

**HIGH COURT OF TRIPURA
AGARTALA**

RFA 21 of 2023

- 1. Smt. Anjali Chakraborty**
W/o- Lt. Dhiresh Chakraborty
- 2. Smt. Neha Chakraborty**
D/o- Lt. Dhiresh Chakraborty
- 3. Smt. Nisha Chakraborty**
D/o- Lt. Dhiresh Chakraborty

All are resident of Nilima Apartment,
House No.44, Ward No.25, Near Central School,
Chandmari, Tarapur, Silchar, Assam, PIN: 788003.

---Appellant-Plaintiff(s)

Versus

- 1. Sri Rati Ranjan Chakraborty**
S/o-Lt. Gurudas Chakraborty
- 2. Sri Rakesh Ch. Deb**
S/o Lt. Prasanna Kr. Deb
- 3. Smt. Uma Chakraborty (Das)**
W/o- Sri Chandan Das
- 4. Smt. Bodhudipa Roy**
D/o- Lt. Mrinmoy Roy
W/o- Sri Mrinmoy Sen

All are Resident Arundhutinagar Road No.1, Behind Sevak Sangha
Club, PO:-AD Nagar, P.S—A.D. Nagar, District- West Tripura.

---Respondent-Defendant(s)

For Appellant (s)	:	Mrs. S. Deb (Gupta), Advocate. Ms. Rumpa Dey, Advocate.
For Respondent(s)	:	Mr. A. Sengupta, Advocate. Mr. MK Biswas, Advocate. Mr. R. Nandi, Advocate.
Date of Hearing	:	25.09.2024
Date of pronouncement	:	01.10.2024
Whether fit for reporting	:	No

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

Judgment & Order

(T. Amarnath Goud, J)

This is an appeal under Section 96 of the Code of Civil Procedure from the original judgment and decree dated 17.08.2023 & 05.09.2023 passed by Ld. Civil Judge (Senior Division) Court No.4, Agartala, West Tripura in TS No.1 of 2015 to allow the Title Suit of the Appellant-Plaintiffs.

[2] The case in a nutshell is that the appellant-plaintiffs has filed the suit for declaration of rights, recovery of possession, cancellation of sale deeds of the defendant Nos. 2 to 6 before the Ld. Trial Court and perpetual injunction. The plaintiffs are the legal heirs of Lt. Dhiresh Chakraborty. Lt. Kusum Kamini Chakraborty was mother of Dhiresh Chakraborty and defendant no. 1 namely Rati Ranjan Chakraborty. In the year 1985 said Kusum Kamini Chakraborty gifted 0.23 sataks of land to her son Dhiresh Chakraborty by dint of registered gift deed vide No. I-6015, dated 16.09.1985 and also by dint of another gift deed gave some land to his other son i.e. defendant no.1 namely Rati Ranjan Chakraborty. At that time Dhiresh Chakraborty was residing at Bhopal, Madhya Pradesh with his family. Lt. Dhiresh Chakraborty requested his full blooded brother to look after his land. Said Dhiresh Chakraborty expired on 20.09.2002 living behind the plaintiffs as his legal heirs. Since, Dhiresh Chakraborty has no son, the son of the defendant No.1 namely Rajesh Chakraborty performed the ritual rites at Bhopal. Thereafter, on 16.01.2010 the plaintiffs came to Agartala and learnt that the defendant no.1 sold away the land belonging to Lt. Dhiresh Chakraborty by dint of Power of Attorney. On enquiry the plaintiffs came to know by dint of a registered power of attorney vide No. IV-47/7, dated 09.01.2002 alleged to be executed at Karimganj, Assam by the deceased Dhiresh Chakraborty and the plaintiff no.1 lodged a complaint before the Ld. Chief Judicial Magistrate, West Tripura, Agartala which was registered as C.R. Misc. 20/2010 and forwarded to the O/c, West Tripura police station and the same was registered as West Agartala police station Case no. 116/2010 under Section 409/179/420/468/471/120(B)/34 of IPC. Later on, charge sheet was filed under Section 409 & 420 of IPC and case was registered as PRC 290/2010. After being summoned all the defendants, except the defendant no. 4 has appeared before the Ld. Trial Court and submitted their written statement. After hearing both the parties and

perusing the evidences the Ld. Court vide its Judgment dated 17.08.2023 dismissed the suit of the Appellant-Plaintiffs.

