

**HIGH COURT OF TRIPURA
AGARTALA**

RFA No.16 of 2017

- 1. Sri Surajit Majumder,**
Son of late Rakhal Chandra Majumder,
Kacharghat, Kailashahar Town, P.O. Kailashahar,
Unakoti, Tripura
- 2. Smt. Sujata Majumder,**
Wife of Sri Arup Dey,
Ramnagar Road No.4, P.O. Agartala,
West Tripura
- 3. Smt. Nibedita Majumder (Kar),**
Wife of Sri Subhas Chandra Kar,
Ranima Apartment (2nd Floor), Flat No.T1, 1/167,
Naktala, Kolkata-700047

(1 to 3, L.Rs of Late Gita Rani Majumder)
- 4. Smt. Saraswati Biswas,**
Wife of Sri Hiranmoy Biswas,
Nabadarsha Housing Society, Plot No.J-11,
P.O. Birati, 24 Pargana, Kolkata-700051
- 5. Smt. Rekha Biswas,**
Wife of Late Monoranjan Biswas,
Jolaibari, Belonia, South Tripura

----Defendant-Appellant(s)

Versus

1. LR's of deceased Nani Gopal Ghosh

- 1a. Sri Partha Pratim Ghosh,**
Son of late Nani Gopal Ghosh,
Resident of Swarupananda Sarani,
P.O. & P.S.- Kailasahar,
District- Unakoti, Tripura.
- 1b. Smt. Gouri Ghosh Chowdhury,**
Wife of Pradip Chowdhury,
Daughter of late Nani Gopal Ghosh,
Resident of Joradighir Paar,
P.O.- Banamalipur, Agartala.
- 1c. Smt. Ruma Ghosh Adhikari,**
Wife of Radharaman Adhikari,
Daughter of late Nani Gopal Ghosh,
Resident of College Road, near G.C. College,
P.O.- Silchar, Assam.
Mobile No. 9485009448, 9862595036

----Plaintiff-respondent(s)

- 2. Sri Jayanta Ghosh,**
Son of Late Jawhar Lal Ghosh,
C/o M/s. J.L. Ghosh (Petrol Pump)
P.O.- Ambassa, Dhalai, Tripura.
- 3. Smt. Lila Rani Choudhury,**
Wife of Sri Pranesh Ranjan Choudhury,
4, S.N. Mukherjee Road, Uttarpara,
Dist - Hoogly, West Bengal.
- 4. Sri Rana Dasgupta,**
Son of Late Sukhendu Ranjan Dasgupta,
Kailashahar Town, P.O. - Kailashahar,
Unakoti, Tripura.
- 5. Smti. Tanushree Sengupta (Roy)**
Wife of Sri Partha Sarathi Roy,
P.O. - Rahara, Haldar Bagan,
Khardah, 24-pargs, West Bengal.
- 6.** Deleted by order dated 10-04-2019 in I.A. 4/2019
- 7.** Deleted by order dated 10.04.2019 in I.A. 4/2019
(4,5, 6 and 7, LR of Late Rama Rani Dasgupta)
- 8. Sri Monojit Majumder,**
Son of late Rakhal Chandra Majumder,
Office of the Deputy Director of Agriculture,
Ambassa, Dhalai, Tripura.
- 9. Sri Subha Ranjan Sinha,**
Son of Late Pulak Ranjan Sinha,
- 10. Sri Priya Ranjan Sinha,**
Son of Late Pulak Ranjan Sinha,
- 11. Smti. Debolina Kundu,**
Daughter of Late Pulak Ranjan Sinha
- 12. Smti. Madhulina Jana,**
Daughter of Late Pulak Ranjan Sinha
- 13. Smti. Shyamalina Pramanik,**
Daughter of Late Pulak Ranjan Sinha
Respondent No.9 to 13 are residents of Ramchandrapur,
C/O Subha Ranjan Sinha,
P.O. – Sankrai, District- Howrah, PIN-711313
(9,10, 11 and 12,-- LRs of Lt. Purnima Sinha)
- 14. Smti. Gouri Deb Choudhury,**
Wife of Sri Anil Baran Deb Choudhury,
Kailashahar Town, Kali Dighirpar,
P.O. & P.S. – Kailashahar,
District – Unakoti
- 15. Smti. Sandhya Rani Pal,**
Wife of Sri Rohini Kumar Pal, Kazirgaon,
P.S. – Kailashahar (Near Panchayet Office),
District – Unakoti.

- 16. Sri Nikhil Chandra Das,**
Son of Late Monomohan Das,
Vill : Kazirgaon, P.S. – Kailashahar,
District – North Tripura (now District – Unakoti).
- 17. Sri Sunil Chandra Das,**
Son of Sri Hara Kumar Das,
Vill : Maguruli, P.S. – Kailashahar,
District – North Tripura (now District – Unakoti).
- 18. Smti. Sabita Shil,**
Daughter of Sri Sitesh Chandra Shil,
Vill : Bilashpur, P.S. – Kailashahar,
District – North Tripura (now District – Unakoti)
- 19. Smti. Swapna Dey,**
Wife of Sri Biswajit Dey,
Vill : Kamrangabari, P.S. – Kailashahar,
District – North Tripura (now District – Unakoti)
- 20. Sri Dulan Miah,**
Son of Cherag Ali,
Vill : Gobindapur, P.S. – Kailashahar,
District – North Tripura (now District – Unakoti)
- 21. Sri Amulya Kumar Das,**
Son of Late Adhar Chandra Das,
Vill : Pabiacherra, at present Vill : Kacherghat,
P.S. – Kailshahar,
District – North Tripura (now District –Unakoti)
- 22. Sri Dulal Chandra Banik,**
Son of Late Akhil Chandra Banik,
Vill : Pabiacherra, P.S. – Fatikroy,
District – North Tripura (now District – Unakoti)
- 23. Sri Amit Kumar Dey,**
Son of Late Chitta Ranjan Dey,
- 24. Smti. Shila Dey,**
Wife of Gouranga Dey,
- 25. Sri Pranesh Ranjan Dey,**
Son of Late Jamini Dey,
- 26. Sri Sourabh Dey,**
Son of Sri Harendra Chandra Dey,
- 27. Sri Hrishikesh Dass,**
Son of Late Ratish Datta,
- 28. Sri Basudeb Datta,**
Son of Late Pranesh Datta,
- 29. Sri Raghu Nath,**
Son of Late Debendra Nath,
Secretary, Ramthakur Seva Ashram,
Sl. No.23 to 29 are residents of Vill : Pabiacherra,
P.S. – Fatikroy,
District – North Tripura (now District – Unakoti).

