

**HIGH COURT OF TRIPURA
AGARTALA
RSA No.11 of 2024**

Bhupaljit Rajkumar and his 1st wife namely Sabitri Singha (Rajkumari) having died, their daughter and legal representative namely:-

**Smt. Prabhavati Rajkumari (Singha)
@Smt. Rajkumari Prabhavati Singha
W/O Late Bhupaljit Rajkumar
Of Jail Road, P.O. & P.S.-Dharmanagar
District-North Tripura, Age- 41 years**

----- Appellant-Plaintiff

Versus

Sonatanjit Rajkumar and his wife namely Chaubi Debi (Singha) having died, their sons and daughters namely:-

- 1. a) Smt. Purnima Singha,**
W/O Lt. Tutendrajit Rajkumar
Vill & P.O.-Dewanpasha, P.S-Dharmanagar
Dist-North Tripura.
- b) Smt. Popi Rajkumari**
D/O Lt. Tutendrajit Rajkumar
W/O Sri Champu Kumar Singha
Vill-Dewanpasha (Near Mantala)
P.O.-Dewanpasha, P.S.-Dharmanagar
Dist-North Tripura.
- c) Smt. Tapa Rajkumari**
D/O Lt. Tutendrajit Rajkumar
W/O Sri Gautam Singha
Of Rajbari (Near Forest Office)
P.O.-Rajbari, P.S.-Dharmanagar
Dist-North Tripura
- 2. Sri Harendrajit Rajkumar,**
S/O- Lt. Sonatanjit Rajkumar,
Of Vill & P.O.-Dewanpasha
P.S.-Dharmanagar,
District-North Tripura.
- 3. Smt. Ganga Rajkumari (Singha),**
W/O- Sri Chandramani Singha,
D/O-Lt. Sonatanjit Rajkumar,
Of Jail Road, P.O. & P.S.-Dharmanagar,
Dist-North Tripura.
- 4. Smt. Jamuna Rajkumari (Singha),**
W/O Sri Dilip Kumar Singha
D/O Lt. Sonatanjit Rajkumar
Vill- Mairang Gaon, P.O-Bhurunga
P.S. -Patharkandi,
Dist- Karimganj(Assam).

----- Respondent-Principal Defendants

Ranjit Rajkumar having died, his legal heir, sons and daughters namely:-

- 5. a) Smt. Sakhi Singha,**
W/O Lt. Kirtijit Rajkumar
Of Jail Road (Mandop Para), Ward No.18
P.O. & P.S.-Dharmanagar
Dist-North Tripura.
- b) Smt. Nandita Rajkumari**
D/O Lt. Kirtijit Rajkumar
W/O Sri Ashok Kumar Singha
Of Vill & P.O-Gossaipur Part 1,
P.S.-Udharbond, Pin-788030
State-Assam, District-Kachar,
Present address-
Of Jail Road (Mandop Para), ward No.18
P.O & P.S.-Dharmanagar,
District-North Tripura.
- c) Smt. Sumit Rajkumari**
D/O Lt. Kirtijit Rajkumar
Of Jail Road (Mandop Para), Ward No.18
P.O. & P.S.-Dharmanagar
District-North Tripura

*****As per the order dated 13.12.2024 passed in I.A. No.4/2024, necessary amendment has been made as follows:-**

- 6. Bina Raj Kumari**
W/O Late Baburen Singha @ Hemanta Meetei
D/O Late Ranjit Rajkumar
C/O Konsan Sana Meetei,
R/O-1 No.Pipal Pukhuri,
P.O. & P.S.-Lanka,
District-Hojai(Assam)
Pin-782446
- 7. (Deleted in the amended memo of First appeal)**
.... Ranjit Rajkumar having died, his legal heir, son namely, Mangaljit Rajkumar also having died, his wife and son namely:-
- 8. a) Smt. L. Ratna Debi,**
W/O Lt. Bibekandajit Rajkumar
- b) R. K. Sonal Singha**
D/O Lt. Bibekandajit Rajkumar
- c) R. K. Raysmi Singha**
D/O Lt. Bibekandajit Rajkumar
All are of Vill & P.O.-Dewanpasha
P.S.-Dharmanagar
Dist-North Tripura
- Dharmajit Rajkumar having died, his legal heir son namely, Gokuljit Rajkumar also having died, his son namely Marjit Rajkumar also having died, his legal heir, daughter namely:-
- 9. Smt. Jyotsna Rajkumari**

W/O Sri Babuchan Singha
D/O Lt. Marjit Rajkumar
Vill-Captanpur(Turning)
P.O.-Captanpur, P.S.-Sonai,
Dist-Cachar(Assam)

