



**HIGH COURT OF TRIPURA
AGARTALA**

RSA No.18 of 2025

1. Smt. Tulsi Roy (Sarkar), D/O. Late Lal Mohan Roy, W/O. Sri Thakur Charan Sarkar, Resident of Nischintapur, Ishanchandra Nagar, P.O. Ishanchandra Nagar, P.S.-Amtali, District-West Tripura.
 2. Smt. Manju Rani Roy (Majumder), D/O. Late Lal Mohan Roy, W/O. Sri Krishnadhan Majumder, Resident of Kuripukur, P.O.-Amtali, P.S.-Amtali, District-West Tripura, Pin-799130.
 3. Sri Dulal Roy, S/O. Late Lalmohan Roy, Resident of Madhupur, P.O.-Amtali, P.S.-Amtali, District-West Tripura, Pin-799130.
- Appellant(s).

V E R S U S

1. Sri Gouranga Chandra Roy, S/O. Sri Monmohan Roy, resident of Madhupur, P.O.-Amtali, P.S.-Amtali, District-West Tripura, Pin-799130.
 2. Sri Ranjit Chandra Roy, S/O. Sri Akhil Chandra Roy, resident of Ballavpur, P.O.-Amtali, P.S.-Amtali, District-West Tripura, Pin-799130.
 3. Sri Pradip Sarkar, S/O. Late Harendra Chandra Sarkar, resident of Nischintapur, P.O.-Amtali, P.S.-Amtali, District-West Tripura.
 4. Sri Nanda Lal Sarkar, S/O. Late Harendra Chandra Sarkar, resident of Nischintapur, P.O.-Amtali, P.S.-Amtali, District-West Tripura.
 5. (a) Smt. Mithu Sarkar, W/O. Late Dulal Sarkar,
(b) Sri Bijen Sarkar, S/O. Late Dulal Sarkar,
(c) Sri Papai Sarkar, S/O. Late Dulal Sarkar.
All are residents of Nischintapur, P.O.-Amtali, P.S.-Amtali, District-West Tripura.
 6. Sri Jyoti Lal Sarkar, S/O. Late Harendra Chandra Sarkar, resident of Nischintapur, P.O.-Amtali, P.S.-Amtali, District-West Tripura.
- Respondent(s).

For Appellant(s)	: Mr. Debalay Bhattacharya, Sr. Advocate, Mr. Agniva Chakraborty, Advocate.
For Respondent(s)	: Mr. Dhruva Jyoti Saha, Advocate, Mr. Samrat Sarkar, Advocate.

HON'BLE THE CHIEF JUSTICE MR. M.S. RAMACHANDRA RAO

CAV reserved on : **08.05.2026.**

Judgment delivered on : **25.05.2026.**

Whether fit for reporting : **YES.**



JUDGMENT & ORDER

Heard Mr. Debalay Bhattacharya, learned senior counsel assisted by Mr. Agniva Chakraborty, counsel appearing for the appellants and Mr. Dhruva Jyoti Saha, counsel appearing for the respondents.

2. This RSA is filed under Section 100 of the Code of Civil Procedure (CPC, for short) by the unsuccessful defendants challenging the judgment dt.25.03.2025 of the Additional District Judge, Court No.2, West Tripura, Agartala in Title Appeal No.25 of 2024 confirming the orders dt.02.12.2024 and 11.12.2024 of the Civil Judge, Senior Division, Court No.1, Agartala, West Tripura in T.S.(P) No.66 of 1977.

3. The respondent No.1/plaintiff had filed the said suit seeking a preliminary decree for partition of the 'A' Schedule property by dividing the same and allotting to him 8 annas share, for passing of a final decree of partition of the said property by appointing a Survey Commissioner and for recovery of possession of the said portion of the property. The plaint 'A' Schedule consisted of 3(three) items - (i) land measuring 1.44 acres, (ii) land measuring 0.19 acres, and (iii) land measuring 0.91 acres.

4. In the said suit, he contended that the property was owned by one Tripura Sundari Kapali, mother of the grandfather of the plaintiff and defendants No.2 to 4 and by Banamali Roy and others, the grandfather of the plaintiff.

