

**HIGH COURT OF TRIPURA
AGARTALA
RSA No.39 of 2022**

Sri Sushanta Ghosh,
S/o. Late Nani Gopal Ghosh,
resident of Golabari, P.S. Teliamura,
District – Khowai, Tripura.

----- Defendant No.1 Appellant
Versus

1. Sri Nandan Ghosh,
S/o. Late Nani Gopal Ghosh,
resident of Golabari, P.S. Teliamura,
District – Khowai, Tripura.

----- Plaintiff Respondent

2. Smti Pushpa Ghosh,
W/o.Late Ranjit Ghosh,
D/o.Late Nani Gopal Ghosh,
resident of A.D. Nagar,
West Pratapgarh,
Near Viveknanda School,
P.S. A.D. Nagar,
District – West Tripura.

3. On the death of Prafulla Ghosh, respondent No.3 his legal heirs:-

3 (a) Sri Sribash Ghosh.

3 (b) Sri Bikash Ghosh.

3 (c) Sri Nibhash Ghosh.

All are sons of Late Prafulla Ghosh,
all are resident of Golabari, P.S. Teliamura,
District – Khowai, Tripura.

3 (d) Smti Rita Ghosh,

W/o. Sri Narayan Ghosh,
D/o. Late Prafulla Ghosh,
resident of Golabari, P.S. Teliamura,
District – Khowai, Tripura.

3 (e) Smti Laxmi Ghosh,

W/o. Sri Sadhan Ghosh,
D/o. Late Prafulla Ghosh,
resident of Ramchandraghat,
Near TSR Camp,
District – Khowai, Tripura.

3 (f) Smti Mani Ghosh,

W/o. Sri Uttam Ghosh,
D/o. Late Prafulla Ghosh,
resident of Amarpur,
District – Gomati, Tripura.

4. Smti Mala Singha Roy,

W/o. Late Babulal Ghosh,
resident of Golabari, P.S. Teliamura,
District – Khowai, Tripura.

5. Sri Ardendu Ghosh,
S/o. Late Babulal Ghosh,
resident of Golabari, P.S. Teliamura,
District – Khowai, Tripura.

6. Smti Gita Ghosh,
W/o. Sri Narayan Ghosh,
D/o. Late Roymohan Ghosh,
resident of Shantinagar,
P.S. Teliamura,
District – Khowai, Tripura.

7. Smti Sandhya Ghosh,
W/o. Sri Manik Ghosh,
D/o. Late Roymohan Ghosh,
resident of Rangamati,
P.S. Amarpur,
District – Gomati, Tripura.

8. Smti Swapna Ghosh,
W/o. Late Dilip Ghosh,
resident of Golabari, P.S. Teliamura,
District – Khowai, Tripura.

9. Sri Nayan Ghosh,
S/o. Late Dilip Ghosh,
resident of Golabari, P.S. Teliamura,
District – Khowai, Tripura.

-----Defendant Respondents

For Appellant(s)	:	Mr. P. Chakraborty, Adv.
For Respondent(s)	:	Mr. S. Lodh, Adv, Ms. S. Deb(Gupta), Adv, Mr. Subham Majumder, Adv.
Date of hearing	:	25.07.2024
Date of delivery of Judgment & Order	:	29.07.2024
Whether fit for reporting	:	NO

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

This second appeal under Section 100 of CPC is
preferred challenging the judgment dated 01.06.2022 and

decree dated 24.06.2022 delivered by Learned District Judge, Khowai District, Khowai in connection with case No.T.A. No.3 of 2019. By the said judgment and decree, the Learned 1st Appellate Court has affirmed the judgment dated 23.05.2018 and decree dated 02.06.2018 delivered by Learned Civil Judge(Jr. Div.), Court No.1 Khowai District, Khowai in connection with case No.T.S.(P) No.1 of 2018.

2. Heard Learned Counsel for the appellant, Mr. P. Chakraborty and also heard Learned Counsel, Mr. S. Lodh for the respondent Nos.1 and 2 and Learned Counsel Ms. S. Deb(Gupta) for the respondent Nos.3 to 9.

3. At the time of hearing, Learned Counsel for the appellant submitted that before the Learned Trial Court, the suit was decreed ex parte. The present appellant did not get any scope to file written statement or to adduce evidence in support of his defence because the present appellant purchased the land as mentioned in schedule A of the plaint from his deceased father but the Learned Court below according to Learned Counsel for the appellant failed to appreciate the same properly and decreed the suit. So, for proper adjudication of the suit, Learned Counsel for the appellant urged for remanding back the suit to the Learned Trial Court for a de novo trial.

