

HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_

RFA. No.04 of 2023

Sri Subrata Kr. Datta

.....Appellant

_V_E_R_S_U_S_

Sri Pankaj Kr. Datta

.....Respondent

For Appellant(s) : Mr. D. R. Chowdhury, Sr. Advocate.
Mr. D. Debnath, Advocate.
For Respondent(s) : Mr. Rattan Datta, Advocate.
Date of hearing and
Judgment and order : **25.09.2024**
Whether fit for reporting : **YES/NO**

HON'BLE MR. JUSTICE T. AMARNATH GOUD
HON'BLE MR. JUSTICE BISWAJIT PALIT

_F_I_N_A_L_O_R_D_E_R_

[T. Amarnath Goud, J]

Heard Mr. D. R. Chowdhury, learned senior counsel assisted by Mr. D. Debnath, learned counsel appearing for the appellant also heard Mr. R. Datta, learned counsel appearing for the respondent.

[2] The present appeal has been filed under Section-96 of CPC against the judgment and decree dated 22.12.2022 and 18.01.2023 respectively passed by the learned Civil Judge, Senior Division, Court No.1, West Tripura, Agartala in connection with Case No. TS (P) 61 of 2020 dismissing the suit of the plaintiff-appellant.

[3] The facts in brief are that the father of the plaintiff-appellant herein and the defendant-respondent herein was the original owner of 0.0800 acres i.e. 4 (four) gandas of bastu class of land pertaining to khatian No. 12942 of Mouja Agartala Sheet No. 22 of Tehsil Agartala, Sadar Revenue circle, Haal Dag No. 19302/19310 by 2(two) separate registered sale deeds in the year 1981 & 1983 A.D. respectively from one Pandab Ch. Debnath. After the death of Barun Kr. Datta in the year 1985, the record of right bearing Khatian No.34230 of Mouja Agartala Sheet No.22 was created in favour of the plaintiff-appellant, the defendant-respondent and their mother Smt. Mira Datta (since deceased). On 16-07-1985 Sri Barun Datta passed away due to illness and old age. Thereafter survival certificate was issued in the name of the plaintiff-appellant, defendant-respondent and their mother, Smti. Mira Datta.

[4] The mother of the appellant during her life time executed a WILL bearing No. III-298 dated 31.10.2000 bequeathing her 1/3rd of the land under Khatian No. 34230 measuring one ganda one Kara and one Kranta along with the dwelling hut which was inherited by her from her husband in favour of the appellant. On 21.08.2007 Mira Datta passed away. The appellant averred that though the respondent was quite aware about the execution of the WILL by his mother, but he intentionally kept the appellant in dark about the WILL and asked him to partition the suit land equally. Since the appellant from his tender years had rendered his due efforts for the upbringing of the respondent so he believed that the respondent without hesitation would agree to partition the suit property amicably. Thereafter the respondent prepared the partition deed vide registered No. 1-5827 dated 30.06.2015.

[5] Both the parties had applied for mutation and the names of the appellant and the respondent was entered in the record of rights under separate khatians. The appellant averred that the WILL was in custody of the respondent and when the appellant came to learn about the execution of the WILL by his mother, he requested the respondent to hand over the WILL, but the respondent kept denying about the execution of the WILL. Thereafter the appellant obtained the certified copy of the said WILL and learnt the entire fact. After learning about this, the appellant requested the respondent to cancel the partition deed, but the respondent refused to do so. On 07.07.2020 the respondent approached the appellant and informed him that due to some financial requirement he is going to sell his entire share including 50% share of the common pathway. The appellant objected to the said proposal and requested the respondent to partition the land as per the WILL, but he respondent refused to do this. Finding no other alternatives, the appellant filed the instant suit.

