

**HIGH COURT OF TRIPURA
AGARTALA**

RSA 01 of 2026

1. Rahim Uddin, S/O. Lt. Achir Ali, Resident of Vill.- Dupirband, P.O.- Krishnapur, P.S.-Dharmanagar, Dist.- North Tripura.
- 2(a). Mst. Piyara Begam, D/O. Late Jangar Uddin, Resident of Vill.- Dupirband, P.O.-Krishnapur, P.S.-Dharmanagar, Dist.- North Tripura.
- 2(b). Mst. Nazma Begam, W/O. Md. Saifu Uddin, Resident of Vill.- Dupirband, P.O.-Krishnapur, P.S.-Dharmanagar, Dist.-North Tripura.
- 2(c). Mst. Safna Begam, D/O. Late Jangar Uddin, Resident of Vill.- Dupirband, P.O.-Krishnapur, P.S.-Dharmanagar, Dist.-North Tripura.
- 2(d). Mst. Jani Begam, D/O. Late Jangar Uddin, Resident of Vill.- Dupirband, P.O.-Krishnapur, P.S.-Dharmanagar, Dist.-North Tripura.
- 2(e). Md. Sultan Hussain, S/O. Late Jangar Uddin, Resident of Vill.- Dupirband, P.O.-Krishnapur, P.S.-Dharmanagar, Dist.-North Tripura.
- 2(f). Md. Alam Uddin, S/O. Late Jangar Uddin, Resident of Vill.- Dupirband, P.O.-Krishnapur, P.S.-Dharmanagar, Dist.-North Tripura.
- 3(a). Md. Taj Uddin, S/O. Late Jamir Uddin, Resident of Vill.- Dupirband, P.O.- Krishnapur, P.S.-Dharmanagar, Dist.-North Tripura.
- 3(b). Md. Selim Uddin, S/O. Late Jamir Uddin, Resident of Vill.- Dupirband, P.O.-Krishnapur, P.S.-Dharmanagar, Dist.-North Tripura.
- 3(c). Md. Nasir Uddin, S/O. Late Jamir Uddin, Resident of Vill.- Dupirband, P.O.-Krishnapur, P.S.-Dharmanagar, Dist.-North Tripura.
- 3(d). Md. Altab Uddin, S/O. Late Jamir Uddin, Resident of Vill.- Dupirband, P.O.-Krishnapur, P.S.-Dharmanagar, Dist.-North Tripura.
- 3(e). Md. Matab Uddin, S/O. Late Jamir Uddin, Resident of Vill.- Dupirband, P.O.-Krishnapur, P.S.-Dharmanagar, Dist.-North Tripura.
- 3(f). Mst. Nurjahan Begam, D/O. Late Jamir Uddin, Resident of Vill.- Dupirband, P.O.-Krishnapur, P.S.-Dharmanagar, Dist.-North Tripura.
4. Md. Nur Uddin, S/O. Late Achir Uddin, Resident of Vill.- Dupirband, P.O.- Krishnapur, P.S.-Dharmanagar, Dist.-North Tripura.
5. Md. Giyas Uddin, S/O. Late Achir Uddin, Resident of Vill.- Dupirband, P.O.- Krishnapur, P.S.-Dharmanagar, Dist.-North Tripura.
6. Md. Riyach Uddin, S/O. Late Achir Uddin, Resident of Vill.- Dupirband, P.O.-Krishnapur, P.S.-Dharmanagar, Dist.-North Tripura.
7. Mst. Karabul Nessa, D/O. Late Achir Ali, Resident of Vill.- Dupirband, P.O.- Krishnapur, P.S.-Dharmanagar, Dist.-North Tripura.
8. Mst. Joytun Bibi, D/O. Late Achir Ali, Resident of Vill.-Dupirband, P.O.- Krishnapur, P.S.-Dharmanagar, Dist.-North Tripura.

9. Mst. Ajia Begam, W/O. Late Jaynal Uddin, Resident of Vill.- Dupirband, P.O.-Krishnapur, P.S.-Dharmanagar, Dist.-North Tripura.

10. Mst. Sahina Begam(minor), D/O. Late Jaynal Uddin, Resident of Vill.- Dupirband, P.O.-Krishnapur, P.S.-Dharmanagar, Dist.-North Tripura.

11. Md. Rul Ahmed(minor), D/O. Late Jaynal Uddin, Resident of Vill.- Dupirband, P.O.-Krishnapur, P.S.-Dharmanagar, Dist.-North Tripura.

