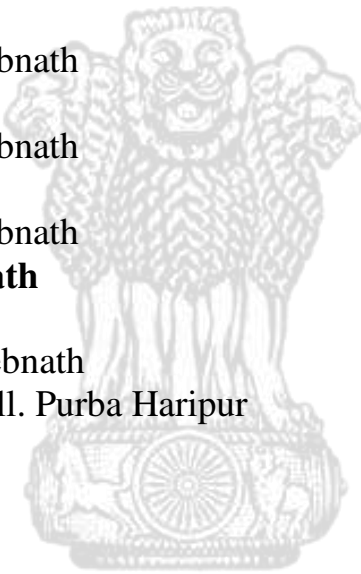
W/O-Sri Iswar Nath
D/O-Lt. Jogendra Ch. Debnath
All are the resident of Vill. Purba Haripur
P/O. Laljuri Bazar
P.S. Kanchanpur
Dist. North Tripura

12. Smt. Kalpana Nath

W/O-Lt. Pramode Nath
D/O-Lt. Jogendra Ch. Debnath
Vill. Subhasnagar
P.O & P.S-Kanchanpur
Dist. North Tripura

13. Smt. Anjana Nath

W/O- Sri Sukhamoy Nath
D/O-Lt. Jogendra Ch. Debnath
Vill. Rabindranagar
P.O/P.S-Kanchanpur.



सत्यमेव जयते

North Tripura

Lt. Anita Nath, W/O-Sri. Narayan Nath, D/O- Lt.

Jogendra Chandra Debnath having died leaving behind

His surviving legal heirs namely:

14. Sri Narayan Nath

S/O-Lt. Nilmani Debnath

15. Sri Amar Debnath

S/O-Sri Narayan Nath

16. Smt. Supriya Nath

D/O-Sri Narayan Nath

Being minor represented by her natural guardian father

Sri Narayan Nath

S/O-Lt. Nilmani Debnath

All are the resident of

Vill. Subhasnagar (Southern side of Fire Service)

P.O/P.S-Kanchanpur

Dist. North Tripura

17. Deleted as per order dated 07.03.2022.

18. Sri Biswamitra Debnath

S/O-Lt. Binanda Debnath

19. Sri Gopal Debnath

S/O-Lt. Binanda Debnath

All are the resident of Vill. Nayagaon

P.O. Tilthai P.S. Panisagar

Dist. North Tripura

20. Sri. Haripada Debnath

S/O-Lt. Binanda Debnath

Vill. East Huplong

P.O. Tilthai

P.S. Panisagar

Dist. North Tripura

21. Smt. Maya Rani Debi

W/O-Sri Gopi Debnath

D/O-Lt. Binanda Debnath

Vill. Rajnagar

P.O. Laxmipur Ananda Bazar

P.S. Dharmanagar

Dist. North Tripura



सत्यमेव जयते

Late Radhapada Debnath, S/O-Lt. Binanda Debnath having died leaving behind his surviving legal heirs namely:

22. **Sri. Subhadra Debnath**
W/O-Lt. Radhapada Debnath
23. **Sri Gautam Debnath**
S/O- Lt. Radhapada Debnath
24. **Smt. Mousumi Debnath**
D/O- Lt. Radhapada Debnath
25. **Sri Ranjit Debnath**
S/O-Lt. Radhapada Debnath

All are the resident of
C/O-Ranadhir Deb
Ashram Road
P.O. Chandrapur
P.S. Dharmanagar
Dist. North Tripura

- 26.(I) **Smt. Ratna Nath,**
Wife of Lt. Ranu Nath, Care of Sri. Lal Mohan Nath,
Resident of Vill-Noagaon, P.O-Tilthai, P.S- Dharmanagar,
Pin-799260, Dharmanagar, North Tripura

(II) **Sri Ramen Debnath,** age about 17 years

(III) **Sri Raajdip Debnath,** age about 3 years,
(both are sons of Lt. Ranu Nath) being minor represented by their
mother and next friend Smt. Sumati Nath, (Second wife) of Lt. Ranu
Nath, resident of Tangi Bari, P.O-Lalcherra, P.S- Dharmanagar,
North Tripura, Pin-799260.

