

**HIGH COURT OF TRIPURA
AGARTALA
RFA No.11 of 2023**

Smti. Mina Datta (Das),

W/O. Late Dilip Das,
D/O. Late Sunil Datta,
Resident of Mohanpur,
P.S. Ranir Bazar, District: West Tripura

-----Plaintiff-Appellant(s)

Versus

1. Smti. Abha Debnath (Das Bishnab),

W/O. Sri Manu Das Baishnab

2. Smti. Mita Datta (Nandi),

W/O. Sri Kajal Nandi

*As per the Hon'ble Court's order dated 28.08.2023
passed in IA 01 of 2023 the name of respondent
No.3 has been deleted from the array of the parties
and the legal heirs of the said respondent have
been impleaded as respondent No.3(a) and 3(b)

3(a).Smti. Sebika Datta,

W/O. Late Subrata Datta

3(b).Smti. Chumki Datta,

D/O. Late Subrata Datta

4. Smti. Tapati Datta,

W/O. Late Sudharshan Datta,

5. Smti. Trishna Datta (minor),

D/O. Late Sudharshan Datta

Being minor is represented by her
natural guardian next friend mother
Smti. Tapati Datta

6. Sri Litan Datta,

S/O. Late Sunil Datta.

All are residents of Mohanpur,
P.O. & P.S. Ranir Bazar, District: West Tripura

-----Defendants-Respondent(s)

For Appellant(s)	:	Mr. P.K. Dhar, Sr. Adv. Mr. R. Debnath, Adv.
For Respondent(s)	:	Mr. S. Chakraborty, Adv. Mr. R. G. Chakraborty, Adv. Mr. Dipak Chakraborty, Adv.
Date of Hearing	:	03.04.2024
Date of delivery of Judgment and Order	:	23.04.2024
Whether fit for Reporting	:	NO

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

This appeal is preferred challenging the judgment and decree dated 03.02.2023 delivered by Learned Civil Judge (Senior Division), Court No.1, West Tripura, Agartala in Title Suit No.15 of 2018. By the said judgment the Learned Trial court partly decreed the suit.

02. Heard Mr. P. K. Dhar, Learned Senior counsel assisted by Mr. R. Debnath, Learned counsel appearing for the appellant and Mr. S. Chakraborty, Learned counsel appearing for the respondent No.1, Mr. R. G. Chakraborty, Learned counsel appearing for the respondent No.2 and Mr. Dipak Chakraborty, Learned counsel appearing for the respondents No.4 to 6. Before entering into the merit of the case let us project the subject matter of the dispute amongst the parties. The appellant-plaintiff filed one suit bearing No.15 of 2018 before the Learned Trial court against the respondent-defendants for seeking declaration with a consequential relief under Section 34 of the Specific Relief Act and for cancellation of instrument under Section 31 of the Specific Relief Act and for Specific Performance of Contract. According to the appellant the appellant-plaintiff and the respondent-defendants No.2, 3, 4, 5 and 6 are the joint owners of the suit land and in the year 2015 after the death of their predecessor Late Sunil Datta, a suit bearing Title Suit (Partition) No.08 of 2015 was instituted for partition of land measuring 0.35 acres appertaining to Khatian No.4704 and 1475 and the

suit was compromised on the basis of compromise petition of the parties and a final decree was passed in the said suit and the suit land as mentioned in Schedule-A of the plaint is a part of decreetal land of the said suit and the appellant-plaintiff further stated that the entire decreetal land of that suit was a pond and bank of pond and the share of the parties was not divided and none of the parties of that suit could get their respective possession according to their share and further stated that immediately after compromise the said suit bearing Title Suit (Partition) No.08 of 2015, the respondent-defendant No.2 proposed to sell her share of land to the appellant-plaintiff and the appellant-plaintiff accepted such proposal and upon oral agreement consideration for sale of land was fixed at Rs.4,00,000/- and on 02.09.2017 the appellant-plaintiff paid Rs.50,000/- by way of advance to the respondent-defendant No.2 on condition that he would pay the remaining amount within six months and upon payment, the respondent-defendant No.2 will execute a registered sale-deed in respect of her share of land in favour of the appellant-plaintiff. On 23.10.2017 the appellant-plaintiff again made payment of Rs.50,000/- by way of advance to the respondent-defendant No.2 while the possession of the said was handed over to the appellant-plaintiff and it was agreed that on payment of the balance amount within a period of three months the respondent-defendant No.2 shall execute a registered sale-deed in favour of the appellant and on 22.12.2017 the appellant-plaintiff approached the respondent-defendant No.2 with remaining amount of