5. The plaintiff contended that Banamali Roy and his two brothers Ramesh Roy and Mahesh Roy partitioned the same, that Mahesh Roy, who is the grandfather of the plaintiff and defendants No.2 to 4 and father-in-law of



defendant No.1 got towards his share, the 'A' Schedule property; after his death his two sons Man Mohan Roy and Lal Mohan Roy (since deceased) inherited the property; on 09.01.1960 Man Mohan Roy and Lal Mohan Roy repurchased certain land which was also included in the 'A' Schedule property; and the father of the plaintiff gifted his 8(eight) annas share in the 'A' Schedule by a document dt.06.02.1976 in favour of the plaintiff.

6. He contended that he is the joint owner of the said properties along with the defendants.

7. According to him, in the pre-settlement operation, the land in question was wrongly recorded in the name of only Lal Mohan Roy, the predecessor-in-interest of the defendants; this was questioned by the plaintiff by filing a petition under Section 95 of the Tripura Land Revenue and Land Reforms Act, 1960 on 13.04.1976 and that the same is still pending. He also contended that after the death of Lal Mohan Roy, the uncle of the plaintiff, the plaintiff maintained a joint kitchen with the defendants for some time, but later there were separate kitchens.

8. According to the plaintiff, the defendants took advantage of the wrong and erroneous preparation of the record of rights and are now trying to claim the entire property and do not wish to partition the same and so he had to file the suit.

9. The defendants No.1 and 5 filed separate written statements, but the other defendants were set *ex parte*.

10. The defendant No.1 contended that the plaintiff and his father Man Mohan Roy were not co-sharers in the suit properties and he had no right, title, interest or possession and so the suit should be dismissed. They



denied that the land was ever owned by Tripura Sundari Kapali, Banamali Roy and others and stated that there was no partition between Ramesh Roy, Mahesh Roy and Banamali Roy. They also denied that Mahesh Roy got any share in the 'A' Schedule property and pleaded that after his death, even the plaintiff has no share therein. They denied the repurchase under the Sale Deed dt.09.01.1960. They contended that their father was the absolute owner in exclusive possession of the suit 'A' Schedule property and after his death, they became full owners thereof, and the plaintiff or his father had no possession of the suit Schedule properties.

11. They also contended that the suit schedule properties were the self acquired properties of their father Lal Mohan Roy, that he had acquired the same with his own money and on his death, the defendants succeeded to the property.

12. Defendant No.5 filed a written statement supporting defendant No.1.

13. Before the trial Court, the plaintiff examined 7(seven) witnesses and marked exhibits 1 to 9.

14. Defendant No.1 got examined as DW-1 and marked as Exhibits-A to C.

15. After contest, preliminary decree was passed on 14.06.1993 in the suit declaring that the plaintiff was having 50% share of the 'A' Schedule property and that the plaintiff is also entitled to have a final decree for partition of his share of 50% therein by metes and bounds by way of appointing a Survey Commissioner.



16. The same was also affirmed in T.A. No.51 of 1993 by judgment dt.02.01.1997 and by this Court on 25.04.2019 in RSA No.10 of 2018.

17. Thus the preliminary decree attained finality.

18. Thereafter, the Survey Commissioner appointed in the final decree proceedings, submitted his report on 06.07.2021 stating that he could not demarcate the land because he was not able to locate it. According to him, as per the decree, the land was supposed to be 77 gandas, but the defendants had sold out the lands to different persons and Khatians had also been prepared in their names.

19. The trial Court asked him to again carry out survey work and he submitted a report on 23.11.2021 and he held that the total decretal land was 127 gandas, in which 8 gandas were forcibly occupied and 78 gandas were sold out by the defendants. He found only 41 gandas of land and in terms of the preliminary decree he held that the plaintiff was entitled to the entire 41 gandas, though he is entitled to 63 gandas towards his half share.

20. The trial Court, therefore, accepted the said report and passed final decree on 21.12.2021 holding that it cannot adjudicate any claim of forceful possession of the suit premises; and since the plaintiff has no objection against the report of the Survey Commissioner, same was accepted by granting liberty to both parties to institute further litigation regarding the land which was forcefully occupied, or regarding the share of the defendants.

21. This was challenged in T.A. No.03 of 2022 by the defendants before the Additional District Judge, Court No.4, West Tripura, Agartala. The said T.A was allowed on 9.1.2024, the judgment of trial court /the final decree



dt.21.12.2021 was set aside and a direction was given to the trial Court to appoint a Survey Commissioner again to do a fresh survey.