....Proforma Respondent(s)

For the Appellant(s) : Mr. S. Bhattacharjee, Advocate

For Respondent(s) : None

Date of hearing and delivery
of judgment and order : **28.03.2023**

Whether fit for reporting : **No**

HON'BLE MR. JUSTICE ARINDAM LODH

Judgment and Order (Oral)

This is a second appeal filed against the judgment dated 03.09.2021 and decree dated 07.09.2021 passed by learned First Appellate Court in Title Appeal No.06 of 2019 whereby and whereunder the learned Appellate Court confirmed the judgment dated 21.01.2019 and preliminary decree dated 01.02.2019 passed in Title Suit (P) 14/2017 by the learned Civil Judge, Senior Division, North Tripura, Dharmanagar.

2. Briefly stated, the plaintiff/appellant had instituted a suit for partition and declaration of his right title and interest over the suit land. According to the plaintiff, the suit land measures about 2.87 acres i.e. 7(seven) kanis. From the facts it is elucidated that the predecessors of the plaintiff/appellant and defendant/respondents, namely Nibaran Chandra Nath, Jogendra Chandra Debnath, Radhaballab Debnath, Binanda Debnath have jointly purchased a land measuring 8(eight) kanis. It is the case of the plaintiff that out of 8(eight) kanis one of the purchasers namely Radhaballab Debnath had sold 1 kani of land to some other person. To partition the balance land, measuring 7(seven) kanis, the plaintiff/appellant had approached the defendants, mainly the defendant/respondents nos.1 and 2, but, they paid no heed to such request

of the plaintiff/appellant compelling him to institute the present suit for partition.

3. The plaintiff/appellant in his suit has sought for partition of 7(seven) kanis of land, i.e. 2.87 acres since 1(one) kani of land was sold by Radhaballab Debnath during his lifetime. Defendant/respondents nos.1, 2 and 3 and proforma defendant/respondent no.26 are the legal heirs of Lt. Radhaballab Debnath. None of the defendants except one of the legal heirs of Jogendra Chandra Debnath, namely Proforma defendant/respondent no.9 appeared, contested the suit and filed written statement. Thereafter, on the basis of pleadings, 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 of the suit?

iii) Whether the plaintiff is a joint share holder of the suit property with the defendants?

iv) Whether the plaintiff is entitled to get decree of partition of the suit land to the extent of 25% share of his deceased predecessor in interest of the suit land?

v) Whether the plaintiff is entitled to any other relief(s)?”

4. Evidences were adduced by both the parties. After completion of recording evidences, arguments were heard. Thereafter, the learned Civil Judge, Senior Division, North Tripura, Dharmanagar had passed

judgment decreeing the suit of the plaintiff over 7(seven) kanis of land, wherein the learned Civil Judge directed to distribute the land amongst the plaintiff/appellant and the defendants/respondents in equal shares having taken into account the original land measuring 8(eight) kanis. The plaintiff/appellant became aggrieved by the judgment and decree passed by the learned trial Court for the reason that he had sought for partition of the suit land, which measures 2.87 acres, and thus, preferred first appeal before the learned District Judge, Dharmanagar, North Tripura. Learned District Judge upheld the judgment and decree passed by the trial Court. Hence, this second appeal.

5. At the time of admission of this appeal, following substantial questions of law were formulated:

“ Whether the findings of both the Courts below are perverse in decreeing the suit for partition amongst the purchasers of 8(eight) kanis of land in equal shares irrespective of the fact that one of the purchasers had sold one kani of land out of his total share of two kanis?”

6. Notices were served upon the defendant/respondents, but, they did not turn up despite receipt of notices. As such, I have taken up the matter for hearing in their absence.

7. I have heard Mr. S. Bhattacharjee, learned counsel appearing for the plaintiff/appellant. None appeared for the respondents without step.

