

**HIGH COURT OF TRIPURA
AGARTALA
RSA No.3 of 2024**

Sri Shaktipada Deb Choudhury

S/O Late Kalipada Deb Choudhury,
Vill-Kameswar, Dharmanagar,
PO-Kameswar, District-North Tripura, PIN-799253.

----Defendant No.2-Appellant

Versus

1. Smt. Milan Rani Debnath (Gupta)

W/O Late Dhruba Kanti Gupta

2. Sri Biswajit Gupta

S/O Late Dhruba Kanti Gupta

Both are resident of Padmapur, Madhubari Road,
Ward No.20, Dharmanagar Municipal Council
PS-Dharmanagar, District-North Tripura, PIN-799253

3. Smt. Mitali Gupta

D/O Late Dhruba Kanti Gupta

W/O Kamalesh Ghosh

Thakurhut Road (Near Thakurpukur)

P.O & P.S. Badu, Barasat, Kolkata-700128.

----- Plaintiff-Respondents

4. Smt. Niyati Das

W/O Late Upananda Das

Of Padmapur, Harichand Road, Narendra Lane.

PO & PS - Dharmanagar, District-North Tripura, PIN-799253.

----- Defendant No.1-Pro-respondent

For Appellant(s) : Mr. Prasenjit Shil, Adv.

For Respondent(s) : Mr. Tapas Kumar Deb, Adv.

Date of hearing &
Judgment & Order : 08.04.2025

Whether fit for
reporting : NO

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order(Oral)

Learned Counsel, Mr. Prasenjit Shil is present for the
appellant namely Shaktipada Deb Choudhury and Learned

Counsel Mr. Tapas Kumar Deb is present for the respondent-plaintiffs No.1, 2 and 3 namely Smt. Milan Rani Debnath (Gupta), Sri Biswajit Gupta, Smt. Mitali Gupta respectively. None appeared on behalf of the original-defendant No.1 i.e. pro-respondent herein namely Smt. Niyati Das.

2. Heard Learned Counsel for both the sides in the connected I.A. No.2 of 2025 and since the matter involves the original second appeal bearing No.RSA No.3 of 2024 so the matter is taken up for hearing accordingly.

3. Taking part in the hearing, Learned Counsel Mr. Tapas Kumar Deb appearing on behalf of the respondent-plaintiffs No.1, 2 and 3 submitted that the suit land was originally belonged to one Dhruba Kanti Gupta being the predecessor of the present respondents No.1, 2 and 3 and said Dhruba Kanti Gupta alleged to have executed one Will in favour of pro-respondent herein namely Smt. Niyati Das, W/O Late Upananda Das of Padmapur, Harichand Road, Narendra Lane, Dharmanagar, i.e., the defendant No.1 of the original suit and before obtaining probate from the competent Court, said Niyati Das transferred the suit land in favour of the present appellant namely Sri Shaktipada Deb Choudhury i.e. defendant No.2 of the original suit filed by the present respondents. Thereafter, the present respondents No.1, 2 and 3 as plaintiffs filed a suit for declaration of right, title and interest and recovery of possession evicting the original defendant No.2 i.e. the

appellant herein and also for cancellation of purported Will bearing No.III-7 SL. No.2267 dated 29.05.1997 executed by the predecessor of the respondent-plaintiffs No.1, 2 and 3 namely Dhruba Kanti Gupta in favour of said Niyati Das i.e. the pro-respondent herein whereby said Niyati Das i.e. the pro-respondent herein transferred the said land in favour of the present appellant vide Sale deed No.I-1627 dated 18.10.2012 illegally. The said suit was numbered as TS No.32 of 2017 in the court of Learned Civil Judge (Senior Division), North Tripura, Dharmanagar and after conclusion of trial, Learned Civil Judge (Senior Division), North Tripura, Dharmanagar decreed the suit in favour of the respondent-plaintiffs No.1, 2 and 3 by judgment dated 07.11.2022 and consequential decree was passed thereafter accordingly. The operative portion of the judgment and order dated 07.11.2022 delivered by Learned Civil Judge (Senior Division), North Tripura, Dharmanagar in connection with the said suit bearing No.TS No.32 of 2017 is reproduced herein below:

"39. In the result, on the basis of the above discussions and deliberations, the suit is decreed with the declaration that the plaintiffs have right, title and interest over the suit land.

It is further declared that the Will bearing No.III-7 SL. No.2267/1997 dated 29-05-1997 and the sale deed bearing No.1-01627 dated 18-10-2012 are adjudged to be void and ordered to be delivered up and cancelled.

It is further declared that the defendant No.2 is liable to be evicted from the suit land and the defendant No.2 is directed to hand over vacant possession of the suit land to the plaintiffs within a period of 30 days from the date of this judgment and order.

The costs of the suit shall be borne by the defendants.

This suit is disposed off accordingly on contest.

Sherestadar is directed to prepare decree accordingly as per the Civil Rules and Orders and send a copy of the decree to the officer in whose office the Will bearing No.III-7 SI No.2267/1997 dated 29-05-1997 and the sale deed bearing No.1-01627 dated 18-10-2012 has been registered and such officer shall note on the copy of the instrument(s) contained in his book(s) the fact of cancellation of such instrument(s).

This Judgment and Order is passed on 7th day of November, 2022 under the seal and signature of the Court.

Make necessary entry in the Trial Register."