[6] The respondent on receipt of the summons appeared in the court and submitted written statement denying the material allegations of the appellant of the respondent also challenged the maintainability of the suit. He also averred that the appellant was the executor of the WILL No. III-298 dated 31-10-2000, executed by their mother Lt. Mira Dutta and knowing fully well purported WILL, the appellant accorded permission to the execution of registered partition deed bearing No. 1-5827 dated 29.06.2015 by which the entire suit land was divided equally between the appellant and the respondent and subsequently after execution of this registered partition deed the names of the appellant and the Defendant Respondent got mutated in separate Khatian bearing No. 1474 and 1476 of Mouja Agartala Sheet No. 22. As

the appellant voluntarily agreed to the execution of the registered partition deed bearing No.1-5827 dated 29-06-2015 if so by the act of the appellant he has lost his right to enforce the WILL No.111-298 dated 31-10-2000 executed by their mother, Lt. Mira Dutta and the Plaintiff Appellant's right to sue has been extinguished. The respondent also claimed that being in urgent need of money on 07.07.2020 he approached the appellant to purchase the respondent's share of land measuring 0.0350 Acres including 50% share of common pathway and after receiving the legal notice dated 18-8-2020 the appellant filed this suit in order to prevent the respondent from selling his portion of the suit land.

[7] In view of the above and having heard the learned counsel appearing for the parties, the learned Court below has observed as under:

“10.23. One of the claims of the plaintiff was that he provided expenditure for the studies of the defendant due to which the defendant became a doctor and, thereafter, as he had spent his own hard earned money on the education of the defendant, so his mother bequeathed 2/3rd of the suit property to him. In my opinion, as to whether or not the plaintiff bore the expenditure for the study of the defendant is not at all material and has no bearing on the instant case. The only question here lies is whether the plaintiff knew about the WILL and knowing fully well about its existence he entered into registered partition deed with the defendant. As it is already established that the plaintiff executed the registered I-5827 dated 29/06/2015 (Exhibit 6) with full knowledge about the Will (Exhibit 5), so, I am of the opinion that the registered partition deed bearing No-I-5827 dated 29/05/2016, is binding upon him and he is barred by the law of estoppel, and acquiescence, from challenging the fruits of his own conduct that is the registered partition deed bearing No-I-5827 dated 29/05/2016. Furthermore, I am of the opinion that the plaintiff doesn't the cause of action projected by the plaintiff is unfounded.

Therefore, the Issues Nos. II, III and IV are decided against the plaintiff.

11. ISSUE NO. V: Here I have to decide whether the WILL bearing No. III298, dated 31.10.2000 is within the knowledge of the plaintiff and is binding upon the parties?

In view of the decision in the above issues, I am of the opinion that the WILL bearing No. III-298, dated 31.10.2000 is not binding upon the parties.

The issues No. V is thus decided accordingly.

12. ISSUE NOS. VI and VII:

The following questions arise for consideration in these issues.

VI. Whether the plaintiff is entitled for a decree of partition, as prayed for?

VII. Whether the plaintiff is entitled for any other relief/ reliefs?

In view of the decision arrived at, in the issues decided earlier, the Issue Nos: VI and VII are decided accordingly against the plaintiff.

13. In consideration of my decisions on the aforesaid points, the suit of the plaintiff is dismissed with no order as to cost.”

[8] Being aggrieved by and dissatisfied with the same, the present appeal has been filed by the plaintiff-appellant before this Court for redress.

[9] Mr. D. R. Chowdhury, learned senior counsel assisted by Mr. D. Debnath, learned counsel appearing for the appellant has submitted that the learned Court below committed wrong and illegalities in deciding the case and thereby passed by the judgment in the present case dismissing the suit of the appellant. The learned Court below has failed to appreciate that the WILL (Exbt.5) has been proved as genuine following the provisions of Evidence Act and keeping the WILL alive the so called partition deed (Exbt.6) cannot legally be considered as valid and legal and as such ought to have passed the judgment granting decree in favour of the appellant.

[10] The learned Court below ought to have considered that while the WILL has been sufficiently proved and the execution and registration of the WILL is not under challenge by the respondent and also when there is nothing in the contents of the WILL that the appellant was present at the time of execution and registration of the WILL and the appellant on denial of the enforcement and acceptance of the decree decided and agreed to execute the said disputed partition deed and as such, it cannot be said that the appellant had the knowledge of the WILL and the executants, the mother gave or handover the WILL to the appellant after execution and registration and there is no such evidence also and as such, ought to have passed the decree in the present suit.

[11] The learned Court below ought to have considered that the WILL (Exbt.5) a registered instrument in which the testator bequeathed her share in the property which cannot be ineffective without due process of law. In the present case the appellant had no knowledge about the WILL and the respondent also did not challenge the WILL (Exbt.5) and the beneficiary, i.e. the appellant after having the information of the WILL in favour of him admitted and accepted the same and have challenged the partition deed (Exbt.6) which had been executed and registered before coming into the knowledge of the WILL (Exbt.5) to the appellant cannot legally affect the enforceability of the said WILL (Exbt.5) and hence the judgment passed by

the learned Court below dismissing the suit of the appellant is illegal and cannot stand in law.

