

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

Sri Sajal Datta,
S/O- Late Srimanta Datta,
A resident of Village-Motai
P.S. Belonia, District-South Tripura

.....Appellant(s)

Vs.

- 1. Smt. Kajal Datta,**
W/O Shri Dhananjaoy Baidya,
D/O Late Srimanta Datta,
Resident of Village-Motai,
P.O. Motai, P.S. Belonia, District South Tripura,
 - 2. Smt. Bijal Datta,**
W/O_Sri Sambhu Mallik,
D/O- Late Srimanta Datta,
A resident of Village-Sonapur, Barpathari,
P.S.-P.T. Bari, District-South Tripura
 - 3. Sri Samir Datta,**
S/O- Late Srimanta Datta,
 - 4. Sri Amir Datta,**
S/O- Late Srimanta Datta,
 - 5. Sri Mihir Datta,**
S/O- Late Srimanta Datta,
All are resident of Village-Motai, P.O.-Motai, P.S.-Belonia, District-South Tripura.
- Respondent(s)**
- 6. Sri Hemanta Kr. Datta,**
S/O-Late Aswini Kr. Datta,
 - 7. Legal heir of Late Sudhir Ch. Datta:**
 - a) Smt. Dipali Datta,**
W/O-Sudhir Ch. Datta,
 - b) Legal Heirs of Late Mridul Datta:**
 - i. Smt. Sampa Datta,**
Late Mridul Datta,
 - ii. Sri Sanjoy Datta,**
S/O-Late Mridul Datta
 - iii. Sri Ajoy Datta,**
Late Mridul Datta,

(ii) & (iii) are minor and their natural guardian is Smt. Sampa Datta.

All are residents of Village-Motai, P.O.-Motai, P.S.-Belonia, District-South Tripura.

... Pro-forma Respondent(s)

For Appellant(s)	:	Mr. BN Majumder, Sr. Adv. Mr. B Paul, Adv. Mr. S Chandra Sen, Adv.
For Respondent(s)	:	None.
Date of hearing	:	9th February, 2024.
Date of delivery of Judgment	:	12th February, 2024.
Whether fit for reporting	:	NO

HON'BLE MR. JUSTICE S.D. PURKAYASTHA

JUDGMENT & ORDER

The Judgment dated 29.08.2022 passed by the learned District Judge, South Tripura, Belonia in Title Appeal No. 04/2021 and consequent decree thereof are under challenge in the second appeal on the following substantial question of law:

- A. Whether a legal heir can be denied the share of the ancestral undivided property, left behind by the late father, only on the ground that he had purchased a portion of the land from his father during the life time of the father.**
- B. Any other substantial question of law may be framed at the time of hearing.**

2. Originally one Sri Srimanta Kumar Datta (original plaintiff i.e. predecessor of present appellant and respondents), Sri Hemanta Kumar Datta (Proforma respondent No.6), and Lt. Sri Sudhir Chandra Datta (predecessor of proforma respondents 7(a), (b)(i-iii), were three brothers. Said original plaintiff filed the involved suit bearing TS(P) No.50/2014 against his said brother Sri Hemanta Kumar Datta and legal representatives of his deceased brother Sri Sudhir Chandra Datta and also impleaded one of his sons, i.e. the appellant, as defendant therein, praying for partition of the suit land consisting of five numbers of plots of total area 1.77 acre (emphasis laid).

3. During pendency of the suit, Srimanta Kr. Datta died and his legal representatives excluding the present appellant were also substituted in his place. His source of claim over the suit land was that

he along with his other two brothers were in possession of the entire suit property of 1.77 acre and proper management and development of the land required partition of the same and therefore the suit.

4. The allegation against the present appellant as made in the plaint was that he had also been possessing certain portion of the suit land and on asking he told his father that he had purchased about 7 gandas of land from the suit land on consideration and therefore, he was impleaded as defendant so that he could explain his status in the suit land, if so desired.

5. In the written statement the appellant along with legal representatives of deceased brother of original plaintiff namely Lt. Sudhir Chandra Datta contested the suit and their claim was that joint property was consisting of an area of 1.67 acre under Khatian No.466 and the appellant did not possess any land of said Khatian No. 466. Rather he possessed an area of 0.10 acre of another Khatian bearing No. 1780 of the same Mouja Motai and Khatian was finally published in his name. They also further disclosed that the appellant got about 7 gandas of land from his father about 20 years ago i.e. the original plaintiff from the suit Khatian No.466 to build up his dwelling house when his relationship with his father was good.