The said Court held that the Survey Commissioner had not properly measured and done demarcation by metes and bounds and he did not specify in his report from which plot number, the 41 gandas of land are left vacant, and what plot numbers are forcibly occupied by which parties, and the identification of the plot numbers which were sold, if any. It held that the report of the Survey Commissioner has not given the correct division of the share of the properties and the report did not conform to the judgment of the High Court in the RSA.

22. After the matter was remanded back, on 16.7.2024, the Survey Commissioner was again asked to do a survey and submit a report. He completed the survey and filed a report on 16.08.2024.

23. The defendants filed objection thereto, *inter alia*, contending that some portion of the suit land had been acquired by the Government of Tripura for construction of National Highway and the report filed by the Survey Commissioner did not reveal it.

24. This objection was rejected by the trial Court which held that the Survey Commissioner in his report dt.16.08.2024 had acted in conformity with the direction of the Appellate Court and there was no merit in their objection.

25. After acceptance of the Survey Commissioner's report on 02.12.2024, the trial Court was informed by the plaintiff that the Survey Commissioner had not demarcated the land of the plaintiff and post pillars within the suit land as demarcated by him in his report dt.16.08.2024.



26. The Court, therefore, on 11.12.2024 accepted the plaintiff's contention and directed the Survey Commissioner to demarcate the decretal land by posting pillars after noting that 78 gandas of the suit land had been sold out by the defendants out of 127 gandas of land, i.e. more than 50% of the suit land, and holding that the plaintiff would be entitled to the remaining 41 gandas of land.

27. This was challenged by the defendants in T.A. No.25 of 2024 before the District Judge, West Tripura, Agartala. They also filed an application under Order VI Rule 17 of CPC for amendment of the Appeal memo, which was opposed by the plaintiff.

28. On 17.03.2025, the lower Appellate Court rejected the application under Order VI Rule 17 of CPC contending that when the case was posted for orders/judgment, this application had been moved and previously sufficient time was given to the defendants, but they did not take steps.

29. It also dismissed the T.A. No.25 of 2024 on 25.03.2025. It held that the trial Court had rightly issued orders to the Survey Commissioner to post pillars after demarcating the land of 41 gandas, which the plaintiff was supposed to get as per the preliminary decree.

30. It held that unless and until the suit schedule property is properly identified by demarcation, it cannot be partitioned by metes and bounds. It relied on the judgment of the Supreme Court in the case of **Shub Karan Bubna alias Shub Karan Prasad Bubna v. Sita Saran Bubna and others**¹, wherein the Supreme Court emphasized that preliminary decree confers right

¹ (2009) 9 SCC 689



of the parties interested in the property and gives a further direction as may be required to effect the division, and the final decree is passed after the partition is made by the Collector or a Commissioner and he divides the property by metes and bounds. It also held that a partition suit continues to be pending until the partition is made and final decree is passed.

31. Challenging the same, this RSA is filed by the defendants.

32. The principal contention of the counsel for the appellants is that the land which had been acquired by the State Government has not been taken note of by the Survey Commissioner and there is a grave error in the Survey Commissioner's report.

33. Counsel for the plaintiff pointed out that in the preliminary decree dt.14.06.1993 in T.S.(P) No.66 of 1977, the plaintiff himself pleaded that his father and the father of the defendants had got compensation jointly from the Government of Tripura for their land which had been acquired by the State Government. He contended that in the judgment of the trial Court, while passing preliminary decree, it was already recorded that Exhibit-1 document was issued by the State Government of Tripura while acquiring 2 gandas from the Jote No.357 under Kayemi Taluk No.57, and the Government paid amount of compensation for the said land acquisition to the father of the plaintiff and to the father of the defendants on 18.11.1959. Thus he contended that, long before the filing of the suit, the land had been acquired by the Government for road widening, and the plaintiff has, therefore, not included that land in the suit 'A' Schedule and he could not have done so either.



34. I completely agree with the contention of the respondent. If the land acquisition had happened and compensation was paid in 1959, the said acquired land would not be part of suit schedule when it was filed in 1977.

35. If the trial Court, while passing preliminary decree had itself noted that the acquisition of the land was much before the filing of the instant suit in 1977, i.e. it took place in 1959 and the said finding had attained finality up to RSA, the defendants cannot be permitted to raise the issue during the final decree proceedings again and seek to delay the passing of the final decree in this manner. No other contention was raised by the appellants.

36. Therefore, I do not find any merit in the RSA. It accordingly dismissed. No costs.

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

(M.S. RAMACHANDRA RAO, CJ)

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