12. Mst. Abida Begam(minor), D/O. Late Jaynal Uddin, Resident of Vill.- Dupirband, P.O.-Krishnapur, P.S.-Dharmanagar, Dist.-North Tripura.

(the plaintiffs no. 10, 11 and 12 are represented by their legal guardian namely Mst. Ajia Begam(Plaintiff no. 9) being minor)

.....*Appellants*

V E R S U S

1. Md. Ala Uddin, S/O. Late Abdul Basir, Resident of Vill.- Dupirband, P.O.-Krishnapur, P.S.-Dharmanagar, Dist.-North Tripura.

2. Md. Abdul Alim, S/O. Late Ala Uddin (Wather Ali), Resident of Vill.- Dupirband, P.O.- Krishnapur, P.S.-Dharmanagar, Dist.-North Tripura.

.....*Respondents*

For Appellant(s)	:	Mr. Sisir Chakraborty, Advocate
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For Respondent(s)	:	None.
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Date of hearing	:	30.01.2026.
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Date of pronouncement	:	02.03.2026.
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Whether fit for reporting	:	NO
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HON'BLE THE CHIEF JUSTICE MR. M.S. RAMACHANDRA RAO

JUDGMENT & ORDER

This second appeal is preferred under Section 100 of CPC by the appellants/plaintiffs challenging the judgment and decree dt. 28.08.2025 in Title Appeal No. 08 of 2023 of the Addl. District Judge, North Tripura, Dharmanagar confirming the judgment dated 22.12.2022 in TS No. 53 of 2012 of the Civil Judge, (Jr. Div.) Dharmanagar, North Tripura.

2. The parties will henceforth be referred to as per the array of the suit.

The case of plaintiffs:

3. The plaintiffs' case was that suit land measuring 0.87 acres described in Schedule A to the plaint was originally owned and possessed by their father one Achir Ali (since deceased), that he died leaving behind 7 sons and 2 daughters, and after his death the plaintiffs being his legal heirs became joint owners of the A schedule land.

4. The plaintiffs contended that the defendant Nos. 1 & 2 started to possess the suit land measuring 0.15 acres described in Schedule B and another portion measuring 0.20 acres described in Schedule C in the first part of the year 1971, with the consent of Achir Ali during his lifetime on condition that they would vacate the same as and when required him. According to the plaintiffs, after the death of Achir Ali, the defendant Nos. 1 & 2 also obtained permission from the plaintiffs to possess the B & C schedule lands on the same condition that they would handover possession of the same to the plaintiffs' as and when required.

5. It was alleged by the plaintiffs that on 03.06.2010 the plaintiffs requested the defendants to return the possession of the B & C schedule lands, but the defendants became very angry and tried to assault the plaintiff No.1 by saying that they are the owners of the B & C schedule lands and if the plaintiffs raise any question regarding ownership and possession of the land, then there would be bloodshed.

6. It is also contended that 15 days after the said incident, the defendant No.2 started construction of a Kuccha Hut on the C schedule land despite the objection raised by the plaintiffs and gradually constructed a tin roofing bamboo fencing mud wall hut along with a verandah described in

Schedule D and started living there with his family members by constructing the homestead therein illegally.

7. The plaintiffs prayed for declaration of their right, title and interest in the A schedule property and for recovery and possession of the property mentioned in schedule B & C by evicting the defendants therefrom by demolishing the illegal constructions and all other obstructions in schedule D. They also sought to challenge a sale deed dt. 14.03.1980 on the basis of which the defendant No.1 claimed to have purchased 0.20 acres from Achir Ali and another sale deed dt. 28.03.1980 under which the predecessor of the father of defendant No.2 purchased from Achir Ali. They contended that the sale deeds were fraudulent, collusive, void and not binding upon the plaintiffs and liable to be cancelled.

The stand of defendants:

8. The defendant Nos. 1 & 2 filed Written Statement opposing the claim of the plaintiffs.

9. They contended that under the registered sale deed dt.14.03.1980, Achir Ali, the father of the plaintiffs, had sold 0.20 acres of land to defendant No.1 after receiving valuable consideration. As the original sale deed was lost, a certified copy of the same was obtained in the year 2000, but his name was not mutated in the revenue records during settlement operations though he was in possession of the same without any interference.

10. It was contended that the defendant No.1 gifted 0.05 acres in favour of Krishnapur Jame Masjid and so he is now possessing 0.15 acres and it has been in his continuous possession.

