

IN THE HIGH COURT OF TRIPURA
AGARTALA

RSA No.16 of 2024

- 1. Sri Usharanjan Das**
- 2. Sri Chitta Ranjan Das**
- 3. Sri Manoranjan Das**
- 4. Sri Niranjan Das**

- All are sons late Umacharan Das

- 5. Smt. Abha Das**
- 6. Smt. Prava Das**
- 7. Smt. Sangita Das**

- All of 5,6,7 are daughters of late Umacharan Das,

- All (1 to 7) are resident of Birbal Das Para,
Amarpur Town, P.O. Amarpur-799120, P.S.
Birganj, District- Gomati, Tripura

..... **Appellant (s)**

- V e r s u s -

- 1. Sri Sadananda Das**
- 2. Sri Sajal Das**
- 3. Sri Swadesh Das**

-All are sons of late Subal Das and all are residents
of Birbal Das Para, Amarpur Town, P.O.- Amarpur-
799120, P.S.- Birganj, District- Gomati, Tripura

4. Smt. Laxmi Das,
wife of Sri Dharendra Das, resident of Drivers' Colony,
P.O. Amarpur-799120, P.S. Birganj, District- Gomati,
Tripura

5. Smt. Saraswati Das (Choudhury)
wife of Sri Subrata Choudhury, resident of Chanmura,
P.O. Teparia, P.S. Airport, District- West Tripura

6. Smt. Krishna Das (Dey)
wife of Sri Bidhu Bhusan Dey, resident of Sankarpalli,
P.O. Amarpur-799120, P.S. Birganj, District-Gomati,
Tripura

7. Smt. Bishnu Das

wife of Sri Babul Das, resident of Sankarpalli, P.O.-
Amarpur-799120, P.S.- Birganj, District- Gomati,
Tripura

8. Smt. Jogamaya Dey (Das)

wife of Sri Nityaranjan Dey, resident of Purba
Pratapgarh, Near- Fulkali Bari, P.S. and P.O.- Amtali,
District- West Tripura, Tripura

9.

(i) [Ganesh Dey (Dead)]

son of late Hiralal Dey

[As per order dated 21.11.2024 passed in I.A. 01 of
2024, his name has been deleted from the Memo of
Appeal.]

(ii) Sri Rakhal Chanra Dey

(iii) Sri Nepal Chandra Dey

(iv) Sri Nirmal Chandra Dey

(v) Sri Gopal Dey

- All of (ii) to (v) are sons of Sri Ganesh Chandra
Dey, residents of village- Mailak, P.O.- Amarpur,
P.S.- Birganaj, District- Gomati, Tripura

(vi) Smt. Kanan Dey

daughter of Ganesh Chandra Dey and wife of not known

(vii) Smt. Kajal Dey

daughter of Ganesh Chandra Dey and wife of not known

-Both are residents of village & P.O. Nalchar, P.S.
Melghar, District- Sepahijala, Tripura

10. Sri Sujit Bhowmik

-son of Sri Jyotish Chandra Bhowmik, residents of Motorstand,
Amarpur Town, P.O.- Amarpur-799120, District- Gomati, Tripura

..... Respondent (s)

For the Appellant(s)	:	Mr. D.K. Das Choudhury, Adv.				
For the Respondent(s)	:	Mr. N. Choudhury, Adv.				
Date of hearing	:	13.02.2025				
Date of delivery of Judgment & order	:	15.05.2025				
Whether fit for reporting	:	<table border="1"><tr><td>YES</td><td>NO</td></tr><tr><td></td><td>√</td></tr></table>	YES	NO		√
YES	NO					
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HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA

JUDGMENT & ORDER

The appeal arises out of the judgment dated 09.02.2024 passed by the learned District Judge, Gomati, Udaipur in Title Appeal No.17 of 2018 and the related decree thereof, whereby the dismissal decree dated 18.08.2018 of the Court of the learned Civil Judge (Sr. Division), Udaipur, Gomati passed in Title Suit (P) No.02 of 2015 was affirmed.