[3] Being aggrieved with the Judgment and Order dated 17.08.2023 passed by the Ld. Trial Court in TS-01/2015 the Appellant-Plaintiffs filed this appeal seeking the following relief(s):

- (i) *Admit the appeal*
- (ii) *Call for the records from the Ld. Civil Judge Senior Division, Court No.4, Agartala, West Tripura in TS(P)No.1/2015*
- (iii) *Issue notice for the respondents;*
- (iv) *After hearing the partis Your Honour would be pleased to set aside the Judgment & Preliminary Decree dated 17.08.2023 & 05.09.2023 passed by Ld. Civil Judge (Senior Division) Court No.4, Agartala, West Tripura, in TSNO.1/2015 and allowed the Title Suit of the appellant-Plaintiffs.*

[4] It is contended by the counsel for the appellants that though the Ld. Trial Court decided that all the sale deeds executed after the death of Dhiresh Chakraborty on 20.09.2002 on the strength of the said Power of Attorney are found to be void ab initio and will not have any legal force of itself or any other document, whatsoever, arose out of the transaction on the basis of the said Power of Attorney after the death of Dhiresh Chakraborty. But without declaring the right, title and interests of the plaintiffs over the suit land is not only perverse and liable to be interfered.

[5] It is further contended by the counsel for the appellants that the sale deed bearing no. I- 10022 dated 20.11.2002 executed by respondent no. 1 Rati Ranjan Chakraborty by dint of registered Power of Attorney vide No IV-47/7, dated 09.01.2002 in favour of Mina Chakraborty (Singha) is void ab initio in respect of the land measuring 2 Gandas under Badharghat Taushil and Mouja, khatian no. 1346 and 1347, Dag no. 3438 and 3443 subsequent Khatian no 3438/17584, 3443/17583 butted and bounded North- Rakesh Chandra deb, South- Hemanta Kumar Nandi, East- Nepal Deb, West- Vendor as the executant died on 20.09.2002 (Exhibit 4) as the said sale deed executed after the death of executant on 20.09.2002.

[6] The counsel for the appellants also contended that the sale deed bearing no. I- 1169 dated 31.01.2006 executed by respondent no. 1 Rati Ranjan Chakraborty by dint of registered Power of Attorney vide No IV-47/7, dated 09.01.2002 in favour of Uma Chakraborty (Das) is void abinitio in respect of the land measuring 1 Ganda 2 Kara under Badharghat Tehsil and Mouja, khatian no. 10711, Dag no. 3438/17584 and Khatian no. 10712 Dag no. 3443/17586 butted and bounded North- Hemanta Nandi, South- Smt. Jyotsna Ray, East- Sri Nepal Deb, West- road then vendor as the executant died on 20.09.2002 (Exhibit-5) as the said sale deed executed after the death of executant on 20.09.2002.

[7] To support her contention, learned counsel for the appellants has relied upon a judgment of the apex court in *State of Maharashtra vs. Pravin Jethalal Kamdar (Dead) by Lrs.* reported in (2000) 3 SCC 460 where the apex court has held as follows:

“As already noticed, in Bhim Singhji's case (supra), Section 27(1) insofar as it imposes a restriction on transfer of any urban or urbanisable land with a building or a portion of such building, which is within the ceiling area, has been held to be invalid. Thus, it has not been and cannot be disputed that the order dated 26th May, 1976, was without jurisdiction and nullity. Consequently, sale deed executed pursuant to the said order would also be a nullity. It was not necessary to seek a declaration about the invalidity of the said order and the sale deed. The fact of plaintiff having sought such a declaration is of no consequence. When possession has been taken by the appellants pursuant to void documents, Article 65 of the Limitation Act will apply and the limitation to file the suit would be 12 years. When these documents are null and void, ignoring them a suit for possession simpliciter could be filed and in the course of the suit it could be contended that these documents are nullity. In Ajudh Raj and Ors. v. Moti S/o Mussadi [(1991) 3 SCC 136] this Court said that if the order has been passed without jurisdiction, the same can be ignored as nullity, that is, non-existent in the eyes of law and is not necessary to set it aside; and such a suit will be governed by Article 65 of the Limitation Act. The contention that the suit was time barred has no merit. The suit has been rightly held to have been filed within the period prescribed by the Limitation Act.”