6. Further allegations of contesting defendants were that the original plaintiff had driven out the legal representative of Lt. Sudhir Chandra Datta from their share of land where they were residing by constructing dwelling hut. Therefore, they started residing later on in the house of the appellant. However, they did not oppose the partition of the land under Khatian No.466.

7. Learned trial court decreed the suit in respect of 1.67 acre of land of Khatian No.466 as it stands presently, in spite of the fact that

the suit land as described in the plaint and as was claimed by the original plaintiff was of 1.77 acre of Khatian No.466. The reasoning for said deviation as given by the learned Trial court in the relevant paragraph, is extracted below:

"From the above discussion it is found that 10 satak of land is under the possession of defendant no.3. In the plaint the plaintiff sated regarding 1.77 acrs of land vide Khatian no.466 and the documents which were exhibited is of 1.67 acrs vide khatian no.466.

Ld. Counsel on behalf of the plaintiff submitted that during the pendency of the suit the land was purchased by defendant no.3 but from the deposition as well as from the documents it shows that before filing this suit 10 satak of land was purchased by defendant no.3 which shows in Exbt. 2 and it is clear that defendant no.3 has already purchased the land measuring 10 satak before the partition from the joint property. Regarding land measuring of 1.77 acrs and 1.67 acrs the subsequent R.O.R. will prevail and in this circumstances the land measuring 1.67 acrs vide Khatian no.466 published in a later stage. Therefore, considering this measurement I am of the view that the partition will be done by considering the land measuring of 1.67 acrs. Lastly, it is to be mentioned here that though defendant no.3 is one of the legal heirs of Lt. Srimanta Kr. Datta, but he will not get any share as he is already taken share from his father by way of purchasing the land. Now, the plaintiffs no.01 to 06 will get one share from the suit land."

8. The First appellate court in the impugned judgment confined the relief within 1.67 acre of land with the following observations-

"[9] This court finds that learned trial Court has rightly decided the Issue Nos.(ii) and (iii), but the observation given by learned trial Court on the point that the defendant appellant will not get any share as he has already taken his share from his father by way of purchasing the land, cannot be accepted as the plaintiff has denied to sale the land in favour of defendant-appellant in his plaint and the defendant-appellant has also not admitted that he has purchased any land from his father. Rather, he has admitted in his written statement that his father gave him approximately 7 gandas of land to build up his dwelling hut before 20 years back and he is possessing the same. So, the defendant-appellant has already taken his share from his father and accordingly got the Khatian No.1780 in his favour. Hence, he is not entitled any further share from the suit land."

Being aggrieved by the said decision of the learned District Judge, South Tripura, the defendant-appellant has come up with this second appeal.

9. Learned Sr. counsel, Mr. B N Majumder, canvassing the aforesaid facts argued that both the learned courts below illegally excluded the appellant from his entitlement to the joint property. The decision of Learned Trial Court suffers from perversity for holding that he had purchased 0.10 acre of land from his father. Learned District Judge also, according to learned Sr. counsel, has erroneously come to the conclusion basing on the written statement that his father had given him approximately 7 gandas of land to build his dwelling hut 20 years back and accordingly, Khatian was also opened in his name.

10. Learned Sr. counsel fairly admits that no document of title was proved by the appellant in the suit to justify such mutation of land in his name. According to learned Sr. counsel, even if for argument sake it is presumed that the father of the appellant had given him 0.10 acre of land, still he cannot be excluded from his legitimate share in the joint property confining his entitlement only 0.10 acre without equal division. Learned Sr. counsel, therefore, presses for upsetting the judgments of both the courts below.