4. On the other hand, Learned Counsel, Mr. S. Lodh appearing for the respondent Nos.1 and 2 submitted that before the Learned Trial Court, none of the contesting defendants filed any written statement nor they adduced any oral/documentary

evidence on record in support of their defence. So, the Learned Trial Court below considering the evidence on record decreed the suit in favour of the respondent-plaintiff No.1 which was affirmed by the Learned 1st Appellate Court and at this stage as per order 41 rule 23 of CPC, there is no scope to remand back the suit to the Learned Trial Court. Learned Counsel further submitted that since the appellant has failed to make out any substantial question of law to be formulated, so there is no scope to interfere with the judgment delivered by the Learned 1st Appellate Court and urged for dismissal of this appeal with costs.

On the other hand, Learned Counsel Ms. S. Deb(Gupta) appearing on behalf of the other contesting respondents shared the same view as made by the Learned Counsel Mr. S. Lodh for the respondent-plaintiff No.1 and urged for dismissal of this appeal.

5. Now, before going to the conclusion of this appeal, let us discuss the subject matter of dispute amongst the rival parties.

The plaintiff Nandan Ghosh i.e. respondent No.1 herein, son of Late Nani Gopal Ghosh filed one suit before the Learned Trial Court for declaration and for partition of joint family properties which was numbered as T.S.(P) No.1 of 2018.

6. In the plaint, it was asserted by the respondent-plaintiff that the suit land has been mentioned in schedule-A, B, C and D of the plaint. According to the plaintiff-respondent, the

land as mentioned in schedule-A of the plaint was jointly owned by his father Nani Gopal Ghosh and his 2 brothers namely Prafulla Kumar Ghosh and Raimohan Ghosh having record of rights in their names without any contrary from any corner and after the death of his father, Nani Gopal Ghosh, the said plaintiff i.e. the respondent No.1 herein and the defendants No.1 and 2 being the legal heirs of said Nani Gopal Ghosh equally inherited the share of Nani Gopal Ghosh and on the death of Raimohan Ghosh, the other defendant Nos.4 to 10 inherited equal shares in the same property of the share left by their deceased predecessor Raimohan Ghosh and the defendant No.3 of the original suit being one of the owners is entitled to his respective share over the land as mentioned in schedule A of the plaint.

It was further asserted by the plaintiff that the land mentioned in schedule B of the plaint was recorded in the name of Nani Gopal Ghosh as bargadar and after his death, the said plaintiff now the respondent No.1 herein and the defendant Nos.1 and 2 of the original suit being the legal heirs inherited the same and they were/are each entitled to equal share over the said land. Similarly, the land as mentioned in schedule C of the plaint was jointly and equally owned by the plaintiff, now respondent No.1 herein and the defendant Nos.1 and 2 by way of inheritance after the death of their original owner Nani Gopal Ghosh i.e. their predecessor, who was the rayati over the same.

7. It was further asserted by the plaintiff that his mother owned and possessed the land as mentioned in schedule D of the plaint as rayati and after her demise, the plaintiff and the defendant Nos.1 and 2 inherited the same in equal share but those properties could not be partitioned.

It was further asserted by the plaintiff that he was informed by defendant No.1, now the appellant herein that his father Nani Gopal Ghosh by a registered sale deed bearing No.1-1317 dated 19.09.2014 transferred land measuring 1.26 acres appertaining to khatian Nos.814, 815, 1979 comprising RS plot Nos.7727, 8146, 7756, 7760 and 7724. It was the case of the plaintiff that the said sale deed was executed fraudulently by the defendant No.1 taking the advantage of long illness of their father who had no right to transfer that much quantum of land.

8. The plaintiff further asserted that he urged for amicable partition of the land as mentioned in the schedule of the plaint on 08.12.2016 which was refused by the defendant No.1 i.e. the appellant herein. Hence, finding no other alternative way, the respondent No.1 as plaintiff has filed the suit before the Learned Trial Court. The defendants of the said suit inspite of receiving summons from the Court did not file any written statement within the statutory period and even after that, nor they adduced any oral/documentary evidence on record in support of their defence. Hence, the suit proceeded ex parte.