.....**Dharmajit Rajkumar having died, his legal heir son namely, Gokuljit Rajkumar also having died, his son namely Marjit Rajkumar also having died, his daughter namely Jyoti Rajkumari also having died, her legal heir son namely:-**

10. Sri Narayan Singha

S/O Lt. Charu Singha
Vill- Banamalipur, Math Chowmuhani
P.O. & P.S.-Agartala,
Dist-West Tripura

11. (Deleted in the amended memo of First appeal)

Kulojit Rajkumar having died, his wife also having died, legal heirs sons namely:-

12. a) Sri Kundajit Rajkumar,

S/O Lt. Kulojit Rajkumar

b) (i) Chandrajit Rajkumar

(ii) Ratanjit Rajkumar

Both are S/O Late Kendrajit Rajkumar
Both are of Village-West Damcherra,
P.O-Narendra Nagar, P.S-Damcherra,
District-North Tripura,
PIN-799256.

(iii) Tombishana Rajkumari

D/O Late Kendrajit Rajkumar
W/O Mihir Sinha,
Resident of Village, Kolkoli,
P.S.-Kolkoli, District-Sepahijala,
PIN-799102

.....**Kulojit Rajkumar having died, his wife also having died, his son namely, Keshajit Rajkumar also having died his legal heirs namely:-**

(c) Smt. Ranjita Rajkumari

W/O- Lt. Kewshajit Rajkumar

(d) Smt. Anita Rajkumari

W/O Sri Sudip Singha
D/O-Lt. Keshajit Rajkumar

(e) Smt. Nita Rajkumari

W/O-Sri Bimal Singha
D/O Lt. Keshajit Rajkumar

(f) Smt. Nibedita Rajkumari

W/O Sri Priyabrata Singha
D/O Lt. Keshajit Rajkumar

All are of Vill-West Damcherra
P.O-Narendra Nagar, P.S-Damcherra

Dist-North Tripura

(g) Smt. Sangita Rajkumari

W/O Sri Raben Singha

D/O Lt. Keshajit Rajkumar

Vill & PO-Dolugaon, P.S-Kailashahar

Dist-Unakoti

.....**Bhupaljit Rajkumar having died, his legal heir 2nd wife namely:-**

13. Smt. Shyamali Debi

W/O Lt. Bhupaljit Rajkumar

C/O-Sri Kirtijit Rajkumar(Pro-defendant No.5)

Of Jail Road, P.O & P.S-Dharmanagar

Dist-North Tripura

----- Proforma Defendants/Proforma Respondents

For Appellant(s)	:	Mr. Saktimoy Chakraborty, Sr. Adv., Ms. Pinki Chakraborty, Adv.
For Respondent(s)	:	Mr. Dipankar Sarma, Adv.
Date of hearing	:	04.07.2025
Date of delivery of Judgment & Order	:	11.07.2025
Whether fit for reporting	:	YES

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

This appeal under Section 100 of CPC is preferred challenging the judgment dated 12.01.2024 and consequential decree dated 16.01.2024 delivered by Learned District Judge, North Tripura, Dharmanagar in connection with case No.T.A./1/2019. By the same judgment and decree, Learned 1st Appellate Court was pleased to dismiss the appeal preferred by the appellant upholding the judgment dated 18.12.2018 and decree dated 19.12.2018 delivered by Learned Trial Court in connection with TS(P) No.8 of 2013 and challenging that judgment and decree, the appellant has again preferred this appeal before this Court.

2. Heard Learned Senior Counsel Mr. Saktimoy Chakraborty assisted by Learned Counsel Ms. Pinki Chakraborty appearing on behalf of the appellant and also heard Learned Counsel Mr. Dipankar Sarma appearing on behalf of the contesting respondent-defendants.

3. At the time of admission of appeal, the following substantial questions of law was formulated by this Court by order dated 26.03.2024:

- i) Whether the judgment and decree passed by the first appellate court were perverse, by giving effect to a deed of relinquishment (Nadabipatra) despite the claim of the plaintiff that she was minor at the time of execution of that deed of relinquishment and that the pro-defendant No.13 was also not a party to that deed?**
- ii) Any other substantial question of law may also be heard during hearing of the appeal?**

4. Before proceeding with the merit of the appeal, let us discuss about the subject matter of dispute amongst the rival parties. The appellants and the respondents herein are the joint owners and possessors of the suit property measuring 3.14 acres, recorded in Khatian No. 272 under Mouja-Dewan Pasha, Dharmanagar Sub-Division which contained the name of their predecessors. The appellant being the successor and legal heir of one late Bhupaljit Rajkumar is entitled to get land measuring 0.32 acres out of the aforesaid quantum of land as her 10% share portion which is/was in her active possession since the time of her father. The respondent-principal defendant Nos.1, 2, 3, and 4 being the legal heirs and successors of one Late Sonaljit Rajkumar are jointly entitled to get land measuring 0.63 acres i.e. 20% share portion of the aforesaid land measuring 3.14 acres. Similarly, the other proforma respondents are also entitled to get their respective shares in the aforesaid suit

property. The principal defendants i.e. the respondents herein started creating disturbance upon the appellant in peaceful position of her share measuring 0.32 acres and accordingly the appellant approached for amicable partition of the suit property but that was not considered/agreed to by the principal respondents.