8. Mr. Bhattacharjee, learned counsel has drawn my attention to the schedule of the plaint to point out as regards the quantum of the suit land to which the plaintiff/appellant had sought for partition. I have found that the suit land measures 2.87 acres i.e. 7(seven) kanis. The plaintiff/appellant in his plaint also has stated as to how the distribution of the shares of the parties to the suit be declared at para 15 of the plaint. According to him, Nibaran Chandra Debnath will get share of land, measuring 28,445 (unit taken as 1,00,000); Jogendra Chandra Debnath also will get 28,445; Binanda Debnath will get 28,445; Radhaballab Debnath will get 14,665, since he had sold one kani of land out of his 2(two) kanis during his lifetime. The plaintiff/appellant has specifically stated at para 16 of the plaint that the principal defendant/respondent nos.1, 2, and 3 and proforma defendant/respondent no.26 being the legal heirs of Radhaballab Debnath are entitled to the shares of 14,665 jointly.

9. Learned counsel for the appellant has further submitted that both the Courts below have miserably erred on facts in not considering the fact that Radhaballab Debnath during his lifetime had sold one kani of land out of his total share of 2(two) kanis which has been reflected in two Khatians in favour of all the legal heirs of the four original purchasers.

These two khatians were brought into record and marked as Exbt-1 and 2 and non-consideration of such material evidence renders the judgments and decrees passed by both the Courts below as perverse.

10. The above submissions of learned counsel appearing for the appellant leads me to go through the evidence adduced by the plaintiff (PW.1) and the answering defendant, who deposed as DW.1. PW.1 has specifically stated in his cross-examination that he has no objection if the suit land is partitioned in conformity with the quantum of land as recorded in the khatians created in respect of the plaintiff and defendants after proper physical enquiry of the possessions of the respective parties over the suit land, which are in consonance of the original purchase deed.

11. I have perused the khatians wherein the total quantum of land recorded in favour of the legal heirs of Radhaballab Debnath i.e. defendant/respondents nos.1, 2, and 3 and proforma defendant/respondent no.26 to the extent of 14,665 i.e. 1(one) kani. DW.1 during his deposition has stated that he has no objection if the suit land is partitioned in accordance with law.

12. At this juncture, I have perused the judgment of both the Courts below. I find that both the Courts below have taken into account total purchased land measuring 8(eight) kanis, irrespective of the fact that Radhaballab Debnath, one of the four purchasers had sold one kani of

land from his share of 2(two) kanis. The legal heirs of Radhaballab Debnath did not contest the suit. They did not even file written statement and there is no denial on the part of the legal heirs of Radhaballab Debnath that their predecessor had sold one kani out of his share of 2(two) kanis.

13. In view of this, both the Courts below have erred on facts in partitioning the suit land considering the entire land measuring 8(eight) kanis and distributing the said originally purchased land of 8(eight) kanis equally amongst the plaintiff/appellant and the defendants/respondents.

14. Situated thus, in my considered view, the findings of both the Courts below are perverse as both the Courts misconstrued the facts apparent on the face of the records i.e., ignoring the suit land mentioned in the schedule of the plaint as well as the shares of the parties to the *lis* as are recorded in khatians, Exbt.-1 and Exbt.-2.

15. In the light of the above discussions, the judgments and decrees passed by both the Courts below stand set aside and quashed.

16. Consequently, the second appeal preferred by the plaintiff/appellant stands allowed. Resultantly, the plaintiff/appeallant along with proforma defendant no.4, 5 and 6 are entitled to get 2(two) kanis of the suit land; legal heirs of Jogendra Chandra Debnath i.e. proforma defendant nos.7-16 are entitled to get 2(two) kanis of suit land;

the legal heirs of Binanda Debnath i.e. proforma defendant nos.18-25 will get 2(two) kanis of land and the legal heirs of Radhaballab Debnath, i.e. Defendant/respondents nos.1, 2, 3 and proforma defendant/respondent no.26 will get their shares of 1(one) kani i.e. 14,665 share out of 1,00,000 unit share.

17. Draw the preliminary decree as per the aforesaid distribution of land.

Pending application(s), if any, also stands disposed.

JUDGE

Snigdha



सत्यमेव जयते