- 30. Sri Jagadish Pal,**
Son of Late Radhika Pal,
Of Ashram Palli (Kumarghat), P.S. Fatikroy,
District – North Tripura (now District – Unakoti).
- 31. Sri Milan Kanti Das,**
Son of Late Bhupendra Kumar Das,
Vill : Kazirgaon, P.S. Kailashahar,
District – North Tripura (now District – Unakoti).
- 32. Sri Bibhas Kanti Das,**
Son of Late Bijoy Krishna Das,
Vill : Chandipur, P.S. Kailashahar,
District – North Tripura (now District – Unakoti).
- 33. Sri Chanchal Kumar Kar,**
Son of Sri Chitta Ranjan Kar,
Vill : Chandipur, P.S. Kailashahar,
District – North Tripura (now District – Unakoti).
- 34. Sri Shyamal Dey,**
Son of Sri Lalit Mohan Dey,
Vill : Sreerampur, P.S. Kailashahar,
District – North Tripura (now District – Unakoti).
- 35. Sri Sujit Kumar Deb,**
Son of Late Shashi Mohan Deb,
Vill : Latiapura, P.S. Kailashahar,
District – North Tripura (now District – Unakoti).
- 36. Sri Binanda Debnath,**
Son of Late Dinamoni Debnath,
Vill : Samrurpar, P.S. Kailashahar,
District – North Tripura (now District - Unakoti).
- 37. Sri Gopendra Chandra Gope,**
Son of Sri Gopal Chandra Gope,
Vill : Mohanpur, P.S. Kailashahar,
District – North Tripura (now District – Unakoti).
- 38. Sri Bibhas Deb,**
Son of Late Bidhu Bhusan Deb,
Vill : Boulapasa, P.S. Kailashahar,
District – North Tripura (now District – Unakoti).
- 39. Sri Mrinal Kanti Pal,**
Son of Late Makhan Chandra Pal,
Vill : Gobindapur (East), P.S. Kailashahar,
District – North Tripura (now District – Unakoti).

----Defendants-Respondent(s)

For Appellant(s)	:	Mr. G. K. Nama, Adv.
For Respondent(s)	:	Ms. A. Debbarma, Adv.
Date of Hearing	:	29.01.2024
Date of delivery of Judgment and Order	:	07.02.2024
Whether fit for Reporting	:	YES/NO

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

Judgment & Order

[T. Amarnath Goud, J]

The defendant-appellants namely Sri Surajit Majumder, Smt. Sujata Majumder, Smti Nibedita Majumder, Smt. Saraswati Biswas and Smt. Rekha Biswas are before the High Court. They have preferred this appeal under Section 96 of CPC challenging the judgment and decree dated 06.04.2017 in connection with Case No.T.S.(Partition) 38 of 1999 delivered by Learned Civil Judge, Senior Division, Unakoti District, Kailashahar.

02. Before entering into the merit of the appeal let us revisit the subject matter of the dispute for which this present appeal has been preferred. The respondent-plaintiff Nani Gopal Ghosh filed one suit against the defendants for partition of the suit land mentioned in the schedule of the plaint and accordingly the suit was numbered as T.S.(Partition) 38 of 1999 before the court of Learned Civil Judge, Senior Division, Unakoti District, Kailashahar. In delivering the merit Learned Trial Court framed the following issues:

- (i) **Is the suit maintainable in its present form?**
- (ii) **Is there any cause of action for this suit?**

(iii) Are the parties entitled to get the partition as prayed for in the pleadings?

(iv) Are the parties entitled to get any other relief/cost?

03. After conclusion of trial Learned Civil Judge, Senior Division by judgment dated 31.03.2008 decreed the suit. The operative portion of the judgment of the then Learned Civil Judge runs as follows:

"4. Considering all aspect I hereby decide that parties are to bear their own costs. Accordingly issue No.4 is decided.

In view of the discussions made above I am of the opinion that the suit should be decreed on contest without cost.

5. Hence the suit is decreed on contest without cost and plaintiff, defendant Nos.1, 2, 3, 4 will get one-fifth share each in "A" schedule land after deducting "D" schedule land being declared as personal land of plaintiff and in doing such partition the land described in "C" schedule will equally fall and be calculated within aforesaid shares of defendant Nos.1, 2, 3, 4 as the "C" schedule land was sold by them from the joint property. I also decide that each of the plaintiff and defendant Nos.1 & 2 will get one-third share in "B" schedule. I also decide that "D" schedule land is declared as personal land of plaintiff.

6. Prepare preliminary decree accordingly.

7. Parties are to cause partition in terms of preliminary decree amongst themselves within 60 (sixty) days from the date of preliminary decree failing which survey commission will be appointed on the application of either party to cause partition in terms of preliminary decree and on receipt of report of survey commission final decree will be prepared."

04. Challenging that judgment the defendants of the original suit preferred one appeal before the High Court and the High Court after hearing in Case No.RFA No.06 of 2008 by judgment dated 08.02.2016 partly allowed the appeal and remitted back the case record to the Learned Trial Court with the following observations:

"19. Therefore, the appeal is partly allowed and the matter is remitted to the learned trial Court for only deciding the following issues:

(i) Whether the relinquishment deed dated 9th February, 1965 was not executed by the four sisters namely, Rama Rani Dasgupta, Rekha Biswas, Gita Rani Majumder, Purnima Sinha?

(ii) If it is proved that the relinquishment deed was executed whether the relinquishment deed

was not acted upon by the parties and is not binding upon these four sisters namely, Rama Rani Dasgupta, Rekha Biswas, Gita Rani Majumder, Purnima Sinha?

In case issues (i) and (ii) are decided against four sisters then they will have no share in the properties.

(iii) What is the share, if any, of the plaintiff and defendant Nos. 1 to 8 in the suit property?

(iv) Whether the land forming part of 'D' Schedule is part of the joint holding or is exclusive land of the brother?

20. After determining the shares of the parties in the property the share of Pannalal Ghosh shall be divided between Nani Gopal Ghosh and the four surviving sisters in equal shares in view of the finding given by this Court.

21. The learned trial Court is directed to issue notices at the addresses given in the plaint and written statement to the parties by registered speed post. The matter is remitted to the learned trial Court only for the purpose of determining these issues. The findings given by this Court on other issues are binding on the trial Court and it shall proceed accordingly. The learned trial Court is directed to dispose of the suit at the earliest and in an event not later than 31st December, 2016.

22. The parties who are represented before this Court through counsel are directed to appear before the learned trial Court on 1 st March, 2016. On the said date, the learned trial Court shall issue notices only to the brothers and sisters, who are not represented or their legal heirs. Notice shall be sent by registered speed post at the cost of the plaintiff to the addresses given in the plaint/written statement and in case, the notices are not received back within 30 days, it shall be presumed that they have been served and the matter shall be proceed accordingly. The sisters if they want to lead evidence can do so and they shall be given at the most two opportunities to do the same and thereafter, the plaintiff Nani Gopal Ghosh will have two opportunities to lead his evidence.

23. CRP No.47 of 2008 arises out of Title Suit No.25(P) of 2001 filed by Pannalal Ghosh and others i.e. his sisters for partition of the suit property, which is virtually the subject matter of dispute in Title Suit No.38(P) of 1999. This suit was withdrawn. Though liberty was sought to file a fresh suit, liberty was not granted and this revision petition has been filed challenging the non-granting of liberty. In the application filed for withdrawal of the civil revision, it has been stated that the plaintiffs need to withdraw this partition suit (on condition to re-file) because another partition suit Title Suit No.38(P) of 1999 between the same parties is pending in this Court. The second suit itself was not maintainable in my view. Pannalal Ghosh is dead. The sisters have been given a right to raise all the disputes in T.S. 38(P) of 1999 and therefore, this petition is dismissed."

05. Thereafter Learned Civil Judge, Senior Division, Unakoti, Kailashahar after compliance of the direction of High Court by an elaborate judgment dated 06.04.2017

again decreed the suit and passed preliminary decree accordingly and challenging that decree the present appellants have preferred this appeal before the High Court again.