On 07.04.2013 at about 10 a.m., the appellant again approached the principal defendants-respondents with a request for amicable partition of the suit property but the respondents did not heed to her request. By this time, the appellant collected the certified copy of Khatian bearing No.272 when she could know that finally published Khatian bearing No.725 of Mouja-Dewanpasha have been prepared in the name of principal defendants-respondents containing land measuring 1.29 acres without implicating the names of other co-sharers as recorded under Khatian No.272 of Mouja-Dewan Pasha.

It was also the case of the appellant-plaintiff that the principal defendants-respondents are/were trying to sell the landed property which is under peaceful possession of the appellant by changing its nature and character and also trying to dispossess her and her family members from the said part of land. Finding no alternative, the appellant approached the Learned Trial Court by filing a suit for partition of the suit property and prayed for passing a preliminary decree and thereafter to appoint a Commissioner for affecting partition by metes and bounds.

Notices were issued upon all the respondents and in response to such notice, the principal respondent-defendants Nos.1 and 2 appeared and contested the suit by filing their written statement

wherein they denied and disputed all the claims raised by the appellant and pleaded that as per registered document No.1-845 of 1998 Nandini Rajkumari along with Kulojit Rajkumar, Surajit Rajkumar and Kirtijit Rajkumar jointly executed their disclaimer deed in favour of Smt. Choubi Devi, Tutendrajit Rajkumar, Harendrajit Rajkumar, Smt. Jamuna Rajkumari and Smt. Ganga Rajkumari in respect of plot of lands as mentioned in Khatian No.725 of Mouja-Dewan Pasha and for this reason, the applicant has got no land of her own and also has got no right to file a suit for partition of the suit property, comprising in Khatian No.272.

In the said suit before the Learned Trial Court the proforma respondents No.12(a) to 12(g) contested the suit by filing written statement and prayed for partition of the suit property, and other respondents and proforma respondents in spite of receipt of summons/notices did not appear before the Learned Trial Court to contest the suit.

5. Upon the pleadings of the parties, Learned Trial Court, in Original Suit No. TS(P)/8/2013, framed the following issues:

- i) Is the suit maintainable in its present form and nature?**
- ii) Has the plaintiff cause of action for this suit?**
- iii) Is the suit land joint properties of the parties to this suit? If, so, is the suit land liable to be partitioned as prayed for?**
- iv) What should be the quantum of share of each party to this suit over the suit land?**
- v) Is the plaintiff entitled to get a decree as prayed for?**
- vi) What other relief/relieves the plaintiff is entitled to get?**

To prove the issues, both the parties have adduced their oral/documentary evidence on record, which are mentioned as under:

(A) Plaintiffs' Exhibits :-

- i) Ext.1:- Certified copy of khatian No.272 of Mouja Dewanpassa in four sheets.
- ii) Ext.2:- Original Voter I/D card.
- iii) Ext.3:- Original admit card issued by the Tripura Board of Secondary Education.
- iv) Ext.4:- Certified copy of trace map of Mouza-Dewanpassa No.27 sheet No.4(pt) in original.

(B) Plaintiffs' Witnesses :-

- i) PW.1 Smt. Prabhabati Rajkumari.
- ii) PW.2 Sri Kirtijit Rajkukmar.

(C) Defendant's Exhibits :-

- i) Ext.A:- Reply letter of State Public Information Officer dated 27-06-2013.
- ii) Ext.B:- Khatian No.272.
- iii) Ext.C:- Khatian No.272/5.
- iv) Ext.D:- Computerized Khatian No.725.
- v) Ext.E:- Certified copy of nadabipatra vide No.1-846 of the year 1998.
- vi) Ext.F:- Finally published corrected khatian No.725.

(D) Defendant's Witnesses :-

- i) DW.1 Tutendrajit Raj Kumar.
- ii) DW.2 Baranya Bijoy Singha.
- iii) DW.3 Sri Sanjib Goswami.

It is also to be noted here that initially on 11.08.2016 the then Learned Civil Judge (Senior Division) passed a preliminary decree of partition in favour of the present appellant, which was challenged before the Learned 1st Appellate Court, and the Learned 1st Appellate Court was pleased to set aside the said judgment and decree, and asked for fresh trial as per law. Accordingly, on 18.12.2018, second judgment was delivered by Learned Trial Court afresh, dismissing the suit of the appellant plaintiff. The operative portion of the judgment and order dated 18.12.2018, delivered by Learned Trial Court runs as follows:

FINAL ORDER

14. From the discussion made above on various issues this Court is of the opinion that plaintiff has failed to prove the status of land as joint property

and hence it is not liable to be partitioned. Suit is not maintainable having no cause of action.