[2] Before advertng to the nature of the suit and the reliefs claimed therein, the plaintiffs' case in brief is required to be canvassed first for convenience of discussions.

According to the plaintiffs, one Birbal Das was the original owner of 1.599 acres of land as described in Schedule-A of the plaint, who died in the year 1970 behind his wife, 2 sons and 2 daughters. His wife was also died thereafter leaving behind her 2 sons namely, Subal Chandra Das (now dead), Umacharan Das (now dead) and 2 daughters, namely Pushparani Dey (Das) (now dead) and Jogomaya Dey (Das)

(defendant no.8). After said Subal Chandra Das and his wife died, the defendant-respondent Nos.1 to 7 as their ultimate legal representatives inherited their properties. The said Umacharan Das is also no more and the present plaintiff-appellants are his ultimate legal representatives. Said Pushparani Dey (Das) also died leaving behind the respondents-defendant Nos. 9(i) to 9 (vii) as her legal representatives. The respondent no.9(i) during pendency of the appeal has expired and his name has now been deleted.

[3] According to the plaintiffs, said 2 daughters and 2 sons of Lt. Birbal Das inherited his property i.e. Schedule- A land in 1/4th share each. From the joint stock, the sons of Late Umacharan Das are possessing the some portion of the land which has been described in the Schedule-C of the plaint and the sons of Lt. Subal Chandra Das i.e. the defendant Nos.1 to 3 are possessing the some portions of the land therefrom by amicable arrangement with the said plaintiffs which are mentioned in Schedule-D of the land. According to the plaintiffs, 0.030 acres of land has been sacrificed for use as a pathway for the general public and another piece of 0.030 acres of land was allowed to be used by the Social Welfare Department, wherein at present, the plaintiffs have no claim. Both the land parcels are described in Schedule-B of the plaint.

[4] According to the plaintiffs, the daughter of said Late Birbal Das namely Pushparani Dey (Das) executed one Will bearing No.III-3 dated 01.02.1993 bequeathing her share in favour of her brother, late Umacharan Das and therefore, the plaintiffs became entitled to her 1/4th share in the joint stock in addition to their own 1/4th share therein. It is also further stated that said Pushparani Dey (Das) during her lifetime also sold out 0.100 acres of land described in the Schedule-F land to the defendant-respondent No.10, Sujit Bhowmik by a registered deed No.I-446 dated 21.09.2007, mentioned in Schedule-G of the plaint. It is also stated that Umacharan Das along with some legal representatives of late Subal Chandra Das filed a suit seeking declaration of right, title and interest in 1/4th share each of Pushparani Dey (Das) and Jogomaya Dey (Das) bearing Title Suit No.03 of 2008 in the court of the Civil Judge (Jr. Division), Amarpur, wherein said sale of land by Pushparani Dey (Das) to defendant No.10 was also challenged and the defendant No.10 also made party therein. On thorough contest, the said suit was dismissed, without giving any decision regarding the prayer of cancellation of said deed and thereafter, they preferred a first appeal in the court learned District Judge, the then South Tripura District, Udaipur which was also dismissed. Then they preferred a second appeal bearing RSA No.43 of 2011 in this Court which was also dismissed on 23.08.2013 but despite the

same, again the present plaintiff-appellants claimed in the instant suit that they are willing to purchase the said land and have prayed before the trial court to allow them to deposit Rs.75,000/- (consideration price of the defendant No.10) in the court with a declaration that the said deed may be declared as null and void.