[12] Long after execution and registration of the partition deed (Exbt.6) could learn about the said WILL being affirmed after having the certified copy of the said WILL and on the agitation of the appellant the original being supplied by the respondent to the appellant cannot be considered as the knowledge of the WILL of the appellant and also cannot be said to the admission of the WILL (Exbt.5) by the appellant and relinquishment of his right over the said WILL and thus cannot be legally presumed estoppels on the part of the appellant to file the present suit and thereby ought to have passed the decree in the present suit in favour of the appellant.

[13] Mr. R. Datta, learned counsel appearing for the respondent has submitted that the plaintiff, the appellant herein has failed to describe the suit land, in its entirety, in the plaint. He drew attention towards the admission by the plaintiff during his cross-examination that he has not mentioned the boundary of the entire suit through a separate schedule, in the plaint and has only mentioned the lands as stated in registered partition deed bearing number the I-5827 dated 29.06.2015. It has been further submitted that based on the description of the suit land in the plant, if a decree is passed than it will tantamount to an un-executable decree and so, on this ground itself, the suit is not maintainable.

[14] The plaintiff maintained silence and voluntarily executed the registered partition deed No-I-5827 dated 29/06/2015 (Exhibit A) has thus by his acquiescence, given away his right to claim two third share of the suit property, accruing through the Will (Exhibit 5) executed by his mother Lt. Mira Dutta. He further submitted that the plaintiff is thus barred by law of *estoppel* and acquiescence, from challenging the validity of the registered partition deed bearing No-I-5827 dated 29/06/2015, and from enforcing the Will. He has further contended that the plaintiff have stated a completely false story to create cause of action for filing the instant suit even though since the year 2015, that is after the execution of the registered partition deed No-I-5827 dated 29/06/2015 (Exhibit A), he took no steps in this regard and never tried to enforce the Will(Exhibit 5).

[15] It has been pointed towards the Exhibit 5, which is the original will bearing No-III-298 dated 31/10/2000, produced by the plaintiff himself and has claimed that Exhibit 5 stands as proof of the fact that the Will was executed with the

knowledge of the plaintiff and was from the very beginning in the plaintiffs custody. He also pointed out the admission by the plaintiff during his cross-examination that the respondent had informed him of his intention to sell his portion of the suit land through a registered letter and has submitted that after receiving the registered letter from the defendant on 18.08.2020, the plaintiff filed this suit to prevent the respondent from selling his portion. In this regard he also pointed towards the cross-examination of PW-2, the uncle of the plaintiff wherein he stated that may be if the respondent did not try to sell his portion of land as per the partition deed, the plaintiff would not have filed the suit. Pointing towards the above statements of the plaintiff and PW-2, the learned counsel claimed that the plaintiff has designed a story contrary to the actual facts in order to create cause of action for filing the suit, where as in reality, no such incident took place.

[16] In support of his case, he has placed his reliance in a judgment of the Hon'ble Apex Court in *Civil Appeal No.8223 of 2009 titled as The Chairman, State Bank of India and Another v. M. J. James*, wherein, the Court has observed as under:

“29. Before proceeding further, it is important to clarify distinction between ‘acquiescence’ and ‘delay and laches’. Doctrine of acquiescence is an equitable doctrine which applies when a party having a right stands by and sees another dealing in a manner inconsistent with that right, while the act is in progress and after violation is completed, which conduct reflects his assent or accord. He cannot afterwards complain.¹⁷ In literal sense, the term acquiescence means silent assent, tacit consent, concurrence, or acceptance,¹⁸ which denotes conduct that is evidence of an intention of a party to abandon an equitable right and also to denote conduct from which another party will be justified in inferring such an intention.¹⁹ Acquiescence can be either direct with full knowledge and express approbation, or indirect where a person having the right to set aside the action stands by and sees another dealing in a manner inconsistent with that right and in spite of the infringement takes no action mirroring acceptance.²⁰ However, acquiescence will not apply if lapse of time is of no importance or consequence.