[8] On the basis of the judgment cited, learned counsel for the appellants has prayed before this court to allow the appeal by setting aside the impugned order of the learned court below.

[9] On the contrary, Mr. A. Sengupta, learned counsel for the respondent No.3 and 4 herein has drawn the attention of this court to the issue no(v) framed by learned court below which reads as under

(v) *Whether the Defendant number (i) by the virtue of forged power of attorney executed the sale deed fraudulently?*

[10] While dealing with the said issue, the learned court below held that the plaintiff side did not produce Smt. Neha Chakraborty as a witness who was stated to be present with her ailing father at the time when the power of attorney was stated to be executed at Karrimganj, Assam. So, the plaintiff side is found to be failed to establish said the power of attorney bearing No.IV-47/7 dated 09.01.2022 to be forged one.. He further contended before this court that the impugned order passed by the learned court below is apt and proper and needs no interference from this court and prayed to dismiss the appeal.

[11] In order to support his contention, learned counsel for the respondent has relied on a judgment of the apex court in *S.Shivraj Reddy (Died) THr His LRs and another vs. S. Raghuraj Reddy and others* reported in AIR 2024 SC 2897 where the apex court has observed as follows:

"16. Thus, it is a settled law that even if the plea of limitation is not set up as a defence, the Court has to dismiss the suit if it is barred by limitation.

17.....

18. The question of limitation in the admitted facts of the present case is pure question of law and not mixed question of fact and law, because the fact regarding the death of one of the partners i.e. Shri M. Balraj Reddy is not disputed. This Court in the case of Narne Rama Murthy v. Ravula Somasundaram and Ors., observed as follows: -

"5. We also see no substance in the contention that the suit was barred by limitation and that the courts below should have decided the question of limitation. When limitation is the pure question of law and from the pleadings itself it becomes apparent that a suit is barred by limitation, then, of course, it is the duty of the court to decide limitation at the outset even in the absence of a plea. However, in cases where the question of limitation is a mixed question of fact and law and the suit does not appear to be barred by limitation on the face of it, then the facts necessary to prove limitation must be pleaded, an issue raised and then proved. In this case the question of limitation is intricately linked with the question whether the agreement to sell was entered into on behalf of all and whether possession was on behalf of all. It is also linked with the plea of adverse possession. Once on facts it has been found that the purchase was on behalf of all and that the possession was on behalf of all, then, in the absence of any open, hostile and

overt act, there can be no adverse possession and the suit would also not be barred by limitation. The only hostile act which could be shown was the advertisement issued in 1989. The suit filed almost immediately thereafter.”

[12] Learned counsel for the respondent No.2 herein submitted before this court that he has been made unnecessarily party in this case since he has nothing to do with the present case in hand. He further sought to strike off his name from the cause title.

[13] Heard both sides and perused the record.

[14] It is seen from the record the few defendants before the learned court below have already entered into a compromise with the appellants herein and thus they have not sought for any relief and moreover they are not party before this Court. Now, the appellants before this court has sought relief against the defendants no.1, 3, 6 and 7 (the respondent nos. 1, 2, 3 and 4 herein). More specifically, the appellants want their relief against the defendants no. 6 and 7 (the respondent No.3 and 4 herein). Since the learned court below has, after conducting a trial, given categorically a finding that the sale deeds which were executed subsequent to the death of the Dhiresh Chakroborty on 20.09.2002, automatically after the death of Dhiresh Chakroborty, the general power of attorney becomes invalid. Moreover, due to which the document becomes inoperative and any transaction or execution of any document pursuant to the death of Dhiresh Chakroborty becomes void. Accordingly, this court upholds the observation made by the court below only in this respect. But it is seen from record that the court below has not granted any consequential relief while holding the said power of attorney to be void abinitio. Hence, this court, to meet proper ends of justice, grants relief in allowing the appeal holding that the sale deeds executed by defendant respondent No.1 in favour of defendant nos. 6 and 7 (the respondent nos. 3 and 4 herein) vide sale deed no.1-1169 and sale deed no.1-694 respectively be stood cancelled. In view of the above, the

appellants are entitled for recovery of possession of the subject land being contested here.

[15] In view of the above observation, the instant appeal is disposed of allowing the appeal to the extent as indicated above. As a sequel, stay, if any, stands vacated. Pending application(s), if any, also stands closed.

B.Palit, J

T. Amarnath Goud, J

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