Challenging that judgment, the present appellant i.e., defendant No.2 of the original suit preferred an appeal before the Court of Learned District Judge, North Tripura, Dharmanagar which was numbered as TA No.26 of 2022 and the Learned District Judge, North Tripura, Dharmanagar by judgment dated 30.08.2023 and consequential decree dismissed the appeal upholding the judgment of the Learned Civil Judge (Senior Division), North Tripura, Dharmanagar. The operative portion of the said judgment and order dated 30.08.2023 delivered by Learned District Judge, North Tripura, Dharmanagar in connection with TA No.26 of 2022 runs as follows:

ORDER

"29. In the result, this appeal filed by the appellant is found to be devoid of merit and it is dismissed with cost.

The judgment and decree by Ld. Trial Court in T.S. 32 of 2017 is upheld and affirmed.

Prepare the decree accordingly.

Send down the L.C. Record along with a copy of judgment.

This appeal stands disposed of on contest."

Challenging that judgment, the appellant i.e., defendant No.2 of the original suit bearing No.TS No.32 of 2017 has preferred this second appeal before this High Court.

Learned Counsel further submitted that the defendant No.1 of the original suit, Smt. Niyati Das in the mean time filed one application for granting probate under Section 276 of the Indian Succession Act, 1925 before the Court of Learned District Judge, North Tripura, Dharmanagar which was numbered as T.S.(Probate) No.1 of 2014 and by judgment dated 06.04.2022, the said probate application filed by the defendant No.1 of the suit bearing No.TS No.32 of 2017 was rejected. The operative portion of the said judgment dated 06.04.2022 and decree dated 07.04.2022 delivered by Learned District Judge, North Tripura, Dharmanagar in connection with T.S.(Probate) No.1 of 2014 runs as follows:

ORDER

"15. In view of the above discussion and findings the application filed by the petitioner, Smt. Niyati Das under Section 276 of the Indian Succession Act, 1925 for grant of a probate of the Will executed by Dhruba Kanti Gupta (now deceased) is hereby rejected.

The parties to this suit shall have to bear their own costs.

Senior Sheristadar is hereby directed to prepare a decree immediately.

This suit is accordingly disposed off on contest."

Challenging that judgment, the defendant No.1 of TS No.32 of 2017 again preferred an appeal before this High Court which was numbered as MFA No.4 of 2022 and this High Court by judgment and order dated 03.06.2023 dismissed the appeal

upholding the order of Learned District Judge, North Tripura, Dharmanagar. The operative portion of the judgment and order dated 03.06.2023 runs as follow:

"36. In view of above, discussion and observation, the present appeal stands dismissed consequently, the findings as observed by the learned Court below stands affirmed. As a sequel, miscellaneous applications pending, if any, shall stand closed. Send down the LCRs forthwith."

Challenging that judgment and order, the said defendant No.1 i.e., pro-respondent herein again preferred an SLP before the Hon'ble Supreme Court of India which was numbered as SLP No.473 of 2024 and by order dated 11.02.2025, the said SLP was dismissed. The operative portion of the order of the Hon'ble Supreme Court runs as follows:

**"Heard the learned counsel appearing for the petitioner.
We find no reason to interfere with the impugned order.
The Special Leave Petition is, accordingly, dismissed.
Pending application(s), if any, shall stand disposed of."**

Learned Counsel thereafter further submitted that since the Supreme Court of India has dismissed the appeal, so there remains nothing for the appellant to proceed with the appeal as because the purported 'Will' on the basis of which, land was transferred in favour of the appellant, was declared as null and void and the present appellant before obtaining probate from the court of competent jurisdiction purchased the suit land from said Niyati Das i.e. the defendant No.1 of the original suit.

4. Per contra, Learned Counsel for the appellant in course of hearing admitted that the said fact and submitted that the

present appellant has nothing to submit against the application for direction filed by the respondent-plaintiffs herein and submitted before the Court to pass appropriate order accordingly.

5. After hearing both the sides, it appears to this Court that said pro-respondent herein namely Niyati Das i.e., defendant No.1 of T.S. No.32 of 2017 before obtaining certificate of probate from the court of competent jurisdiction transferred the suit land in favour of the present appellant on the basis of Title deed bearing No.I-1627 dated 18.10.2012 and the said purported Will has already been declared as void and cancelled by the Court of Learned Civil Judge, Senior Division, North Tripura, Dharmanagar which has been affirmed by the Learned 1st Appellate Court in TA No.26 of 2022 by judgment dated 30.08.2023 and consequential decree dated 04.09.2023. So, after going through the aforesaid judgments and hearing of Learned Counsel for both the sides, it appears to this Court that there is/are no substantial question(s) of law to be decided herein in favour of the present appellant.

6. In the result, the appeal filed by the present appellant stands dismissed being devoid of merit. The judgment dated 30.08.2023 and decree dated 04.09.2023 delivered by Learned District Judge, North Tripura, Dharmanagar in connection with T.A. No.26 of 2022 is hereby upheld and affirmed accordingly.

Prepare decree accordingly.

Send down the record of Learned Courts below along with a copy of this judgment and order.

A copy of this judgment and order be furnished free of cost to Learned Counsel for the respondent-plaintiffs No.1, 2 and 3.

The I.A. No.2 of 2025 is accordingly stands disposed of and another I.A. No.1 of 2024 is accordingly stands dismissed being devoid of merit.

JUDGE