[5] It is also stated by the plaintiffs that said Jogomaya Dey (Das) (the defendant No.8) executed one Will on 01.02.1993 in favour of the defendant Nos.2 & 3 by bequeathing her $1/4^{\text{th}}$ share therein to them and simultaneously, the defendant Nos.4 to 7 i.e. the daughters of late Subal Chandra Das also relinquished their shares in the joint property in favour of the defendants No.1 to 3 and therefore, they also became entitled to $1/3^{\text{rd}}$ share each in the $1/4^{\text{th}}$ share portion of said late Subal Chandra Das and further, the defendants No.2 and 3 will get $1/2$ share each in the said $1/4^{\text{th}}$ share of Jogomaya Dey (Das). Similarly, daughters of Umacharan Das have also relinquished their shares in favour of their brothers, the plaintiffs No.1 to 5 in the joint property which they will get now. It is also stated that there is a pond in schedule-A land jointly used by the plaintiff Nos.1 to 5 and the defendant Nos.1 to 3 which has been described in Schedule-E of the plaint. Therefore, according to the calculation of the plaintiffs, the plaintiff Nos.1

to 5 are now entitled to get 1/10th share each in Schedule-A land and the defendant No.1 is entitled to 1/12th share therein and the defendant Nos.2 to 3 are entitled to 5/24th share each of the said property. Finally, the plaintiffs in the said suit prayed for the following reliefs:

(i) To declare that the plaintiff Nos.1 to 5 and the defendant Nos.1 to 3 are the absolute owners and possessors of the whole Schedule-A land;

(ii) To declare that the plaintiff Nos.6 to 8 have relinquished their shares in favour of the plaintiff Nos.1 to 5 and the defendant Nos.4 to 8 have relinquished their shares in favour of the defendant Nos.1 to 3 and that the defendant Nos.8 & 9 have no share in the Schedule-A land;

(iii) To declare that the defendant No.10 did not acquire any right, title and interest over the Schedule-F land by his purchase deed dated 21.09.2007 and also for cancellation of his purchased deed No.I-446 dated 21.09.2007;

(iv) To direct the plaintiffs and the defendant Nos.1 to 3 to pay sale price of Rs.75,000/- to the defendant No.10 or to deposit the same in the court and;

(v) To declare that the plaintiff Nos.1 to 5 are entitled to 50% share in Schedule-A land and the defendant Nos.1 to 3 are entitled to 1/12th share and 5/24th share each in the Schedule-A land and finally, to pass a preliminary decree declaring said shares of the plaintiffs No.1 to 5

and the defendant Nos.1 to 3 and in case of failure of the parties to partition their land, to pass a final decree.

[6] The legal representatives of late Pushparani Dey (Das) and the defendant No.10 contested the said suit contending that the whole property of late Birbal Das was not brought into hotchpot and no Will was executed by their mother in favour of Umacharan Das and 2 sons of Late Subal Chandra Das and according to them, as said Pushparani Dey (Das) would live with her husband in the Schedule-A land itself after her marriage, said Late Birbal Das gave her 5 gandas of land. They have also stated that some legal heirs of Subal Chandra Das, namely Sadhana Rani Das, Krishnarani Dey, Bishu Rani Dey and others sold out 0.130 acres to Hiralal Roy vide registered deed No.I-50 dated 25.01.1993 and said Umacharan Das also sold out 0.21 acres of land to one Gopal Chandra Das and late Subal Chandra Das and Umacharan Das also sold out some other lands to various persons from the undivided property. Other defendants did not contest the suit by filing any written statement.

[7] During trial, from the side of the plaintiffs 13 nos. of witnesses were examined and from the side of the contesting defendants, 4 witnesses were examined. The plaintiffs also proved 3 numbers of Khatians, 2 numbers of survival

certificates, 2 numbers of Will, certified copy of one registered sale deed and certain documents of previous suit bearing No.T.S.03 of 2008. From the side of the contesting defendants, they also proved 11 numbers of Khatians, one certified copy of judgment passed in RSA No.43 of 2011 and one Will dated 12.10.2007. They also proved certified copy of the sale deed No.I-50 dated 25.01.1993 executed by Sadhana Rani Das and others in favour of Hiralal Roy (Exbt.N) and another certified copy of the sale deed bearing No.I-140 dated 28.02.1979 executed by Umacharan Das in favour of Gopal Chandra Das (Exbt.O).