06. Heard Mr. G.K. Nama, Learned counsel appearing for the appellants and Ms. A. Debbarma, Learned counsel appearing for the respondents. After hearing both the sides and after going through the records of the Learned Court below we have decided to formulate the following point for just decision of the appeal:

Whether the judgment and decree dated 06.04.2017 passed by Learned Civil Judge, Senior Division, Unakoti, Kailashahar is perverse?

07. In course of hearing of arguments Learned counsel for the appellants submitted that the judgment passed by the Learned court below suffers from various infirmities as because the Learned court below did not consider the exhibited documents relied upon by the defendant-appellants before the Learned court below and passed an erroneous judgment which cannot be maintained in the eyes of law. He further submitted that for the convenience of the court the defendant-appellants have submitted one written argument which may be taken into consideration at the time of delivery of judgment. Learned counsel further submitted that at the time of delivery of judgment on 08.02.2016, this High Court formulated four issues and a direction was given to the Learned court below

to decide those issues after taking evidence on record of the contesting parties. But the Learned Court below failed to appreciate the evidence on record of the parties led by them before the Learned court below and came to a wrong observation about the actual entitlements and share by the respondent-plaintiff No.1 and further submitted that the respondent-plaintiff No.1 during his lifetime by different registered deed of sale transferred huge quantum of land to different persons but those were not taken into consideration by the Learned Trial Court below. Learned counsel for the appellants further submitted that Exbt.-5 i.e. the deed of relinquishment was not duly proved and registered and not acted upon. But the Learned court below came to a finding that the deed of relinquishment was duly proved and registered and it was duly acted upon and came to a perverse finding detrimental to the interest of the defendant-appellants.

08. Learned counsel also submitted that from the evidence on record it appears that all the subject matter of issues which were raised by the defendant-appellants and others before the Learned Trial Court were not duly considered by the Learned Court below and ultimately decreed the suit, misinterpreting and misconstrued the directions issued by the High Court. So the appellant urged before this court for interference by way of setting aside the judgment and decree of Learned Trial Court with a fresh

direction to remit back the case to the Learned Trial Court for *de novo* trial of the suit.

09. Per contra, Learned counsel for the contesting respondents i.e. the respondent-plaintiff No.1 has fairly submitted that in pursuance of the direction of the High Court of Tripura passed in RFA No.6 of 2018, Learned Trial court took evidence on record after informing the contesting parties and thereafter rightly and reasonably delivered the judgment decreeing the suit after taking into consideration all the oral and documentary evidence on record and Learned court below as per direction of the High Court came to reasonable finding that Exbt.5 i.e. deed of relinquishment was duly acted upon. So the Learned counsel appearing for the respondents submitted that there is no scope to interfere with the judgment passed by the Learned court below and submitted before the court to uphold and affirm the judgment of the Learned court below dismissing the appeal and relied upon few citations.

10. It is on record that to substantiate the case both the parties have adduced their witnesses in support of their claim over the suit land. For the sake of convenience, let us revisit the relevant part of the evidence on record of the parties. The respondent-plaintiff No.1 Nani Gopal Ghosh before the Learned Trial Court submitted his examination-in-chief by an affidavit and he also relied upon some documents which were marked as Exbt.1 series (documents as per firisti dated 11.11.1999), Exbt.2 series (documents

submitted as per firisti dated 11.11.1999), Exbt.3 series (document submitted by firisti dated 26.02.2008) and document submitted as per firisti dated 26.02.2018 marked as Exbt.4 series. During cross-examination by the principal contesting defendants in the original suit he submitted that his father expired on 15.12.1964 leaving behind his mother, six daughters and three sons. He also stated that they are businessman and there is no service holder in the family and none of their brother was in service. He conducted the entire business and property remaining with his father. Cloth business ended in the year 1950 and also deposed that at the time of death of his father he had one Petrol pump at Kumarghat and one Kerosine business at Kailashahar. He had huge landed property. He further deposed that he was unable to say the exact quantum of land left by his father. It may be few hundreds drone. He further deposed that his father had number of suits for recovery of possession regarding land. On 09.02.1965, he got power of attorney from his mother, six sisters and two brothers to conduct the suits and cases. He further deposed that he put some decrees in execution and some not and regarding those cases his brothers and sisters subsequently filed suits and cases and in those cases they made him disclaimer. Also he deposed that he did not bring the land of those suits as the land in the instant suit. His sister Rama Dasgupta, Gita Rani Majumder, Rakha Biswas, Purnima Sinha executed registered 'Nadabi Patra' in respect of their

claim in the paternal property in the year 1965. He further deposed that the reference under Section 30 regarding acquisition of land for the purpose of District Judge's quarters ended in compromise and they got the respective shares of their award in compliance with the decree and the decree they got after the execution of said 'Nadabi Patra'. He further deposed that regarding 'Nadabi Patra' executed by him in favour of Sushital Dhar and his father subsequently his brothers and sisters filed T.S. 30/1973 for land measuring 14.30 acres in which he got decree up to High Court and it is still pending in Supreme Court and the 'Nadabi Patra' executed by him earlier was set aside and that 14.30 acres of land is not the suit land in the instant matter. He further deposed that in Misc. L.A. 38/82 though he claimed one-tenth share. His co-sharers got their respective shares. He could not say the exact amount of agricultural and non-agricultural lands left by his deceased father. Further deposed that Jawahar Ghosh, Gita Rani Majumder, Rakha Biswas, Purnima Sinha and Rama Dasgupta made registered gift deed in his favour regarding the land where he constructed Petrol Pump at Kailashahar on behalf of Purnima Sinha, Rekha Biswas and Saraswati Ghosh he executed gift deed as their attorney in his favour to avoid litigation. After one year his father made a gift deed in favour of Panna Lal Ghosh regarding the same land. His mother died in his custody. In the mortgage suit about 4/5 acres of land incorporated and their entire joint property

was incorporated in the suit. He further deposed that his mother had 20 acres of personal land. She died in the year 1986 and her left estate was not incorporated in the present suit. Upto 1972 his three brothers and his mother remained in the same mess.

11. PW-2, Ayesha Begam is a staff of Sub-Registrar office, Kailashahar. Being summoned she appeared to depose as a witness. She identified the sale-deed vide No.1-449 dated 22.04.2015 executed by Panna Lal Ghosh as attorney in favour of Shyamal Dey was marked as Exbt.8. She had identified another certified copy of registered sale-deed executed similarly as attorney in favour of Sujit Kr. Deb vide No.1-454 dated 22.04.2015 which was compared with the original document was marked as Exbt.9. She identified another certified copy of sale-deed executed by Panna Lal Ghosh as attorney in favour of Bhibas Das vide sale-deed No. 1-452 dated 22.04.2015 marked as Exbt.10. She identified copy of sale-deed executed by Panna Lal Ghosh as attorney in favour of Chanchal Kr. Kar vide deed No.1-451 dated 22.04.2015 marked as Exbt.11. She identified another certified copy of sale-deed executed by Panna Lal Ghosh as attorney in favour of Bhibash Kanti Das vide deed No.1-450 dated 22.04.2015 marked as Exbt.12. Further she identified certified copy of sale-deed executed by Panna Lal Ghosh as attorney in favour of Mrinal Kanti Paul and others vide deed No.1-448 dated 22.04.2015 marked as Exbt.13. She identified certified copy of sale-