9. To substantiate the suit, the respondent No.1 as plaintiff was examined as PW-1 and he relied upon certain documents which were marked as exhibits in the case which were reproduced herein below:

Plaintiff's witness:

i) PW-1 : Nandan Ghosh

Plaintiff's Exhibits:

- i) Ext.-1 : Certified copy of khatian No.815.
- ii) Ext.-2 : Certified copy of the finally published computerized khatian No.1979.
- iii) Ext.-3 : Certified copy of the finally published computerized khatian No.814.
- iv) Ext.-4 : Certified copy of the finally published computerized khatian No.4150.
- v) Ext.-5 : Certified copy of the finally published computerized khatian No.672.
- vi) Exbt. 6 : Certified copy of Sale Deed being No:1-1317 dated 19.09.14.

10. Finally, to determine the case, Learned Trial Court below framed four numbers of points for decision and on conclusion of trial, the Learned Trial Court below by judgment dated 23.05.2018 decreed the suit in favour of the plaintiff i.e. the respondent No.1 herein. For the sake of convenience, I would like to refer hereinbelow the relevant portion of the judgment and order of the Learned Trial Court which runs as follows:

ORDER

(I) In view of the foregoing discussions and reasons, the suit of the plaintiff is decreed declaring that the predecessor in interest of the plaintiff and the defendants having possession upon the scheduled lands whereby the plaintiff and the defendants numbers 1,2 and 4-10 being the legal heirs of the predecessors in interests have accrued right over the scheduled suit lands by way of inheritance.

(II) It is further ordered and decreed that the sale deed No.1-1317 dated 19.09.14 is hereby

declared void and inoperative in law and it confers no right, title to the defendant No.1 over the land shown in the registered sale deed and a precept be issued to the Circle Officer, Khowai Revenue Circle to delete the name of the defendant No.1 from the land record of schedule lands.

(III) The plaintiff is hereby held entitled to get 1/9th share over the "A" scheduled land, entitled to get 1/3rd share over the "B" and "C", "D" scheduled lands respectively. As pleaded by the plaintiff, the Defendant No.3 is entitled for 1/3rd share over the "A" scheduled land.

(IV) The defendants are hereby directed to get the quantum of the scheduled suit lands equally partitioned amongst the plaintiff and defendants accordingly.

(V) No order as to costs.

(VI) Prepare preliminary decree accordingly.

11. Challenging that judgment, the defendant No.1 as appellant filed an appeal before the Court of Learned District Judge, Khowai District, Khowai which was numbered as T.A. No.3 of 2019 and after hearing both the sides, Learned 1st Appellate Court dismissed the appeal affirming the judgment and decree delivered by Learned Trial Court. The operative portion of the Judgment and order of Learned 1st Appellate Court dated 01.06.2022 runs as follows:

ORDER

"The appeal is hereby dismissed.

The Judgment and decree passed by the trial court is hereby upheld.

Send down the case record along with a copy of this judgment to the Ld. Trial Court.

Accordingly, this appeal is disposed of on contest.

Make necessary entry in the relevant TR as well as in the CIS."

12. Before the High Court, the following substantial question of law was formulated by order dated 05.09.2022 which is as under:

Whether non-consideration of the right of bargadar as to transfer the suit land and/or right of inheritance by the courts below lead to infirmity in its judgment and as a result the judgment of both courts below are perverse?

13. I have heard argument of both the sides and gone through the records of the Learned Courts below. It appears from the record that the land as mentioned in schedule A of the plaint was originally owned by Nani Gopal Ghosh, Prafulla Kumar Ghosh and Raimohan Ghosh (all are now dead) and accordingly, ROR was prepared in their name vide Khatian No.815 under Mouja Krishnapur and Tehsil Krishnapur in equal shares. So, lawfully those three persons were the equal share holders of the aforesaid landed property.

After the death of said Nani Gopal Ghosh, his sons and daughter i.e. the present appellant and the respondent Nos.1 and 2 inherited their respective share of the property left by their deceased father. Similarly, after the death of Raimohan Ghosh, his legal heirs i.e. defendant Nos.4 to 10 of the original suit inherited his property.

So, the plaintiff respondent No.1 being one of the legal heirs of said Nani Gopal Ghosh is entitled to get $1/9^{\text{th}}$ share of the land as mentioned in schedule A of the plaint. Similarly, the defendant No.1 i.e the present appellant and the defendant No.2, now the respondent No.2 are also entitled to get $1/9^{\text{th}}$

share each from the land as mentioned in scheduled A of the plaint. Similarly, defendant No.3 being one of the owners is entitled to get $1/3^{\text{rd}}$ share of the suit land as mentioned in schedule A of the plaint and the defendant Nos.4 to 10 are entitled to get equal share of the land left by their deceased predecessor, Raimohan Ghosh.