11. On consideration of the records, apparently some gross irregularities are found to have taken place during trial of the suit. The original plaintiff submitted only two documents at the initial stage viz., (i) photocopy of certified copy of Khatian No.466 (which reflects total area as 1.77 acre) and (ii) photocopy of one notice of mutation. Simultaneously, from the side of contesting defendants, certified copies of Khatian No.466 concerning area of 1.67 acre, certified copy of mutated Khatian No. 1780 acre consisting of area of 0.10 acre standing

in the name of the appellant and one trace map were submitted. Later on, at the time of recording of evidence, from the side of plaintiff, the original copy of the said notice of mutation, certified copy of Khatian No.466 (concerning land area of 1.77 acre) were also further submitted. But at the time of recording of evidence of Plaintiff's Witness no.1, the following documents were taken into evidence as quoted from the evidence sheet of PW.1:-

- “(i) This is the certified copy of computerized khatian no.466 marked as Exbt.1(two series).**
- (ii) This is the certified copy of computerized khatian no.1780 marked as Exbt.2.**
- (iii) This is the copy of notice of mutation, dated, 30.04.14 marked as Exbt.3 (2 series)”**

But without marking the documents of plaintiffs, the trial court made the marking of Exbt.1 & 2 in the documents submitted by the contesting defendants. In fact, the substituted plaintiffs never relied upon the document under Exbt.2, nor they submitted any such document in the court. Khatian No.466 was relied upon by both the parties but as stated above, marking of Exbt.1 was done on Khatian No.466 which was submitted by the contesting defendants, and therefore, it reflects of total area of 1.67 acres but what ought to have been marked was Khatian No.466 of area of 1.77 acre i.e. the previous Khatian No.466 as it would stand before the land of 0.10 acre was mutated in the name of appellant.

12. Despite original copy of notice of mutation was submitted by the plaintiff marking was done on the photocopy thereof. Anyway, as said document is not much relevant for adjudication of the involved issues, such irregularity has not affected the interest of either of the parties. But the marking of Exbt.1 has certainly thrown significant bearing upon the rights of the parties, specially the plaintiffs. In fact,

the contesting defendants submitted examination-in-chief on affidavit of two witnesses but ultimately they did not appear to face cross-examination and no document was also taken into evidence on their behalf.

13. In the Trial court such defect was detected and accordingly, the said court vide order dated 05.02.2019 directed for re-examination of PW-1 and successive dates were fixed for that purpose. But again on 13.07.2020, when another Presiding Officer was in seisin of the matter, the trial court modified the said order and fixed the next date of argument without re-examination of PW-1 with erroneous observation that as the documents submitted from the side of plaintiffs as well as from the defendants were same, as such there was no need of exhibiting the documents of plaintiffs further. In continuation thereafter, the trial court granted decree of partition for 1.67 acre of land instead of 1.77 acre of land and excluded the right of the present appellant in the suit land. In the pleading, the appellant did not specifically disclose the source of his title on 0.10 acre of land to justify mutation of such land in his name, nor he proved any basic document of his title, if any, over said 0.10 acre of land. Anyway, as already discussed above, these irregularities go to the root of the case affecting the rights of the parties which are therefore required to be regularized first by re-examination of PW.1 with further clarification as to which documents he had actually intended to put into evidence.

14. In the result the appeal is allowed. The impugned judgment dated 29.08.2022 passed by the learned District Judge, South Tripura and consequent decree thereof as well as the judgment passed by the learned Civil Judge, Junior Division, Belonia dated 18.12.2020 passed in TS(P) No.50 of 2014 and related decree thereof are hereby set aside.

The matter is remanded to the Trial court for fresh hearing and decision with the following directions that:-

- (i) after receipt of LCRs, the trial court will notify the parties for their appearances; if despite service of notice they or any of them do not/does not appear, necessary order may be passed in accordance with law,
- (ii) the Trial Court will thereafter fix a date for re-examination of PW-1 Sri Samir Datta and after said re-examination and on his identification necessary documents shall be taken into evidence and shall be marked accordingly as exhibits for him, after expunging all the marking as have already been done previously. Needless to say, the other side should be given a scope to further cross-examine him but for the whole purpose not more than three dates will be given to the parties.
- (iii) the Trial court shall also give opportunity to the contesting defendants to lead their evidences, if they so desire, but not more than three dates shall be given to them for this purpose including cross-examination of their witnesses.
- (iv) the Trial Court shall hear the arguments of both sides and finally pass the judgment.
- (v) the entire process should be completed within next six months after receipt of LCRs.

Reconsign the LCRs.

The second appeal is accordingly disposed of.

Interim application(s), if any, also stands disposed of.

JUDGE