Rs.3,00,000/- and requested him to execute the registered sale-deed in her favour. But the respondent-defendant No.2 ignored the request without any reason and on 31.01.2018 the appellant-plaintiff could know that the respondent-defendant No.2 created a registered sale-deed in favour of the respondent-defendant No.1 in respect of her share of land and respondent-defendant No.2 illegally executed a registered sale-deed on 24.11.2017 in favour of the respondent-defendant No.1 in order to deprive the appellant-plaintiff and therefore such deed was liable to be cancelled as it was illegal, purported, manipulated and executed without delivery of possession. The suit was contested by the respondent-defendants No.1 and 2 by filing the written statement denying the claim of the appellant-plaintiff but the respondent-defendants No.3-6 filed written statement admitting the case of the appellant-plaintiff and they also admitted that they were aware about the contents of the oral agreement made in between the appellant-plaintiff and the respondent-defendant No.2 for sale of the suit land and also with regard to the advance payment in question.

03. Upon the pleadings of the parties following 9(nine) numbers of issues were framed:

- (1) Whether the suit of the Plaintiff is maintainable in it's present form and nature?**
- (2) Whether the Plaintiff has cause of action for filing the suit?**
- (3) Whether the suit of the Plaintiff is barred by law of limitation?**
- (4) Whether the Plaintiff is entitled to get declaration that the suit land mentioned in Schedule 'A' is the part of the joint property of the Plaintiff and Defendant Nos.2 to 6?**

- (5) Whether the Plaintiff is entitled to get declaration that the instrument vide registered Sale Deed No.1-1173 dated 24.11.2017 is void or voidable instrument which is liable to be delivered up and cancelled?
- (6) Whether the Plaintiff is entitled to get the decree for specific performance of contract in respect of the suit land mentioned in Schedule 'A' of the plaint?
- (7) Whether the Plaintiff is entitled to get perpetual injunction restraining the Defendants No.1 and 2, their men and agent from interfering with the possession of the Plaintiff over the Schedule 'A' land as well as the confirmation of possession by the Plaintiff therein?
- (8) Whether the Plaintiff is entitled to get the decree, as prayed for?
- (9) What other relief/reliefs the parties are entitled to?

04. To substantiate the issues both the parties have adduced oral/documentary evidence on record which are as follows:

(A) Plaintiff-Appellant's Witness:-

PW-1:- Smt. Mina Datta (Das)

PW-2:- Sri Dilip Das alias Dilip Kumar Das

PW-3:- Sri Sushanta Debbarma

(B) Plaintiff-Appellant's Exhibits:-

(1) Exbt.1- Certified copy of Sale Deed No.1-1173 dated 24.11.2017.

(2) Exbt.2 - Certified copy of order dated 29.06.2015.

(3) Exbt.3 - Certified copy of decree dated 06.07.2015.

(4) Exbt.4 - Solenama filed in T.S. (P) 08 of 2015 before the Civil Judge (Sr. Divn), Court No.3.

(5) Exbt.5/1 - Computerized Khatian No.4704

(6) Exbt.5/2 - Computerized Khatian No.1475

(C) Defendant-Respondent Witsesse:-

DW-1:- Smt. Abha Debnath (Das Baishnav)

DW-2:- Smt. Mita Datta

(D) Defendants Exhibits:-

NIL

Finally on conclusion of trial Learned Trial court delivered the judgment and order dated 03.02.2023. For the sake of convenience, I would like to refer herein below the operative portion of the judgment and order of the Learned Trial court which is as follows:-

"In consideration of my decisions on the aforesaid points, the suit of the plaintiff is hereby decreed partly in favour

of the plaintiff with the declaration that the suit land is jointly possessed by the plaintiff and the rest of the co-sharers.

As the defendant No.1 has purchased the share of the defendant No.2, so he has stepped in the position of the defendant No.2, is entitled to joint ownership and possession of the share of the defendant No.2.

Prepare decree accordingly and place before me within fourteen days from today.

The suit is thus disposed of on contest.

Make necessary entries in the relevant register."