In the same way, the land as mentioned in schedule B of the plaint was belonging to Nani Gopal Ghosh, the predecessor of the plaintiff now respondent No.1 herein and defendant No.1 now the appellant and defendant No.2. So, the original plaintiff and the defendant Nos.1 and 2 inherited the said land equally and the defendant No.1 i.e. the appellant herein is entitled to get $1/3^{\text{rd}}$ share of the land as mentioned in schedule B of the plaint along with two other co-sharers equally.

In respect of the land, as mentioned in schedule C measuring 0.71 acres which was belonging to said Nani Gopal Ghosh (since dead), the predecessor of the plaintiff and the defendant Nos.1 and 2. So, the plaintiff and defendant Nos.1 and 2 inherited the said land equally. So, the present appellant as defendant No.1 is also entitled to get $1/3^{\text{rd}}$ share of the said land as mentioned in schedule C of the plaint along with two other co-sharers equally.

In respect of land as mentioned in schedule D measuring 0.34 acres which was belonging to Jyotibala Ghosh (since dead) the mother of the defendant No.1 i.e. the appellant

herein, plaintiff-respondent No.1 and defendant No.2 i.e. the respondent No.2 herein. So, the defendant No.1 is entitled to get $\frac{1}{3}^{\text{rd}}$ share of the said land as mentioned in schedule D of the plaint like other legal heirs of Lt. Jyotibala Ghosh.

In this way, it is also on record that the said land as mentioned in schedule A, B, C and D of the plaint were not partitioned. So, the original plaintiff i.e. the respondent No.1 herein approached for partition to the other contesting defendants but his request was not accepted by them.

14. It was also the case of the plaintiff that the father of the original plaintiff was looked after by the defendant No.1 i.e. the present appellant herein and he was suffering from illness for a long period. So, taking advantage of his illness, he arranged to get a sale deed dated 19.09.2014 bearing No.1-1317 in his favour for the land measuring 1.26 acres. Since said Nani Gopal Ghosh has no legal right to transfer the said quantum of land during his lifetime being the joint family property and his mental status was not fit for execution of such deed. So, the deed was challenged before the Learned Trial Court by the plaintiff.

In this regard, I would like to refer one judgment of Hon'ble Supreme Court reported in **2024 SCC Online SC 517**. In **Kizhakke Varrakandiyil Madhavan(Dead) Thr. Lrs. V. Thiyyurkunnath Meethal Janaki and Ors.** dated 09.01.2024, wherein in para No.18 Hon'ble Supreme Court observed as under:

"18. * * * * *
If right, title or interest in certain property is
sought conveyed by a person by an
instrument who herself does not possess any
such form of entitlement on the subject being
conveyed, even with a subsisting deed of
conveyance on such property, the grantee on
her successors-in-interest will not have legal
right to enforce the right the latter may have
derived from such an instrument.
*** * * * ***

The present appellant did not contest the same nor produced any oral/documentary evidence on record to counter the submissions made by the plaintiff. So, finally, Learned Court below allowed the suit and granted decree in favour of the plaintiff now the respondent No.1 herein which has been affirmed by Learned 1st Appellate Court.

15. Now, after hearing both the sides and also after perusal of the evidence on record it appears to this Court that the present appellant has failed to make out any substantial question of law to be formulated in this appeal and also I find no perversity in the judgment of Learned 1st Appellate Court. Thus, in my considered view, the appellant is not entitled to get any relief in this appeal.

16. In the result, the appeal filed by the appellant stands dismissed being devoid of merit. The judgment dated 01.06.2022 and decree dated 24.06.2022 delivered by Learned District Judge, Khowai District, Khowai in connection with case No.T.A. No.3 of 2019 affirming the judgment dated 23.05.2018 and decree dated 02.06.2018 delivered by Learned Civil Judge(Jr. Div.), Court No.1 Khowai District, Khowai in connection with case No.T.S.(P) No.1 of 2018 is hereby affirmed

and accordingly it is upheld. The Learned Trial Court shall take immediate steps for preparation of final decree, if necessary, by appointing Survey Commissioner for proper identification of the land, if the parties fails to make partition of the property as per judgment of the Learned Court below.

Prepare decree accordingly.

With this observation, the appeal is disposed of on contest.

Send down the LCRs along with a copy of this judgment.

JUDGE



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