The deed of relinquishment/ nadabipatra ie registered deed no.1-848, dated 25-03-1998 is the vital document for our consideration. Deed of release/relinquishment is covered as a valid transfer as per Section 5 of T.P.Act. Exbt.1 vide khatian No.272 is now converted to the new corrected khatian vide No. 725 after deletion of some names on the basis of nadabipatra and hence the plaintiff-Pravabati Rajkumari cannot get any partition of the suit land. If we compare the old dags/sabek dags of khatian No.272 to the new dag numbers of finally published khatain No. of 725(vide Exbt.F), we can get the similar plots in respect of C/S Plot No. 1214, 1215, 1220, 1221, 1582 which are shown in the suit land but now these plots are converted into the hal plot Nos.3651, 3681, 3662, 3665, 3631, 3701 and 3702. So, nothing is left for partition and therefore suit of the plaintiff is failed.

Accordingly, the suit is dismissed on contest with cost.

Prepare decree of dismissal accordingly.

Enter the result entry in the Trial Register.

Challenging that judgment and decree, the present appellant further preferred appeal under Section 96 of CPC before the Learned 1st Appellate Court i.e. Learned District Judge, North Tripura, Dharmanagar which was also dismissed by the Learned 1st Appellate Court. The operative portion of the judgment and order dated 12.01.2024 passed by Learned 1st Appellate Court runs as follows:

ORDER

33. In the result this appeal filed by the appellant is found to be devoid of merit and it is dismissed.

The Judgment and Decree passed by Ld. Trial Court in T.S.(Partition) 08 of 2013 is upheld and affirmed.

Prepare the decree accordingly.

Send down the L. C. Record along with a copy of this Judgment to the Ld. Trial Court.

This appeal stands disposed of on contest.

Make necessary entry in the TR and CIS.

Accordingly, challenging that judgment, the appellant has again approached this Court by filing second appeal under Section 100 of CPC.

6. At the time of hearing of argument Learned Senior Counsel Mr. S. M. Chakraborty assisted by Learned Counsel Ms. P. Chakraborty first of all drawn the attention of the Court and submitted that on the day of execution of deed of relinquishment i.e. Nadabi Patra(Exhibit-E), the appellant was minor. Furthermore, according to Learned Senior Counsel, on that day, her second mother was alive, but her signature was also not obtained on the said deed of relinquishment(Exhibit-E). Moreso, to substantiate her contention, the appellant before the Learned Trial Court relied upon and produced and proved documented evidences like Voter ID card(Exhibit-2) and Admit Card(Exhibit-3) from which it was crystal clear that on the day of execution of deed of relinquishment, the appellant was a minor. Even the contesting respondents failed to satisfy the Court by adducing any rebuttable evidence on record to disbelieve Exhibit-2 and Exhibit-3, but the Learned Trial Court did not appreciate those documents and finally dismissed the suit. He thereafter drawn the attention of the Court referring the written statement filed by the contesting respondent-defendants Nos.1 and 2, wherein in para No.9, they have mentioned as follows:

"9. That the suit is barred by limitation, being a disclaimer, vide Regd. Deed No.1846 of 1998 dated 25.03.1998 signed as a joint disclaimer No.4 as a lone daughter of Late Bhupaljit Rajkumar."

Learned Senior Counsel further referred para No.14 of the written statement filed by the contesting respondents, wherein it was mentioned as under:

"14. That, in respect of para-4 of the plaint the plaintiff has failed to establish her claim as a legal heir and successor of Late Bhupaljit Rajkumar and Late Bhupaljit Rajkumar's share was 25%

as per C.S. Khatian No.272 of Mouja-Dewanpasha and not 10% of the presumptive suit land of 3.14 acres. So, the claim of the plaintiff appears to be a kid's story of the monkey, sharing bread with the cats."

Referring the aforesaid paragraphs, Learned Senior Counsel has drawn the attention of the Court that the stand of the contesting respondents was contrary to each other. In one para, they stated that the appellant was the legal heir of late Bhupaljit Rajkumar, but in another para, they have taken the plea that the appellant had got no share of her own rather 10% was presumptive. Thereafter, Learned Senior Counsel has further drawn the attention of the Court referring Exhibit-1, i.e. Khatian No.272 which was attested on 03.12.1965, wherein the share of the predecessor who is the father of the appellant has been shown as 1(one) Kani out of total land measuring 3.14 acres. Learned Senior Counsel has also drawn the attention of the Court referring para No.3 of the plaint, wherein it has been specifically mentioned the aforesaid land measuring 3.14 acres, and the said fact, according to Learned Senior Counsel, has not been disputed by the contesting respondent-defendants.