deed executed by Panna Lal Ghosh as attorney in favour of Binanda Debnath vide deed No.1-453 dated 22.04.2015 marked as Exbt.14. She identified certified copy of sale-deed executed by Panna Lal Ghosh as attorney in favour of Milan Kanti Das vide deed No.1-447 dated 22.04.2015 marked as Exbt.15, she identified certified copy of sale-deed executed by Panna Lal Ghosh as attorney in favour of Gopandra Ch. Gope vide deed No.1-455 dated 22.04.2015 marked as Exbt.16. She identified certified copy of sale-deed executed by Lila Choudhury as attorney in favour of Sajal Bhadra vide deed No.1-226 dated 26.08.1986 marked as Exbt.17. She identified certified copy of rectification sale-deed executed between Panna Lal Ghosh @ Manik and others as attorney in favour of Anil Baran Deb Choudhury vide deed No.1-1900 dated 30.06.1981 marked as Exbt.18, she identified another certified copy of rectification sale-deed executed in between Panna Lal Ghosh @ Manik and Girija Kr. Bhadra vide deed No.1-1901 dated 30.05.1981 marked as Exbt.19. She identified certified copy of rectification sale-deed executed in between Panna Lal Ghosh @ Manik and Sudhir Kr. Banerjee vide deed No.1-1902 dated 30.05.1981 marked as Exbt.20 and she identified certified copy of sale-deed executed in between Panna Lal Ghosh @ Manik and Rajendra Ch. Deb vide deed No.1-1899 dated 30.05.1981 marked as Exbt.21.

During cross-examination by the contesting respondent-defendants she stated that Exbt.6 to 14 were

registered as per judgment and direction of Hon'ble High Court of Tripura passed in connection with case No.W.P(C) 48 of 2003 and there is no signature of her in any of the certified copies exhibited.

12. The principal defendant No.1 of the original suit being the younger brother of the respondent-plaintiff in original contested the suit by filing written statement. He also appeared to the Learned court below as a witness. In his examination-in-chief in affidavit he has asserted the grounds stated in his defence filed in the written statement. But in course of cross-examination by the respondent-plaintiff he deposed that he has got power of attorney executed by his sisters in his favour in this suit. He further deposed that in that power of attorney he was empowered to depose as a witness. He further deposed that besides the instant suit land the other land in suits related to their paternal estates and records are being prepared in the names of different persons by virtue of different transactions. He further deposed that he did not sell any land from their joint property in between 1973 and 1999. He admitted that he sold some land which fell into the shares of his sisters by virtue of their power of attorney due to the result of family arrangement. He could not say the exact quantum of land sold by him. He further deposed that once upon a time in the year 1970 he also executed Power of Attorney in favour of Nani Gopal Ghosh and prior to that he did not take any paternal estate and he was not aware of

the Power of Attorney executed in the year 1970. He also deposed that after the death of his father so many litigations cropped up and most of the cases were pending and those cases he was involved but he did not contest those cases by engaging any lawyer. His father had Taluk and Jote land. He deposed that litigations were pending with the property of his mother and the property of his mother was recorded in her name. In his written statement he did not give particulars of the estate left by his mother. At the time of death of his father, his two sisters remained unmarried and the expenses of the marriage went from the joint family property. As Nani Gopal Ghosh did not furnish account of the joint family income so they filed account suit. In the year 1973 the power of attorney was executed by them in favour of Nani Gopal Ghosh was cancelled and before that they did never demand account of joint family income to him. Again he deposed that **he has got no objection in causing partition.**

13. DW-1, Rana Dasgupta in his cross-examination by way of affidavit deposed that he is the defendant No.5(a) of the suit and he is one of the legal heirs of his mother Rama Rani Dasgupta (since dead) who was the eldest daughter of late Akhil Chandra Ghosh. He further deposed that she cancelled the Power of Attorney executed in favour of Panna Lal Ghosh and Nani Gopal Ghosh on 27.07.1974 and as such the written statement dated 15.03.2000 filed by Panna Lal Ghosh on behalf of his mother was without any

authority and beyond knowledge of his mother. He also deposed that his mother late Rama Rani Dasgupta was the exclusive owner and possessor of land measuring 0.820 acres recorded under Khatian No.4399 of mouja Kailashahar appertaining to R.S. Plot No.4124, 4125, 4126, 4177/10386, 4128 by virtue of registered deed of gift No.1-2917 dated 07.07.1977 executed by late Priya Bala Ghosh i.e wife of late Akhil Chandra Ghosh from her share of land inherited after the death of late Akhil Ch. Ghosh and accepting the gift by his mother entered into the possession of the said land and by presenting deed of gift for registration while it was attested by Nani Gopal Ghosh, Pannalal Ghosh and Rakhal Ch. Majumder and he inherited the said gifted land with his other sisters after the death of his mother where he has got his homestead and building over the said land. ROR of the same is standing in the name of his mother. He further deposed that the plaintiff wrongly included the said land in the suit land recorded under Khatian No.804/5 and 805/6 of mouja Kailashahar under "A" schedule land of the plaint which could not be the subject matter of partition. This witness further stated that his mother jointly with Smt. Rekha Biswas , late Gita Rani Majumder, late Purnima Sinha executed the registered deed of relinquishment dated 09.02.1965 in respect of all the properties left by late Akhil Chandra Ghosh which was never cancelled by any of the executants of the said deed. As such, it is still in force and was acted upon and most of the

khatians are still standing in the name of late Akhil Ch. Ghosh as the 'Nadabi' was acted upon. He also deposed that he could identify the signatures of his mother over the said deed and also could identify the signature of his father as one of the attesting witness of the said deed. But none of the executants of the said deed except Rekha Biswas is alive. He also deposed that the plaintiff Nani Gopal Ghosh and late Panna Lal Ghosh obtained a registered Power of Attorney from all legal heirs of late Akhil Ch. Ghosh for management of the properties and for convenience on 09.02.1965 some properties were sold on the strength of the Power of Attorney by Nani Gopal Ghosh for marriage of Saraswati Ghosh (Biswas) and Lila Choudhury while they had been residing in the family of Nani Gopal Ghosh.

From the year 1973 Panna Lal Ghosh had been managing all the properties left by late Akhil Chandra Ghosh except "D" schedule land which fell to the exclusive share of Nani Gopal Ghosh by virtue of registered deed of dissolution of partnership dated 14.10.1974 while he came into exclusive possession of entire "D" schedule land on 01.05.1973 to the knowledge of all the heirs of late Akhil Chandra Ghosh and started to possess the said land as exclusive owner. Further this witness stated as stained relation and dispute cropped up between Nani Gopal Ghosh and Panna Lal Ghosh his mother along with Gita Rani Majumder and others executed the registered deed of gift on 22.07.1976 in respect of "D" schedule land in which Nani

Gopal Ghosh was already in physical possession of land any running his Petrol Pump and Kerosene godown. Pannalal Ghosh subsequently manufactured some anti-dated gift deeds on the basis of Power of Attorney but he never came into possession of land under the purported gift deeds nor his deeds were acted upon in any manner. He further deposed that he can identify the signature of his mother on the said gift deed dated 22.07.1976. He again stated that the finally published khatian of the "D" schedule land was also recorded in the name of Nani Gopal Ghosh finding him exclusive owner and possessor "D" schedule land. He further deposed that Pannalal Ghosh during his life-time and management of properties left by Akhil Chandra Ghosh on the strength of registered Power of Attorney dated 09.02.1965 beyond the knowledge of legal heirs of late Akhil Chandra Ghosh sold out valuable land measuring 27.10 acres of mouja-Pabiacherra left by late Akhil Ch. Ghosh in the year 1981 and all the lands were acquired by the Government for construction of Railway line before filing of the suit. Again he deposed that Pannalal Ghosh during pendency of the suit as attorney of his sisters except his mother sold out most valuable land of Kailashahar town measuring 0.234 acres by registered sale-deeds in the year 2002 which is front portion of "A" schedule land under Khatian No.804/1 and 804/2 of mouja Kailashahar. Thus, Pannalal Ghosh had left no share of properties and L.A. Collector made awards in L.A. Cases in the name of all legal

heirs of late Akhil Ch. Ghosh in the khaians of acquired land were standing in his name, but in need of money on the request of Nani Gopal Ghosh and Panna Lal Ghosh his mother and others received compensation money on compromise.