11. It is stated that the father of defendant No.2 purchased land measuring 0.22 acres from one Charag Ali under registered sale deed dt. 23.09.1982 for valuable consideration; that the said Charag Ali purchased the same from one Riachat Ali under registered sale deed dt. 14.11.1980; and Riachat Ali had purchased the said land from Achir Ali, the father of the plaintiffs, under a registered sale deed dt. 28.03.1980.

12. It is stated that father of defendant No.2 executed a gift deed in respect of land measuring 0.58 acres including the land measuring 0.22 acres in favour of his wife Jamila Bhanu under a gift deed dt. 30.04.2008. It is stated that though the father of defendant No.2 applied for mutation in her name, but mutation was not done only for 0.36 acres and not for 0.22 acres for unknown reasons and the name of Achir Ali continued.

13. The defendants contended that taking advantage of the non-recording of the names of the purchasers of the said property, the plaintiffs started creating trouble by attempting to take possession of the suit land with connivance of the revenue staff and ensured that Khatian was not prepared in the name of the defendant No.1 and in the name of father or mother of defendant No.2.

14. It was contented that the plaintiffs cannot claim title and seek to recover possession of the said land in B, C & D Schedule which had been sold out by their father Achir Ali through registered sale deeds and they have no right, title or interest over the property and only to harass the defendants the suit was filed.

15. They further contended that the suit is bad for non-joinder of parties and the father and mother of defendant no.2 are necessary parties to the suit.

The issues:

16. The trial court framed the following issues:

- 1. Whether the suit is maintainable in its present form and nature or not?*
- 2. Whether there is any cause of action for filing the instant suit?*
- 3. Whether the plaintiff is entitled to get the decree of right, title and interest in respect of the suit land as described in the schedule 'A' of the plaint?*
- 4. Whether the plaintiff is entitled to get the decree of declaration that the sale deed no.1-1083 dt. 14.03.1980 and 1-1451 dt.28.03.1980 are made of fraud and thereby collusive and void and not binding upon the plaintiffs and liable to be cancelled?*
- 5. Whether the plaintiff is entitled to get the decree for recovery of possession by evicting the defendant no.1 and his person(s) from the suit land described 'B' of the plaint and defendant no.2 and his person(s) from the suit land described in schedule 'C' of the plaint by way of demolishing and abolishing all obstruction as described schedule 'D' of the plaint.*
- 6. What other relief/reliefs are entitled to the petitioner as sought for?*

The judgment of the trial court:

17. The trial court held that the plaintiffs had not impleaded in the suit Riachat Ali or Charag Ali who are the executants of the respective sale deeds or Jamila Bhanu the mother of the defendant No.2 whose interest in the suit property was directly affected and in whose name the suit property presently vests, and so those persons are deprived of opportunity to show better title to the suit land.

18. It held that the gift deed in favour of the mother of defendant No.2 had not been challenged and it was imperative on the part of the plaintiffs to implead the parents of the defendant No.2.

19. It held that the Masjid to whom land of 0.05 acres has been gifted was also not made a party to the suit though plaintiffs know fully well about the donation dt. 25.09.2006 made in its favour by the defendant No.1.

20. It therefore held that the suit was bad for non-joinder of necessary parties and also for discrepancy in identification of the suit land.

21. It then considered the plea of the plaintiffs that Achir Ali had died in the year 1978 and so could not have executed the sale deeds on 14.03.1980 and 28.03.1980 respectively. It noted that the plaintiffs had produced a death certificate of Achir Ali, Exhibit 3 which shows the date of death of Achir Ali as 30.01.1978. But it is evident from the evidence on record that the said entry of death of Achir Ali was done on 12.09.2000. It believed the plea of plaintiffs that Achir Ali died on 30.1.1978 in view of presumption under Section 114 (e) of the Evidence Act, 1872 that the official acts have been regularly performed and though this presumption was rebuttable, the defendants did not discharge the onus on them to rebut it by producing and examining the witnesses in whose presence the signature of late Achir Ali was affixed to the sale deed.

22. It accepted the plea of the defendants that on account of loss of original sale deed dt. 14.03.1980 certified copy of the same was filed by the defendants and since the defendants were not cross-examined by the plaintiffs on this aspect, the certified copy of the said sale deed can be accepted as secondary evidence.

23. It concluded that the defendants failed to show by giving cogent evidence that the sale deeds dt. 14.03.1980 was duly executed by late Achir Ali because the plaintiffs have disputed the same on the ground that late Achir Ali had already expired prior to the execution of the sale deed on 30.01.1978.

24. It also held that the sale deed dt. 28.03.1980 filed by the defendant no.2 in respect of C schedule land was not the original and was only a certified copy and no reason is assigned why the original was not filed.