Learned Senior Counsel thereafter referred last part of para No.13 of the judgment delivered by the Learned Trial Court. In the said para, it has been mentioned by the Learned Trial Court that on the basis of alleged Nadabi Patra(deed of relinquishment) which has been marked as Exhibit-E, new Khatian No.725 was created wherein there was no share belonging to the present appellant as observed by the Learned Trial Court. But according to Learned Senior Counsel, where the deed itself is inoperative and inadmissible in evidence, how

the Learned Trial Court relied upon the same because the minor cannot enter into an agreement and in support of his contention, Learned Senior Counsel relied upon one citation of the Hon'ble Supreme Court of India reported in **(2006) 5 SCC 353** in **Prem Singh and others v. Birbal and others** wherein in Para No. 16, Hon'ble the Apex court observed as under:

"16. When a document is valid, no question arises of its cancellation. When a document is *void ab initio*, a decree for setting aside the same would not be necessary as the same is *non est* in the eye of the law, as it would be a nullity."

Referring the same, Learned Senior Counsel submitted that since the document itself is *void ab initio* as such, the same is *non est* in the eye of law and as such on the basis of that no legal action can be acted upon/taken, although the same was not challenged by the alleged minor by attaining her maturity.

Learned Senior Counsel again drawn the attention of the Court that in para No.30 of the judgment, Learned 1st Appellate Court came to the observation that Nadabi Patra stands good and based on that, finally published Khatian No.725 was published but where the Nadabi Potra was *non est* in the eye of law in view of the said principle of law laid by the Hon'ble Supreme Court, any action taken on that cannot be legally acceptable and based upon that no legal right can be established. But both the Courts below relied upon Exhibit-E and Khatian No.725(Exhibit-C) and dismissed the suit without any basis for which interference of the Court is required by setting aside both the judgment and decree of the Learned Courts below by allowing this appeal.

7. On the other hand, Learned Counsel for the principal defendants-respondents has drawn the attention of the Court that there was no infirmity in the judgment delivered by Learned Courts below. According to Learned Counsel in the plaint from Page No.-1 to 8, nowhere the appellant took the plea that she was Nandini Rajkumari, rather in all places she took the plea that her name was Prabhabati Rajkumari(Singha). Furthermore, only during her cross-examination by the contesting respondent-defendants, she took the plea that her another name is Nandini Rajkumari. Learned Counsel Mr. Sarma further submitted that said "Nadabi Patra" i.e. deed of relinquishment(Exhibit-E) was never challenged by the appellant-plaintiff. Even she has not also denied her signatures on Nadabi Patra. Furthermore, the appellant could also file suit within a period of limitation as provided under Article 59 of the Limitation Act. So, at this belated stage, there is no scope on the part of the appellant to take the plea and both the Learned Courts below considering everything rightly dismissed the suit of the appellant-plaintiff. Learned Counsel Mr. Sarma further drawn the attention of the Court referring Section 5 and 6 of the T.P. Act, and submitted that by virtue of Exhibit-D i.e. deed of relinquishment, one can transfer the legal right and property and there is presumption of correctness of entries in the ROR as per Section 43(3) of TLR and LR Act, 1960. Learned Counsel in support of his contention, also relied upon one citation of the Hon'ble Supreme Court of India reported in **(2022) 12 SCC 815** in **K. Jayaram and others v. Bangalore Development Authority and**

others, wherein in Para Nos.10, 14 and 15, Hon'ble the Apex Court observed as under:

"10. It is well-settled that the jurisdiction exercised by the High Court under Article 226 of the Constitution of India is extraordinary, equitable and discretionary and it is imperative that the petitioner approaching the writ court must come with clean hands and put forward all facts before the court without concealing or suppressing anything. A litigant is bound to state all facts which are relevant to the litigation. If he withholds some vital or relevant material in order to gain advantage over the other side then he would be guilty of playing fraud with the court as well as with the opposite parties which cannot be countenanced.

14. It is necessary for us to state here that in order to check multiplicity of proceedings pertaining to the same subject-matter and more importantly to stop the menace of soliciting inconsistent orders through different judicial forums by suppressing material facts either by remaining silent or by making misleading statements in the pleadings in order to escape the liability of making a false statement, we are of the view that the parties have to disclose the details of all legal proceedings and litigations either past or present concerning any part of the subject-matter of dispute which is within their knowledge. In case, according to the parties to the dispute, no legal proceedings or court litigations were or are pending, they have to mandatorily state so in their pleadings in order to resolve the dispute between the parties in accordance with law.