14. Before the court on oath he further stated late Priyabala Ghosh wife of late Akhil Ch. Ghosh was his grandmother i.e mother of his mother. She gifted one plot of land measuring a bit more than 2 kanis falls under A-schedule land described in the plaint. He stressed upon his claim to that particular plot of land. Again he stated that he has got no other claim apart from this in connection with this suit. His mother Rama Dasgupta died on 05.02.2005. He was acquainted with the hand writing and signature of his mother and identified her signatures in the gift deed dated 22.07.1976 executed by his mother and others in favour of Nanigopal Ghosh marked as Exhbt. 3/2, 3/3, 3/4, 3/5, 3/6 & 3/7. He also identified the signature of his mother in the deed of relinquishment in two pages marked Exbt.5/1 and 5/2. He further stated that he was acquainted with the signature of his father who expired on 26.08.1991. He also identified the deed of relinquishment marked as Exbt.5/3. The "D" schedule land described in the plaint was under the possession of Nanigopal Ghosh since 1973. One dispute arose in between Panna Lal Ghosh and Nani Gopal Ghosh. He did not submit any written statement in this suit. He further deposed that in the year 2000 his mother did not

execute any Power of Attorney in favour of Panna Lal Ghosh. In the year 1965 his mother and others gave one Power of Attorney to Pannalal Ghosh and Nani Gopal Ghosh for the purpose of conducting the suits left pending by his grand-father Akhil Ch. Ghosh. The said Power of Attorney was cancelled by his mother in the year 1974. He also stated that he has no claim over "D" schedule land and the deed of relinquishment was never cancelled by his mother. After execution of the deed of the relinquishment his mother or her sisters did not individually sale any land left by Akhil Ch. Ghosh. In the year 1981 Pannalal Ghosh sold 27 acres of land left by Akhil Ch. Ghosh and in the year 2002 again he sold out 12/14 gandas of land which is adjacent to Girls' School, Kailashahar. There is one case pending in the Revenue Court regarding ceiling in respect of the property of Akhil Ch. Ghosh. He and his mother did not receive any sale proceeds of the land sold by Pannalal Ghosh. A considerable part of the property was acquired but the benefit of the same was not given to his mother.

In the cross-examination by defendant Surajit Majumder he deposed that he was not present when Exbt.3 and Exbt.5 were executed. After the death of his mother he himself and her other legal heirs were not substituted and they were not made party of the suit. There are two suits pending in respect of property of Akhil Ch. Ghosh before the Hon'ble Supreme Court of India. He submitted two affidavits

in respect of those two suits. Nothing more came out relevant.

15. DW-2 Surajit Majumder in his examination-in-chief in affidavit submitted that his mother defendant No.7 Gita Rani Majumder was the party of this suit and after her death her legal heirs were substituted as defendant 7(b to e). Said Gita Rani Majumder filed one joint written statement along with other defendants on 15.03.2000. After the death of Akhil Ch. Ghosh the plaintiff became Karta of the said family and he manufactured the so called registered deed of relinquishment on 09.02.1965. But the deed of relinquishment was never acted upon as the plaintiff himself accepted their registered deed of General Power of Attorney on the same date i.e. 09.02.1965 for administration of their joint property and conducting their litigations etc. He also stated that the plaintiff sold out several joint properties on their behalf without their consent. The deed of relinquishment never acted upon and it is evident from several cases such as Civil Misc (LA) 38 of 1982 in the court of Ld. District Judge, Kailashahar and in Civil Misc. (LA) 01 of 1998 in the court of Ld. District Judge, Kailashahar in which Gita Rani Majumder was made party. Said plaintiff made solemn statement on oath in proceeding relating to the property in Civil Misc. LA 38 of 1982 that all the legal heirs of late Akhil Ch. Ghosh including Gita Rani Majumder had equal shares in the properties of late Akhil Chandra Ghosh. So according to him the relinquishment

deed dated 09.02.1965 was not acted upon. He further stated that the plaintiff himself stated that the defendants No.3, 6 and 8 put his signature as executants and the gift deed dated 22.07.1976 was prepared by plaintiff in favour of himself. The plaintiff also admitted this fact in his cross-examination on 25.03.2008. The executants and the so-called recipient of that deed seems to be the same person and it was made collusive which according to this witness cannot be made effective in law. The defendant No.4 herself and defendants No.3, 6 and 8 through their appointed attorney Pannalal Ghosh executed one gift deed in favour of their mother Priyabala Ghosh on 21.07.1976. Later on, Priyabala Ghosh executed another gift deed bearing No.1-2951 dated 14.07.1977 in favour of Pannalal Ghosh. So according to this witness the plaintiff cannot become the exclusive owner of the "D" schedule land. He further deposed that on 26.02.2014 the plaintiff in collusion with his son fraudulently mutated "D" schedule land in his name just placing preliminary decree of TS 38 (P) of 1999 and collusive gift deed dated 22.07.1976. A new khatian was posted in the name of Nani Gopal Ghosh bearing No.5809 (Petrol Pump) and 229/1 (Kerosene godown). He also stated that the plaintiff has intentionally suppressed the potential facts as per law and rule of ceiling limit under the TLR & LR Act, 1960 and the plaintiff has already reached his optimum as per decision of the competent Revenue authority vide order dated 08.06.1976 passed in Ceiling

Case No.01 of 1976 and this order was passed by the then District Collector S. Narayanan. The plaintiff at that time having four members (one wife, two daughters and one son) and the same still reduced later on with the death of wife and marriage of two daughters and he cannot held more than 10 acres of land by him but it was observed in the order that he was holding 10.212 acres of land.