05. Challenging the judgment the appellant-plaintiff has preferred this appeal under Section 96 of CPC before the High Court. Now here in this appeal we have to decide as to whether the judgment of the Learned Trial court suffers from infirmities or not. At the time of hearing of argument Learned Senior counsel Mr. P.K. Dhar appearing for the appellant-plaintiff and Learned counsel for the respondent-defendants No.1 and 2 submitted that the judgment of the Learned Trial court suffers from infirmities as because the Learned Trial court on conclusion of the trial opined that the suit land is jointly possessed by the appellant-plaintiff and the other contesting defendants which according to Learned Senior counsel was perverse because the Learned Trial court ought to have grant decree either in favour of the appellant-plaintiff or in favour of the respondent-defendants rather the Learned Trial court without doing the same came to an erroneous observation. In respect of cancellation of instrument Learned Senior counsel submitted that the Learned Trial court could not appreciate the evidence on record and came to an erroneous observation for which the judgment of the Learned Trial court is required to be interfered with. Learned Senior counsel submitted that the Learned Trial court below failed to

determine and decide the issue Nos.4 and 5 properly for which the suit is required to be remanded back to the Learned Trial court for fresh adjudication of the aforesaid issue Nos.4 and 5 and urged for allowing this appeal.

06. Per contra, Learned counsel for the respondent-defendants No.1 and 2 also shared the same view made by the Learned Senior counsel appearing for the appellant. Learned counsel for the other respondents also supported the version of Learned Senior counsel Mr. P.K. Dhar representing the appellant and they also urged for remanding back the case to the Learned Trial court below.

07. I have heard detailed arguments of Learned counsel for the parties and also gone through the judgment of the Learned court below. Learned court below at the time of delivery of the judgment decided that the suit land is the joint property of the appellant-plaintiff and the defendants No.2-6 and also came to an observation that the sale-deed vide No.1-1173 dated 24.11.2017 is a valid one.

08. In course of argument Learned counsels of both the sides fairly submitted that the Learned Trial Court below failed to appreciate the evidence on record properly and determined the issue Nos. 4 and 5, because according to Learned counsels Learned Trial court below ought to have decreed the suit either in favour of the plaintiff or in favour of the defendants. But the Learned Trial court at the time of delivery of the judgment came to the observation that the suit land as mentioned A of the plaint is still a joint property of the

appellant-plaintiff and the respondent-defendants No.2-6. Learned court below without appreciating the evidence on record properly further came to an observation that the disputed sale-deed vide No.1-1173 dated 24.11.2017 was a valid one. So Learned counsels of both the sides fairly submitted before this court to remand back the matter to the Learned Trial court to determine and decide the issue afresh.

09. From the rival contentions of the parties, it appears that the appellant-plaintiff in the plaint and in the relief portion sought for a decree that the suit land as mentioned in Schedule-A of the plaint be declared as a joint property of the appellant-plaintiff and the respondent-defendants No.2-6, so this plea of the Learned counsel for the appellant-plaintiff cannot be accepted. However, the Learned Trial court below at the time of delivery of the judgment in determining issue No.5 came to an observation that the suit deed dated 24.11.2017 was a valid one and it appears that based upon the evidence on record the Learned Trial court below determined the issue against the appellant-plaintiff. Since the Learned counsels of the contesting parties at the time of hearing urged for remanding back the suit for adjudication of the issues afresh. So after discussions it appears to this court that this present suit be remanded back to the Learned Trial court after setting aside the judgment and decree with a direction to give opportunities to the contesting parties to adduce fresh evidence to substantiate the issue Nos.4 and 5 and to deliver fresh judgment. Since on the basis of the pleadings of the parties issues were framed, so no separate issues are required to be framed by the Trial court again.

10. In the result, the judgment and decree dated 03.02.2023 delivered by Learned Civil Judge (Senior Division), Court No.1, West Tripura, Agartala in Title Suit No.15 of 2018 is hereby set aside on the consensus submission of the Learned counsel for the contesting parties. The suit is remanded back to the Learned Trial court with direction to allow the parties to adduce fresh evidence to substantiate the issues framed by the Learned Trial court earlier and to deliver a fresh judgment within a period of 4(four) months from the date of receipt of the copy of this judgment. The parties be asked to appear before the Learned Trial court below on 03.05.2024.

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

Prepare decree accordingly and send down the LCR forthwith.



JUDGE

**SABYASACHI
BHATTACHARJEE**

Moumita

Digitally signed by SABYASACHI
BHATTACHARJEE
Date: 2024.04.25 03:20:33 -07'00'