15. In the instant case, since the appellants have not disclosed the filing of the suit and its dismissal and also the dismissal of the appeal against the judgment of the civil court, the appellants have to be non-suited on the ground of suppression of material facts. They have not come to the court with clean hands and they have also abused the process of law. Therefore, they are not entitled for the extraordinary, equitable and discretionary relief."

Referring the same, Learned Counsel Mr. Sarma submitted that the appellant all along suppressed the material facts and she has not come before the Court with clean hands. As such there is no merit in the appeal and urged for upholding the judgments delivered by the Learned Courts below.

Learned Counsel also referred another citation of the Hon'ble Supreme Court reported in **(2008) 12 SCC 481** in **K.D. Sharma v.**

Steel Authority of India Limited and others wherein in para Nos.26 to 28 Hon'ble the Apex Court observed as under:

"26. It is well settled that "fraud avoids all judicial acts, ecclesiastical or temporal" proclaimed Chief Justice Edward Coke of England about three centuries before. Reference was made by the counsel to a leading decision of this Court in **S.P. Chengalvaraya Naidu v. Jagannath:(1994) 1 SCC 1** wherein quoting the above observations, this Court held that a judgment/decreed obtained by fraud has to be treated as a nullity by every court.

27. Reference was also made to a recent decision of this Court in **A.V Papayya Sastry v. Govt. of A.P.:(2007) 4 SCC 221** Considering English and Indian cases, one of us (C.K. Thakker, J.) stated: (SCC p. 231, para 22)

"22. It is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the court, tribunal or authority is a nullity and non est in the eye of the law. Such a judgment, decree or order-by the first court or by the final court has to be treated as nullity by every court, superior or inferior. It can be challenged in any court, at any time, in appeal, revision, writ or even in collateral proceedings."

The Court defined "fraud" as an act of deliberate deception with the design of securing something by taking unfair advantage of another. In fraud one gains at the loss and cost of another. Even the most solemn proceedings stand vitiated if they are actuated by fraud. Fraud is thus an extrinsic collateral act which vitiates all judicial acts, whether in rem or in personam.

28. So far as the proposition of law is concerned, there can be no two opinions. The learned counsel for the respondents also did not dispute the principles laid down in the above decisions as also in several other judgments. They, however, stated that on the facts and in the circumstances of the case, the ratio laid down in the above cases has no application."

Referring the same, Learned Counsel again submitted that as the appellant has not come before the Court with the clean hands as such she is not entitled to get the relief as prayed for.

Finally, Learned Counsel relied upon another citation of the Hon'ble Supreme Court of India reported in **AIR 1967 SC 1395** in **Kuppuswami Chettiar v. A.S.P. Arumugam Chettiar and another** wherein in para No.2 and 6, Hon'ble the Apex Court observed as under:

"2. The High Court held, and in our opinion rightly, that Ex. B-1 was not vitiated by misrepresentation and the appellant was well aware of the nature of the deed when he executed it. The appellant is somewhat deaf of hearing. But he is a wealthy and shrewd money lender and capable of managing his affairs. He took the draft of the deed to his own lawyer and after obtaining legal advice, executed it. He himself presented the deed for registration. He received no consideration for release, but the motive for the release was the pending litigation and the fact that the properties originally belonged to the family of the respondents. Having regard to the release, the respondents immediately applied in the pending suit for removal of the properties from the scope of the suit and for the consequential amendment of the plaint. After the execution of the deed, the appellant never asked for accounts, nor cared to ascertain how the respondents were managing the properties. In the written statement filed in O.S. No.174 of 1953, he took the plea that the deed of release did not effectively pass title to the outstandings, but he did not then say that it was vitiated by misrepresentation. His present plea that the deed was induced by misrepresentation is an afterthought. In agreement with the High Court we accept the testimony of the respondents witnesses and we reject the onus is upon the appellant to establish the plea of misrepresentation. He has failed to establish this plea.