[8] The learned Trial Court dismissed the suit by disbelieving the Will executed by Pushparani Dey (Das) in favour of Umarcharan Das. The learned Trial Court also observed that as Jogomaya Dey (Das) was alive, any will executed by her had no force. The learned Trial Court also observed that no deed of relinquishment was proved to establish that the plaintiff Nos.6 to 8 had relinquished their shares in favour of the plaintiff Nos.1 to 5 and that in view of the judgment passed by the learned Civil Judge (Jr. Division), Amarpur in Title Suit No.03 of 2008 and the subsequent judgment of this Court, the sale transaction in favour of the defendant No.10 by Pushparani Dey (Das) was a valid one. Learned Trial Court ultimately rejected the claim of

the plaintiffs. The first appellate court also maintained the said findings.

[9] The second appeal has been admitted on the following substantial questions of law:

"Whether the judgment and decree of learned first appellate court and trial court are perverse on the ground of rendering decisions without framing any issue on partition of the suit land."

[10] Mr. D.K. Das Choudhury, learned counsel appearing for the appellants narrating the entire facts as canvassed in the pleadings submits that despite a specific prayer of partition, no issue on the partition was framed and even no decision on that point was also given by Ld. Trial Court despite the fact that said Court specifically observed that the parties were entitled to get their respective shares. In spite of making such observations, learned counsel, Mr. Das Choudhury submits, the suit was dismissed and the first appellate court also committed error by not interfering with such findings of the learned trial court. Finally, learned counsel submits that the suit is required to be remanded to the learned trial court for framing a specific issue regarding the relief of partition as claimed and to decide the same accordingly.

[11] Mr. N. Choudhury, learned counsel appearing for the respondent Nos.9(ii) to 9(vi) submits that the partition may be

effected in equal 1/4th shares each for his set of legal representatives i.e. two deceased sons and one deceased daughter of said Birbal Das and 1/4th share in favour of Jogomaya Das. However, it is also argued by learned counsel that the entire property was not included in the suit and the documents of such transfer were also proved into evidence from the side of the said contesting defendants. Mr. Choudhury, learned counsel finally submits that the hands of the plaintiffs' are unclean and therefore, dismissal of the suit requires no interference.

[12] On consideration of the submissions of both sides and the materials placed in the evidence, it appears that under Khatian Nos.1086/1 and 1086/2 of Mouza-Amarpur, the total area of land that stands jointly in the name of the ultimate legal representative of Late Birbal Das is 1.599 acres. The plaintiffs No.1 to 5 and the defendants No.1 to 3 have prayed for a declaration of their ownership and partition of the said total 1.599 acres of land, though according to the plaintiffs, they are disclaimers over 0.06 acres of land under Schedule-B which have been sacrificed for a pathway and Samaj Shiksha Kendra under Social Welfare Department but such land has not been excluded from Schedule-A land with reference to their prayer for partition. From the certified copy of the sale deed No.I-140

dated 28.2.1979 under Exbt.O, it appears that the predecessor of the plaintiffs, namely Umacharan Das sold out 0.21 acres of land from the joint property to one Gopal Ch. Das and vide sale deed No.I-50 dated 25.1.1993 (Exbt.N), the legal heirs of late Subal Chandra Das also sold out 0.130 acres of land to one Hiralal Roy. In that deed also, they claimed that they were entitled to 1/4th share in the total land by way of inheritance but they totally suppressed the said facts in the plaint and also did not include said lands in the description of the suit property, rather they came up with a fresh story of entitlement of a much higher share in the suit property.