16. In support of his examination-in-chief he also relied upon some documents which were marked as exhibits. The certified copy of decree dated 31.08.1988 in TS 01 of 1988 passed by the Learned District Judge, North Tripura, Kailashahar containing 19 sheets of paper marked as Exbt.A as a whole (with objection). He submitted original registered gift deed No.1-3668 dated 28.08.1976 executed on 21.07.1976 in three sheets marked as Exbt.B (with objection). He also relied upon another registered gift deed No.1-2951 dated 14.07.1977 executed on 14.07.1977 in three sheets which were marked as Exbt.C (with objection). He submitted original Power of Attorney dated 18.02.2016 executed by Smt. Saraswati Biswas in his favour in seven sheets marked as Exbt.D (with objection). He also submitted certified copy of registered general Power of Attorney dated 10.10.2012 executed by Smt. Rekha Biswas in favour of Ashok Lal Gon in two sheets marked as Exbt.E (with objection), submitted computerized copy of khatian No.5809 of mouja-Kailashahar marked as Exbt.F, submitted computerized copy of khatian No.229/1 of mouja-

Kailashahar marked as Exbt.G, submitted certified copy of order sheet of revenue proceeding No.9 of 1976 dated 08.06.1976 in three sheets marked as Exbt. H. H/1 and H/2 (with objection), submitted certified copy of written statement filed in L.A. Case No.1(Kai)/1981 in five sheets marked as Exbt.I (with objection), submitted certified copy of evidence of petitioner in L.A. Case No.38/1982 in five sheets marked as Exbt.J (with objection), also submitted certified copy of judgment & decree passed in L.A. Case No.38 of 1982 dated 11.10.1985 in twenty two sheets marked as Exbt.K (with objection), submitted certified copy of order sheet dated 26.02.2014 in MR. Case No.169 of 2014 marked as Exbt.L (with objection), also submitted report of mutation in MR Case No.169 of 2014 in two sheets which were marked as Exbt. M & M/1(with objection), submitted certified copy of order sheet dated 26.02.2014 in MR Case No.164 of 2014 marked as Exbt.N (with objection), submitted report of mutation in MR case No.164/2014 marked as Exbt.O (with objection) and submitted certified copy of mutation notice in MR case No.20140164 marked as Exbt.P (with objection).

During cross-examination by the plaintiff he was confronted with the registered gift deed No.1-3307 under Exbt.3 series to which he admitted that the land under said gift deed relates to the 'D' schedule land of present suit. But he could not surely say that whether the signatures in the said gift deed are/were of his mother Gita Rani Majumder or

not. He identified the signature of his father in the said gift deed as attesting witness and identified the same marked as Exbt.3/1. He was confronted with registered deed No.IV-21 dated 09.02.1965 to which he admitted that it is relinquishment deed and was marked as Exbt.5 (two sheets). But he could not surely say whether those were the signatures of his mother in the said relinquishment deed or not. He also stated that the deed was executed before his birth. He further stated that probably in the year 1972 his aunt Saraswati Biswas got married. Later on, his another aunt Lila Choudhury got married but he could not say the exact time and that time Akhil Chandra Ghosh was not alive. His mother Gita Rani Majumder died on 13.08.2009. He also deposed that his brothers and sisters are not the legal heirs of deceased Pannalal Ghosh. He further stated that probably no Power of Attorney was executed by his mother in favour of Pannalal Ghosh in connection with the present case and could not say whether Saraswati Biswas had executed any Power of Attorney or not in favour of Pannalal Ghosh. They have not submitted any written statement for themselves as the legal heirs of Gita Rani Majumder. His mother did not step into the witness box for deposing as witness. His aunt Saraswati Biswas also did not step into the witness box to depose as a witness. He further stated that when the present suit was filed that time all the brothers and sisters had their own family having separate mess. Again he stated that once upon a time there was no

good relation in between Nani Gopal Ghosh and Pannalal Ghosh and submitted that he did not submit any counter-claim on the basis of relinquishment deed. He also could not say as to whether his mother executed any gift deed on 22.07.1996 or not. He could not say as to whether the gift deed dated 22.07.1976 was cancelled or not. He could not say from which point of time Nani Gopal Ghosh was occupying "D" schedule land. He could not say anything about partnership deed in between Nani Gopal Ghosh and his two brothers. He has further submitted that Pannalal Ghosh had one Petrol Pump at Kumarghat, Nani Gopal Ghosh had one Petrol Pump at Kailashahar and Jaharlal Ghosh had one Petrol Pump at Kamalpur. He also could not say that whether Pannalal Ghosh was looking after the properties or not except Petrol Pump at Kailashahar. He was confronted with the certified copy of khatian Nos.229/1 and 5809 of mouja-Kailashahar to which the witness admitted that the facts and also submitted that they have submitted the same documents and the documents were marked as Exbt.6 & 7, but volunteered that they have challenged the aforesaid khatians before the Revenue Authority. He had submitted that they have not submitted any document to show that said khatians have been challenged before the Revenue Forum. He also submitted that very recently a building has been constructed over 'D' schedule land but he could not say who constructed said building. Nani Gopal Ghosh was occupying the 'D' schedule land. But he could

not say specifically from which point of time said Nani Gopal Ghosh was possessing 'D' schedule land. Again he stated that since 15/16 years Nani Gopal Ghosh was running his business at Kailashahar over 'D' schedule land. He could not say whether any step was taken for mutation of 'D' schedule land during revisional survey operation by his mother or by Pannalal Ghosh. He has no claim over 'B' schedule land. He could not say as to whether any other has made any objection to the revenue authority about mutation of 'D' schedule land except him. He could not say whether Pannalal Ghosh had sold out more than 60% of properties left out by Akhil Ch. Ghosh or not. Again he stated that Pannalal Ghosh was also the attorney of his mother and as per Power of Attorney Pannalal Ghosh had sold out certain landed property of 'A' schedule land. He also stated that sale-deeds had been registered during pendency of the suit and there are several buildings standing on the said land and those were the in front side of 'A' schedule property. They did not submit any document showing the receipt of award in LA proceeding and further stated that on the basis of Power of Attorney dated 09.02.1965 several litigations were cropped up. One civil appeal is pending before the Hon'ble Supreme Court in reference to the decree passed in T.S. 01 of 1998. He also stated that Saraswati Biswas and Lila Choudhury are residing outside the State of Tripura and his brother Monojit Majumder was residing in Tripura. He has further stated that there is one K. Oil depot at

Kailashahar market(west) situated within 'D' schedule land run by Nani Gopal Ghosh. Again he denied that the defence of the plaintiff that Pannalal Ghosh on the basis of influential power of attorney had sold out certain property of Akhil Ch. Ghosh. He has further stated that Power of Attorney dated 09.02.1965 was executed both in favour of Nani Gopal Ghosh and Pannalal Ghosh.

17. DW-3, Atanu Roy was working as Computer Operator in the office of Sub-Registrar, Kailashahar and he appeared before the court being deputed by Sub-Registrar. He identified the certified copy of registered sale-deed No.1-3103 dated 30.04.1968 in between Satyendra Kumar Debroy in one side and Nani Gopal Ghosh and others in another side. He identified the said certified copy marked as Exbt.Q (with objection). He had identified another certified copy of registered sale-deed No.1-3104 dated 30.04.1968 in between Smt. Basanti Bala Debroy in one side and Nani Gopal Ghosh and others in other side. After comparison it was marked as Exbt.R (with objection). He identified certified copy of registered sale-deed No.1-4852 dated 21.12.1970 in between Sri Makhanlal Mondal in one side and Nani Gopal Ghosh and others in other side marked as Exbt.S (with objection). He identified certified copy of registered sale-deed No.1-3152 dated 22.05.1970 in between Sri Abhinash Deb in one side and Nani Gopal Ghosh and others in other side marked Exbt.T (with objection). He identified certified copy of registered sale-

deed No.1-149 dated 16.01.1967 in between Nani Gopal Ghosh in one side and Hashmat Ali and others in other side marked as Exbt. U(with objection). He identified another certified copy of registered sale-deed No.1-152 dated 16.01.1967 in between Nani Gopal Ghosh in one side and Sekander Ali and others in other side marked as Exbt.V (with objection). He identified certified copy of registered sale-deed No.1-2126 dated 18.09.1992 in between Subodh Kumar Majumder and other in one side and Ajit Kumar Majumder in other side marked as Exbt.W (with objection). Further he identified certified copy of registered sale-deed No.1-1529 dated 21.10.1998 in between Nani Gopal Ghosh in one side and Jyotsna Sarkar in other side marked as Exbt.X (with objection). During cross-examination he stated that it was not possible on his part to say who had written the contents of certified copies of aforesaid documents and also admitted that the certified copies were issued before his joining at Kailashahar.