6. Counsel next submitted that a release can only enlarge an existing title of the releasee, and there can be no release in favour of a releasee who has no interest in the property. He relied on the following observation in *Hutchi Gowder v. Bheema Gowder*, 1959-2 Mad LJ 324 at p. 337: (AIR 1960 Mad 33 at p. 41). "A release deed can only feed title but cannot transfer title" and another observation in *S. P. Chinnathambiar v. V. R. P. Chinnathambiar*, 1953-2 Mad LJ 387 at p. 391: (AIR 1954 Mad 5 at p. 8) "Renunciation must be in favour of a person, who had already title to the estate, the effect of which is only to enlarge the right. Re-nunciation does not vest in a person a title where it did not exist." Now, it cannot be disputed that a release can be usefully employed as a form of conveyance by a person having some right or interest to another having a limited estate, e.g., by a remainderman to a tenant for life, and the release then operates as an enlargement of the limited estate. But in this case, we are not concerned with a release in favour of the holder of a limited estate. Here, the deed was in favour of a person having no interest in the property, and it could not take effect as an enlargement of an existing estate. It was intended to be and was a transfer of ownership. A deed called a deed of release can, by using words of sufficient amplitude, transfer title to one having no title before the transfer. The cases relied upon by counsel are not authorities for the proposition that the operative words of a release deed must be ignored. In *S. P. Chinnathambiar's case*. 1953-2 Mad LJ 387: (AIR 1954 Mad 5) the document could not operate as a transfer, because a transfer was hit by S. 34 of the Court of Wards Act, and viewed as a renunciation of a claim, it could not vest title in the release. In *Hutchi Gowder v. Bheema Gowder*, 1959-2 Mad LJ

324: (AIR 1960 Mad 33) the question was whether a covenant of further assurance should be enforced by directing the defendant to execute a release deed or a deed of conveyance, and the Court held that the defendant should execute a deed of conveyance. These decisions do not lay down that a deed styled a deed of release cannot, in law, transfer title to one who before the transfer had no interest in the property."

Relying upon the same, Learned Counsel submitted that the principle of law laid down in the aforesaid citation is also very much relevant for decision of this appeal.

8. Here in the case at hand both the Courts below relied upon Exhibit-E i.e. deed of relinquishment and as such came to the observation that based upon Exhibit-E, Khatian No.725 was created and dismissed the suit filed by the appellant. It is the settled position of law that Khatian does not confer any title. Here in the case at hand as submitted by Learned Counsel for the respondents although the appellant as plaintiff in the plaint did not mention her name as Nandini Rajkumari but in her cross examination she stated that her another name is Nandini Rajkumari and the principal respondent-defendants in their written statement admitted the said fact. Moreover, there was no contrary evidence on record that Nandini Rajkumari and the present appellant is not the same person rather they are of different identity.

Further, on perusal of Exhibit-2 and Exhibit-3, it appears that at the time of execution of "deed of relinquishment", she was minor but the Learned Courts below did not consider those documents and came to the observation that the same was legally enforceable and relied upon the same. But in view of the principle of law laid down by the Hon'ble Supreme Court in the aforementioned case, **Prem Singh and**

others(supra) where the document itself is *void ab initio* as such the same is *non est* in the eye of law as there was/is no contrary evidence on record challenging Exhibit-2 and Exhibit-3 as relied upon by the appellant-plaintiff. Thus, it appears to this Court that both the Courts have committed gross irregularity in proper appreciation of the evidence on record. Since the appellant was minor on the day of execution of deed of relinquishment (Exhibit-E), so, on the basis of that no right can be created in favour of the present respondent-defendants in respect of the share of property belonging to the deceased father of the appellant namely Bhupaljit Rajkumar for land measuring 0.32 acres as alleged in the plaint by the appellant. To substantiate that a contract entered into by a minor is *void ab initio*, reference may be made to the case of **Krishnaveni v. M.A. Shagul Hameed and Another** reported in **2024 SCC OnLine SC 1903** wherein in para Nos.7, 8, 9 and 10 Hon'ble the Apex Court observed as under:

"7. There is no dispute on the contention raised by the defendants in the suit that the appellant was a minor at the time of the said agreement dated 03.09.2007. Therefore, such contract with a minor, was rightly found to be a void contract by the High Court. For such conclusion, the High Court relied on the ratio in *Mathai Mathai v. Joseph Mary*:(2015) 5 SCC 622. In this judgment, the Court opined that a 15 year old could not have entered into a valid contract in her own name and she ought to be represented either by her natural guardian or a guardian appointed by the Court in order to lend legal validity to the contract in question. The conclusion drawn by the High Court is also supported by the Privy Council's decision in *Mohori Bibee v. Dharmodas Ghose*:1903 SCC OnLine PC 4.

8. Mr. B Balaji, learned counsel for the appellant, submits at this juncture, that a contract in favour of a minor is enforceable and is not void. He further submits that the II Additional Subordinate Judge (28.04.2017) has rightly placed reliance on *A.T. Raghava Chariar v. O.A. Srinivasa Raghava Chariar*:1916 SCC OnLine Mad 83 and *Thakur Das v. Pulti*:AIR 1924 Lah 611, to hold that every contract with a minor is not necessarily void, and a contract

for a minor's benefit is enforceable and the validity of such a contract can be considered during trial. The appellant's argument deserves to be negated in light of the decision in Mathai Mathai:(2015) 5 SCC 622, wherein this Court has held:

"18.... Many courts have held that a minor can be a mortgagee as it is transfer of property in the interest of the minor. We feel that this is an erroneous application of the law keeping in mind the decision of the Privy Council in Mohori Bibee case(supra).