[13] On taking into consideration the judgment dated 23.08.2013 passed by the Coordinate Bench of this Court in RSA No.43 of 2011 (Exbt.6), it appears that second appeal ultimately arose out from the decision of the learned Civil Judge (Jr. Division), Amarpur passed in Title Suit No.03 of 2008, wherein said late Umacharan Das and some legal representatives of Late Subal Chandra Das were the plaintiff-appellants and legal representatives of late Pushparani Dey (Das), Jogomaya Das (the respondent No.9) and Sujit Bhowmik (respondent No.10) were also party wherein those plaintiffs even claimed adverse possession in the suit land against their co-sharer and the said deed executed by Pushparani Dey (Das) in favour of Sujit

Bhowmik was also challenged but ultimately, this Court affirmed the findings of the learned District Judge, South Tripura that transfer of land by the defendant No.1 to defendant No.3 could not be held illegal but that was to be construed as the transfer of her share or a portion of her share since there was no partition of the Schedule-A land. Despite the said matter as already been settled in the first round of litigation up to the level of this court, again attempts have been made by the present plaintiff-appellants to get the said sale deed canceled and to somehow grab the said land through judicial pronouncement.

[14] The plaintiffs have also brought forward the story of relinquishment of share of the plaintiff Nos.6 to 8 in favour of the plaintiff Nos.1 to 5 and relinquishment of share of the defendant Nos.4 to 7 in favour of the defendant Nos.1 to 3 but no deed of relinquishment has been proved in the record though it is settled by the pronouncement of the Hon'ble Apex Court in case of *Kuppuswami Chettiar v. Arumugam Chettiar, (1967) 1 SCR 275* that any such relinquishment can be effected on registration of a deed of relinquishment where the document clearly discloses an intention to effect a transfer. The relevant paragraph of the said judgment reads thus:

4. The question is whether Ex. B-1 on its true construction conveyed properties to the respondents. In *T. Mammo v.K. Ramunni*, AIR 1965 SC 337, this Court held:

"a registered instrument styled a release deed releasing the right, title and interest of the

executant in any property in favour of the releasee for valuable consideration may operate as a conveyance, if the document clearly discloses an intention to effect a transfer”.

In the present case, the release was without any consideration. But property may be transferred without consideration. Such a transfer is a gift. Under Section 123 of the Transfer of Property Act, 1882, a gift may be effected by a registered instrument signed by or on behalf of the donor and attested by at least two witnesses. Consequently, a registered instrument releasing the right, title and interest of the releasor without consideration may operate as a transfer by way of a gift, if the document clearly shows an intention to effect the transfer and is signed by or on behalf of the releasor and attested by at least two witnesses. Exhibit B-1 stated that the releasor was the owner of the properties. It showed an intention to transfer his title and its operative words sufficiently conveyed the title. The instrument, on its true construction, took effect as a gift. The gift was effectively made by a registered instrument signed by the donor and attested by more than two witnesses.”

There is no scope of transfer by way of relinquishment or release orally of any immovable property or interest therein, more particularly when the value of the same is Rs.100/- or upwards. If such relinquishment or release is executed out of love and affection and in the nature of gift, then apart from requirement of registration of the same, such deed is required to be attested by atleast two witnesses.

[15] It appears that this a chance litigation instituted by the plaintiffs with certain pleas having no legal and factual basis, just to gamble in litigation with vexatious claims. Such attempt made by the plaintiffs is nothing but abuse of process of a law. Learned Trial Court ought to have imposed compensatory cost against the plaintiffs while dismissing the claim. Remanding the case for framing of an issue regarding the relief of partition in

the above said contexts, will be a futile exercise, for, all the properties are not brought on record and descriptions of the suit land which is liable to be partitioned is also not correctly placed in the plaint.

[16] In the result, the substantial question of law as framed in the appeal is answered accordingly in the negative. The appeal is consequently dismissed with cost in favour of the contesting defendants/respondents.

The Registry is to prepare the decree accordingly. Send down the Trial Court record and the record of First Appellate Court forthwith with copies of this judgment and decree.

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

JUDGE

SUJAY GHOSH Digitally signed by SUJAY GHOSH
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