18. In course of hearing of argument Learned counsel for the appellants submitted that Learned court below failed to appreciate Exbt.-5 and the exhibited documents at the instance of DW-2 and came to an erroneous finding that Exbt.5 was duly acted upon. Learned counsel further submitted that the Learned court below in deciding the suit did not consider aforesaid exhibits Q R S T U V W X by which the plaintiff had sold out a considerable portion of the land which was part of suit land but the

Learned court below did not consider those exhibited documents and came to an erroneous observation and ultimately decreed the suit. Referring the evidences of the parties Learned counsel appearing for the appellants submitted that the Learned court below at the time of deciding the suit could not properly appreciate or determine the points as framed by the High Court in delivering the judgment in connection with RFA 06/2008 and ultimately came to an erroneous finding for which interference of this court is required and prayed for setting aside the judgment passed by the Learned Trial Court.

19. On the other hand, Learned counsel Ms. A. Debbarma appearing for the respondent-plaintiff No.1 has submitted that the Learned Trial Court below as per the directions given in case No.RFA 06/2008 took evidence on record of the witnesses and after elaborate discussions of all the points including the evidence on record and considering all aspects has reasonably and rightly delivered the judgment and accordingly preliminary decree was passed and there is no scope to interfere with the judgment at this stage and prayed for dismissal of the appeal with costs and relied upon some decisions.

20. We have heard arguments of both the sides and gone through the record of the Learned court below. As already stated the respondent-plaintiff No.1 Nani Gopal Ghosh filed the partition suit against the defendant Panna Lal Ghosh (since dead), Jaharlal Ghosh (since dead) and

also against his sisters. Presently all the sisters are not alive and their legal heirs have been substituted. In the plaint the respondent-plaintiff No.1 given four schedules such as A B C D. According to the original respondent-plaintiff (since dead) out of his six sisters the defendant Nos.5-8 i.e. four sisters namely Rama Rani Dasgupta, Rekha Biswas, Gita Rani Majumder and Purnima Sinha had executed one deed of relinquishment (Exbt.5) and gave up all rights and claims upon the property left by their father Akhil Chandra Ghosh (since dead) inherited by them. It was the further case of said Nani Gopal Ghosh that he himself, his brother defendant Pannalal Ghosh, Jaharlal Ghosh, defendant No.3 Saraswati Ghosh (Biswas) and defendant No.4 Lila Rani Ghosh (Choudhury) are the only persons entitled for share of the property left by their deceased father Akhil Ch. Ghosh including the share left by their mother Priabala Ghosh (since dead) and the said property has been described in Schedule 'A' of the plaint.

21. It was the further case of the respondent-plaintiff that the land as described in the schedule-B of the plaint was purchased by him along with two other brothers and it was not their ancestral property. Further out of the property as mentioned in the schedule-A of the plaint some portions were sold by his brother Pannalal Ghosh (since dead) for himself and on behalf of his sisters by dint of a Power of Attorney and those properties has been described in schedule-B of the plaint. Apart from that there was another

property consisting of land having one petrol pump and kerosene go-down. It was the admitted position that the ancestral business of the parties were divided amongst those three brothers and initially it was a part of their joint business but upon division amongst the three brothers the business at Kailashahar went in favour of the respondent-plaintiff No.1 Nanigopal Ghosh whereas business of similar nature was given to Pannalal Ghosh at other places i.e. Kanchanpur and Kumarghat and business at Kamalpur was given to their brother Jaharlal Ghosh and those property is described in schedule 'D' of the plaint. In RFA No.06 of 2008 the High Court of Tripura observed that defendant Jaharlal Ghosh of the original suit filed written statement supporting the case of his brother plaintiff Nani Gopal Ghosh, now the plaintiff-respondent (since dead). The High Court of Tripura further observed that the purchasers of C-schedule property were made proforma-defendants and some of them appeared claiming to be *bona-fide* purchasers of the suit property for valuable consideration and their rights should not be affected. The principal defendant of the original suit Pannalal Ghosh (since dead) totally denied the execution of deed of relinquishment and it was submitted that the said deed was never executed and it was never acted upon. Rather he took the plea that those four sisters who are the parties of the deed of relinquishment have their equal rights in the property left by their property Akhil Ch. Ghosh and as

such the plaintiff Nani Gopal Ghosh along with other defendants are/were entitled to 1/9th share of the property.

22. Learned court below as per direction of the High Court took evidence and finally gave the judgment. It was the case of the defendant Surajit Majumder that deed of relinquishment was a forged one but the defendants did not take any step for cancellation of the document. The plaintiff to support of his case has produced that document (Exbt.5) in original from his custody which was more than 30 years old and Learned court below came to an observation that in view of Section-90 of the Evidence Act there was no scope to draw any adverse presumption of the document being more than 30 years old. The respondent-plaintiff exhibited said document i.e. deed of relinquishment through the evidence of DW-2. Furthermore, Rana Dasgupta the respondent-defendant No.5(4) went to the witness box to depose as a witness. He proved the signature of his mother Rama Dasgupta who happened to be the sister of said Nani Gopal Ghosh and Pannalal Ghosh being one of the executant of said relinquishment deed in question. So considering the evidence on record Learned court below came to the observation that the burden of proof that the said document was never executed lies to the defendants and moreso, no evidence whatsoever was adduced by the contesting defendants to prove that said document was a forged one and none of the sisters even during their lifetime or their legal heirs came forward challenging the validity of the said

document and sought for its cancellation. Even no suit under Specific Relief Act was filed challenging the validity of the said question. So in our considered view Learned court below rightly came to the conclusion that the relinquishment deed (Exbt.5) was duly executed by the parties i.e. some of the contesting defendants. Secondly, regarding application of the said deed of relinquishment Learned court below relied upon the evidence of PW-3 Rana Dasgupta who is one of the heirs of the executants Rama Dasgupta came before the court and on oath stated that said deed of relinquishment was acted upon. Similarly the legal heirs of another sister i.e. the defendant Purnima Sinha by filing written statement on 27.07.2016 submitted that the deed in question was acted upon. PW-3 also in course of examination deposed before the court that after execution of the deed of relinquishment his mother and other sisters did not sell any property left by their deceased father Akhil Ch. Ghosh and that part of evidence was also not challenged by the contesting defendants during cross-examination. DW-2 in course of his examination did not specifically deny that the said deed of relinquishment was not acted upon.

23. Learned court below after receipt of the record from the High Court recorded the evidence of DW-2 and PW-3 and through whom the said deed was executed and through their evidence signature of one of the party was proved in the case. As already stated that although the

sisters of respondent-plaintiff filed their written statement denying the execution of deed of relinquishment but to substantiate their contention they did not appear before the court to support their version in their written statement. The defendants took the plea that Nani Gopal Ghosh in most of the litigation impleaded his sisters indicating that the deed of relinquishment was not acted upon and after execution of deed on so many occasions they gave Power of Attorney in favour of their other brothers which proved that the deed in question was acted upon and after the suit being remanded back the Learned Trial Court recorded the evidence of DW-2 and also recorded the statement of evidence of one Atanu Roy to exhibit some registered sale-deeds alleged to be executed by Nani Gopal Ghosh in favour of different persons which were objected by the respondent-plaintiff.