30. Laches unlike limitation is flexible. However, both limitation and laches destroy the remedy but not the right. Laches like acquiescence is based upon equitable considerations, but laches unlike acquiescence imports even simple passivity. On the other hand, acquiescence implies active assent and is based upon the rule of estoppel in pais. As a form of estoppel, it bars a party afterwards from complaining of the violation of the right. Even indirect acquiescence implies almost active consent, which is not to be inferred by mere silence or inaction which is involved in laches. Acquiescence in this manner is quite distinct from delay. Acquiescence virtually destroys the right of the person. Given the aforesaid legal position, inactive acquiescence on the part of the respondent can be inferred till the filing of the appeal, and not for the period post filing of the appeal. Nevertheless, this acquiescence being in the nature of estoppel bars the respondent from claiming violation of the right of fair representation.”

[17] Before we proceed to look into the merits of the arguments advanced by the Counsels of both the parties, it will be apt to look into the law as to the doctrine estoppel and acquiescence as it stands this day. The doctrine of estoppel is a rule of evidence and is enshrined in the Section-115 of the Indian Evidence Act. Section-115 in The Indian Evidence Act, 1872 provides that when one person has, by his declaration, act or omission, intentionally caused another person to believe a thing to be true and to act upon such belief, then neither he nor his representative is allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing. The law of estoppel is a rule of exclusion by which a party to litigation is stopped from asserting or denying a fact.

[18] The doctrine of acquiescence has been given recognition and in the decision of the Hon'ble Apex Court in ***Chairman, State Bank of India v. M.J.James, Civil Appeal No. 8223 OF 2009***, the Hon'ble Apex Court has detailed the doctrine of acquiescence in the following manner:

“Doctrine of acquiescence is an equitable doctrine which applies when a party having a right stands by and sees another dealing in a manner inconsistent with that right, while the act is in progress and after violation is completed, which conduct reflects his assent or accord. In literal sense, the term acquiescence means silent assent, tacit consent, concurrence, or acceptance, which denotes conduct that is evidence of an intention of a party to abandon an equitable right and also to denote conduct from which another party will be justified in inferring such an intention. Acquiescence can be either direct with full knowledge and express approbation, or indirect where a person having the right to set aside the action stands by and sees another dealing in a manner inconsistent with that right and in spite of the infringement takes no action mirroring acceptance. However, acquiescence will not apply if lapse of time is of no importance or consequence.”

[19] The Hon'ble Apex Court further held that even indirect acquiescence implies almost active consent and acquiescence virtually destroys the right of the person. Acquiescence implies active assent and is based upon the rule of estoppel in pais. Acquiescence being in the nature of estoppel bars the respondent from claiming violation of the right of fair representation. Thus, in the aforesaid decision, the Hon'ble Apex Court had expressed in clear and unequivocal terms that in direct acquiescence in the form of not raising any objection when the same act contrary to the rights of the person takes place, destroys the right of such a person. The only precondition is that the person should have knowledge of the right when it was infringed. In the present case, if the evidences on record establish that prior to executing the registered partition deed no-I-5827 dated 29/06/2015, the plaintiff had knowledge about the execution of the Will bearing No-III-298 by his mother Lt Mira

Dutta on 31/10/2000, the law of estoppel and acquiescence bars him from subsequently challenging the said partition deed.

[20] In view of above arguments advanced by the learned counsel appearing for the parties and having observed the findings as observed by the learned Court below, we are of the opinion that the case of the appellant is that he is a beneficiary of registered WILL of 2000 in which his mother being the executed a WILL in favour of the appellant herein and the respondent is not the beneficiary of the WILL. Both of them again in 2015 have entered into a registered partition deed and accordingly, the property has been divided amongst them. Now, after many years, in view of certain developments, there was a difference of opinion and hence, the appellant herein, has preferred a suit before the Court below and not being satisfied with the observations made by the learned Court below has preferred the present appeal.

[21] This Court considers that having kept his eyes wide open, the appellant himself in the recital of the partition deed has categorically discussed with regard to the property of the mother and both the brothers are jointly enjoying the same. Accordingly, this Court finds that both are entitled for the same in terms of the partition deed. In that view of the matter, the present appeal stands dismissed consequently, the findings are arrived at by the learned Court below stands affirmed. As a sequel, miscellaneous application, pending if any, shall stand closed.

B. PALIT, J

T. AMARNATH GOUD, J

A. Ghosh