19. As per the Contract Act, 1872 it is clearly stated that for an agreement to become a contract, the parties must be competent to contract, wherein age of majority is a condition for competency. A deed of mortgage is a contract and we cannot hold that a mortgage in the name of a minor is valid, simply because it is in the interest of the minor unless she is represented by her natural guardian or guardian appointed by the court. The law cannot be read differently for a minor who is a mortgagor and a minor who is a mortgagee as there are rights and liabilities in respect of the immovable property would flow out of such a contract on both of them. Therefore, this Court has to hold that the mortgage deed, Ext. A-1 is void ab initio in law and the appellant cannot claim any rights under it. Accordingly, the first part of first point is answered against the appellant."

9. In view of the decision in Mathai Mathai(supra) the judgments in Raghava Chariar(supra) and Thakur Das(supra) are no longer good law, and the II Additional Subordinate Judge's (28.04.2017) reliance on the aforesaid decisions to hold that the contract in favour of the minor is enforceable is misconceived.

10. Having considered the basis of the impugned judgment:2019 SCC OnLine Mad 136, we see no infirmity with the view taken by the High Court. The appeal is accordingly dismissed. The interim order merges with this final order."

It is the settled law that Khatian does not confer any title. In this regard, I would like to refer the following citation reported in **2023 SCC OnLine SC 1483** in **P. Kishore Kumar v. Vittal K. Patkar**, wherein in para No.12, 13, 14, 15, 16 and 17, Hon'ble the Apex Court observed as under:

"12. It is trite law that revenue records are not documents of title.

13. This Court in Sawarni v. Inder Kaur:(1996) 6 SCC 223 held that mutation in revenue records neither creates nor extinguishes title, nor does it have any presumptive value on title. All it does is entitle the person in whose favour mutation is done to pay the land revenue in question.

14. This was further affirmed in Balwant Singh v. Daulat Singh (Dead) by LR:(1997) 7 SCC 137 wherein this Court held that mere mutation of records would not divest the owners of a land of their right, title and interest in the land.

15. In Jitendra Singh v. State of Madhya Pradesh:2021 SCC OnLine SC 802, this Court after considering a catena of judgments, reiterated the principle of law as follows:

"6. *mutation entry does not confer any right, title or interest in favour of the person and the mutation entry in the revenue record is only for the fiscal purpose."**

16. We may also profitably refer to the decision of this Court in Sita Ram Bhau Patil v. Ramchandra Nago Patil (Dead) by LR:(1977) 2 SCC 49 wherein it was held that there exists no universal principle that whatever will appear in the record of rights will be presumed to be correct, when there exists evidence to the contrary.

17. In the present case, the Commissioner's order distinctly denying the rights of occupancy to the plaintiff's vendor is evidence that renders these revenue entries unworthy of acceptance."

9. In views of the above, after going through the judgments of both the Courts below, it appears to this Court that there is/are substantial questions of law to be decided in favour of the appellant and on the basis of Exhibit-E, the right of appellant being minor on the day of execution of deed cannot be extinguished and as such in the considered opinion of this Court, both the judgments and decrees of the Learned Courts below cannot be sustained in the eye of law. Accordingly, both the judgments and decrees of the Learned Courts below are liable to be set aside. The appellant as plaintiff along with her mother if she is alive are jointly entitled to the share of their deceased predecessor to the extent of land measuring 0.32 acres in the joint family property which was initially recorded in Khatian No.272 which was later on converted into Khatian No.725 ignoring her share.

10. In the result, the appeal filed by the appellant is hereby allowed. The judgment dated 12.01.2024 and consequential decree

dated 16.01.2024 delivered by Learned District Judge, North Tripura, Dharmanagar in connection with case No.T.A./1/2019 upholding the judgment dated 18.12.2018 and consequential decree dated 19.12.2018 in connection with case No.TS(P)/8/2013 is hereby set aside. The matter is remanded back to the Learned Trial Court below to determine the issues afresh excepting issue No.(iii) which has been settled by this Court that the appellant plaintiff is entitled to partition of her share for land measuring 0.32 acres over the joint family property, if necessary, after taking oral/documentary evidence afresh of both the parties in accordance with law and thereafter to deliver a fresh judgment within a period of 6(six) months from the date of receipt of the copy of judgment passed by this Court.

With this observation, this present appeal stands disposed of.

Prepare decree accordingly.

Both the parties be asked to appear before the Learned Trial Court below either personally or through their engaged Learned Counsel on 31.07.2025 positively.

Send down the records of the Learned Courts below along with a copy of this judgment and Order.

Pending applications(s), if any, also stands disposed of.

JUDGE