DW-2 although relied upon a series of documents but those documents were marked with objection from the other side and those documents were gift deed, sale deeds and Power of Attorney. But neither the scribe, any attesting witness, or any of the executants have been brought into the witness box to prove those documents. Just by mere marking of documents as an exhibits it is not sufficient to prove the contents of any documents when there is objection from the other side. The contesting defendants in the original suit though proved Exbt. Q, R, S, T, U, V, W and X i.e. the sale-deeds executed by the respondent-plaintiff in favour of different persons. But the contesting defendants

before the Learned Trial court could not prove that those deeds were executed on the basis of Power of Attorney given by the sisters subsequent to the execution of deed of relinquishment and it is also not proved that which plots were sold by execution of those deeds and said Power of Attorney was also not proved for exhibit by the defendants before the Learned Trial Court.

24. In pursuance of the direction of the High Court, Learned Trial Court issued summons upon all the sisters but none of the sisters appeared. Although some of them after receipt of summons engaged counsels on their behalf but in course of recording of the evidence none of them appeared to substantiate their defence. It is the settled position law that if a party to the suit does not appear to the witness box to substantiate his case on oath and does not offer himself or herself to be examined by the other side in that case an adverse presumption can be drawn up against them. Rather before the Learned trial court the respondent-plaintiff proved deed of relinquishment and legal heir of one of the contesting defendant Purnima Sinha in her written statement specifically admitted that the relinquishment deed was acted upon. The contesting defendants to counter the same failed to prove or produce any Power of Attorney as alleged by them. Although they relied upon some registered sale-deeds but those were marked under objection and this does not lead to mean that the deed of relinquishment was not acted upon.

25. Thus after considering all aspects it appears that Learned Court below rightly came to the conclusion that the relinquishment deed in question was acted upon and the four sisters had no share in the property left by their deceased father. As observed by Learned Trial Court the relinquishment deed was executed on 09.02.1965 and the dissolution of partnership was executed on 14.10.1974 and by registered deed of gift the respondent-plaintiff No.1 transferred the share of defendant No.3, 6 and 8 in his own name which was executed on 22.07.1976 and as the relinquishment deed was decided to be valid and acted upon. So the sisters concerned were bound by the subsequent deed of dissolution of the partnership. Except the aforesaid four sisters the rest two other sisters never appeared before the court nor challenged the deed of dissolution of partnership or the amicable partition of the business properties amongst the brother.

The defendant in his written statement admitted the claim of respondent-plaintiff No.1 over 'D' schedule land and at the same time the heirs of defendant No.8 Purnima Sinha by written statement dated 27.07.2016 admitted the said fact. The witness Surajit Majumder DW-2 and Rana Dasgupta PW-3 in course of their examination before the court did not say anything showing their claim in respect of 'D' schedule land. The deed of dissolution of partnership in original was produced and exhibited before the Learned Trial Court along with the registered deed of gift and the

signature of one of the defendant Rama Rani Dasgupta (since dead) was duly proved by PW-3, one of the executants and attesting witness. Exbt-D and Exbt.-E are two power of attorneys executed by the sisters and in those power of attorneys the sisters did not raise any claim over the petrol pump and kerosene go-down at Kailashahar which is within 'D' schedule land and in fact they never did any claim in respect of 'D' schedule land. The contesting defendant Surajit Majumder although relied upon Exbt.B and Exbt.C i.e. the original gift deed on the basis of which Pannalal Ghosh (since dead) on the strength of Power of Attorney executed by the defendants No.3, 6, 8 and 4 transferred their share in favour of their mother and their mother subsequently transferred her total share in his favour i.e. (Pannalal Ghosh) through Exbt.C over 'D' schedule land. But none of the sisters before the Learned Trial court led their claim against the partition of business amongst the three brothers. Thus Learned Trial Court rightly came to the finding that the 'D' schedule land is the personal property of the respondent-plaintiff and not a joint business.

26. Finally Learned Trial Court below came to the finding that in respect of land as mentioned in schedule-A, sisters Rama Rani Dasgupta, Rekha Biswas, Gita Rani Majumder and Purnima Sinha by execution of deed of relinquishment left their properties and since it was decided that the deed of relinquishment was found to be valid. So

the remaining sisters Saraswati Biswas and Lila Rani Choudhury have/had share in the land as mentioned in the schedule-A. In the meantime Pannalal Ghosh, principal-defendant died leaving no class-1 heir. So his property will get devolved amongst the respondent-plaintiff and the sisters surviving. DW-2 Surajit Majumder in his cross-examination specifically stated that he is not the legal heirs of Pannalal Ghosh but he produced those some documents after his death and in the process of proving those documents he did not brought any executants or any scribe into the witness box, neither prove any of the signature of the witness. Even the Sub-Registrar was not produced. Moreso, finally published khatian was found in the name of the respondent-plaintiff No.1 in respect of land as mentioned in schedule-D who appears to have been possessing the same since 1973. From the oral evidence it appears that the respondent-plaintiff was all along in possession of the land in question as mentioned in schedule 'D' and DW-2 specifically stated that the respondent-plaintiff was possessing the suit land since long back and running business therein and DW-2 could not say the position prior to that. Thus the plaintiff-respondent could prove his possession over 'D' schedule land since long back and till today none of the contesting defendants could challenge his possession, even the gift deed dated 22.07.1976. As the Learned court below held that the relinquishment deed is held to be valid and the said four sisters will have no share

therein. So the plaintiff-respondent defendant Pannalal Ghosh and Jaharlal Ghosh succeeded by defendant No.2, Saraswati Biswas and Lila Rani Choudhury will have 1/5th share in each of the A-schedule land.

27. So finally Learned Trial court after hearing both the sides came to the conclusion that the entire property should be divided giving 1/5th share to the respondent-plaintiff Nani Gopal Ghosh (now his heirs) and C-schedule property as per direction of the High Court should be deducted from the share of Pannalal Ghosh as he sold the same from his share and the sisters on behalf of whom he sold the property and after giving his 1/5th share to the respondent-plaintiff (now his heirs) and deducting the property sold. The remaining land is to be distributed amongst the defendant No.1, 2(b), 3 and 4 and the share of defendant No.1 (Pannalal Ghosh) should get devolved amongst respondent-plaintiff (now legal heirs), defendants No.3 and 4 (sister Purnima Sinha died after the record was remanded back and her name was deleted as per order dated 27.06.2016 and sister Rekha Biswas relinquished her rights over the property of her father).

28. So after hearing the parties and going through the arguments and counter arguments filed, it appears to us that Learned court below rightly delivered the judgment and decree dated 06.04.2017 in the suit and accordingly drawn up preliminary decree and we do not find any cogent grounds to interfere with the same.

29. In the result, the appeal filed by the present appellants is hereby dismissed on contest with costs being devoid of merit. The judgment and decree passed by the Learned Civil Judge, Senior Division, Kailashahar, Unakoti District on 06.04.2017 is hereby upheld and accordingly it is affirmed. Pending application, if any, also stands disposed of.

Draw the decree accordingly and send down the LCRs along with a copy of this judgment.

JUDGE

JUDGE



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