

**HIGH COURT OF TRIPURA
AGARTALA**

RFA 18 of 2023

Sri Jitendra Basak and Anr.

----- Appellant

Versus

Smti. Dulali Basak And 5 Ors.

---Respondent

For Appellant (s)	:	Mr. D. Deb, Advocate.
For Respondent(s)	:	Mr. Ratan Datta, Advocate. Mr. K. Datta, Advocate.
Date of hearing and date of judgment and order	:	06.11.2024
Whether fit for reporting	:	No

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

Judgment & Order (Oral)

T.Amarnath Goud, J

Heard learned counsel appearing for the parties.

[2] This is an appeal under Section 96 of the CPC against the judgment dated 23.08.2023 passed by the Ld. Civil Judge, Senior Division, Court No.2, Belonia, South Tripura in Case No.T.S.(P) 12 of 2020.

[3] It is the case of the plaintiffs-appellants that the plaintiff appellants knowing the suit land as joint properties left by their predecessor Lt. Ashutosh Basak as he purchased the suit land along with land with his own fund in the year 1968 in the names of the minor sons Arun Ch. Basak, the predecessor of the 1st Party defendant respondents & Sri. Barun Ch. Basak, the 2nd Party defendant respondent no.5, whom at that time at the age of 13 & 11 years respectively filed the suit T.S.(P) 12/2020 claiming partition of the suit land amongst the Plaintiffs, 1st Party & 2nd Party respondents.

[4] The 1st party defendant respondent nos. 1-3 & the 2nd party defendant respondent no.4 & 5 submitted their respective written statements on 05/04/2021 where the 1st Party defendant respondents denying the claim of the plaintiff appellants, but the 2nd Party defendant respondents supported the case of the plaintiff appellants.

[5] On 07/04/2022 the 1st party defendant respondents filed the application under Order 7 Rule 11(a) (c) (d) of CPC for rejecting the plaint of the plaintiff Appellants on the grounds stated in the petition. On 07/05/2022 the plaintiff appellants submitted Written Objection against the petition of the 1st party defendant respondents filed under Order 7 Rule 11(a)(c) (d) of CPC.

[6] The Ld. Civil Judge (Sr. Division) Court no.2, Belonia, South Tripura after hearing the parties on the application under Order 7 Rule 11(a)(c) (d) of CPC passed the Judgment & Order dated 23/08/2023, dismissed the suit of the plaintiff appellants on rejection of the plaint.

[7] Being aggrieved & dissatisfied with the Judgment & Order of the Ld. Civil Judge (Sr. Division), South Tripura, Belonia, passed in T.S.(P) 12/2020, the plaintiff appellants have preferred the present appeal before this Court.

[8] On the contrary, learned counsel appearing for the respondents have contended before this court that the impugned order dated 23.08.2023 is just and proper and needs no interference from this court and further prayed to dismiss the appeal.

[9] Heard both sides.

[10] After perusing the record, this court is of the view that the learned court had rejected the plea of the appellants herein but has failed to indicate the reasons properly to show whether the sale deed by which the father Lt. Asutosh Basak purchased the land including the suit land in Benami of the minor sons have been challenged or not. Moreover, learned court below should examine whether the provisions of Benami transaction is old one and was legal and thereby since long years

back benami transaction were being made as valid and not prohibited. The learned court below shall also deal with the issues which were not dealt with. Parties are at liberty to contest their matter afresh and are also expected to cooperate with the proceeding till the matter reaches its finality.

[11] This court opines that to meet the proper ends of justice one more opportunity may be given to the parties to establish their case before the learned court below. Accordingly, it is ordered. Therefore, the impugned judgment dated 23.08.2023 is set aside and the matter is remanded back for fresh adjudication in accordance with law.

[12] With the above observation and direction, this present appeal is remanded back and accordingly, the same is disposed of. As a sequel, stay, if any, stands vacated. Pending application(s), if any, also stands closed.

B.Palit, J

T. Amarnath Goud, J