25. It therefore, held that the relief of declaration that sale deed dt. 14.03.1980 is fraudulent, collusive, void and not binding on the plaintiffs can be granted and it can be cancelled, but declaration that the sale deed dt. 28.03.1980 cannot be granted. The reason for the latter was stated to be non-joinder of necessary parties by the plaintiff.

26. It further held that the plaintiffs had claimed for right, title and interest over the B schedule land pertaining to RS Plot No.628 under a finally published Khatian No.72 measuring 0.15 acres showing that it is bounded on the north by the Masjid but at the same time , they have also sought for right, title or interest over the same plot of land in schedule A showing it's extent to be 0.20 acres. The defendants asserted that 0.05 acres had been gifted to a Masjid but plaintiffs were silent about this. It therefore held that there is a discrepancy as to the extent of land covered by RS Plot No. 628 as to whether it was 0.20 acres or 0.15 acres and if the entire relief is granted, then the Masjid's interest will be affected.

27. So the trial court dismissed the suit stating that the plaintiffs had failed to make out a case for declaration of their right, title and interest in their

favour in respect of A schedule land taking into account that B, C & D schedule is part of the A schedule land.

The judgment of the First Appellate Court:

28. Challenging the same, Title Appeal No. 08 of 2023 was filed by the plaintiffs before the Addl. District Judge, North Tripura, Dharmanagar.

29. The defendants also filed Title Appeal No. 13 of 2023 to the extent that the trial court had held against them.

30. The First Appellate Court also dismissed the appeal confirming the judgment of the trial court.

31. After considering the evidence on record it held that since the defendant No.1 as DW3 stated that the original sale deed dt. 14.03.1980 was lost, foundation had been laid for production of the certified copy of the said sale deed. It held that the defendants would get the benefit of Section 90 of the Indian Evidence Act, 1872 since the certified copy is of a sale deed which is more than 30 years old. It relied on the judgment of the Supreme Court in *Lakhi Baruah v. Padma Kanta Kalita, Civil Appeal No. 3866 of 1996 dt. 26.02.1996*¹ in support of the said conclusion.

32. It then looked at the sale deed dt. 14.03.1980 and noted that there was an endorsement of the Sub-Registrar that Achir Ali presented the said document for registration on the said date and also admitted the execution of the said deed. So the sale deed dt. 14.03.1980 is believable and it may be said that Achir Ali executed the sale deed in favour of defendant No.1.

33. Coming to the sale deed dt. 28.03.1980 it held that the defendants did not lay any foundation for production of the certified copy of the said sale

¹ (1996) 8 SCC 357

deed and for non-production of the original. It therefore agreed with the trial court's view that the certified copy of the sale deed dt. 28.03.1980 is not admissible.

34. It considered the evidence of the Panchayat Secretary who was examined as CW1 and found that the death certificate of Achir Ali was issued on 12.09.2000 though he died on 30.01.1978 as per his evidence and that the death of Achir Ali was reported in 2000. It therefore doubted as to whether the date of death of Achir Ali mentioned in the said certificate was correct or not because there was no reason assigned by plaintiffs for reporting late the death of Achir Ali in the year 2000 if he had really died in the year 1978, 22 years after his alleged death.

35. It also noted that there was no document in respect of verification of death of Achir Ali was available in Dhupirband Gao Panchayat and so the death certificate produced by the plaintiffs was not issued properly in compliance with procedure and so the presumption in relation thereto cannot be taken.

36. The Appellate Court held that Exhibit H, original sale deed dt. 05.09.1981 was also executed by Achir Ali in favour of a third person namely, Md. Abdul Gaffar. It therefore concluded that it is difficult to believe that Achir Ali died on 30.01.1978 and therefore it is probable that he would have executed the sale deeds dt. 14.03.1980 and dt. 28.03.1980 also. It also relied on the judgments of the Supreme Court in *Prem Singh & Ors. v. Birbal & Ors.*² & *Vishwanath Bapurao Sabale v. Shalinibai Nagappa Sabale & Ors.*³,

² (2006) 5 SCC 353

³ (2009) 12 SCC 101

that if there is a presumption of a registered document being validly executed and that a registered document would *prima facie* be valid in law.

37. It therefore concluded that the plaintiffs failed to prove that the sale deeds dt. 14.03.1980 and dt. 28.03.1980 are fraudulent, collusive, void and not binding upon the plaintiffs and were therefore not liable to be cancelled. It also held, in agreement with the trial court, that the suit was bad for non-joinder of the necessary parties.

38. It thus reversed the judgment of the trial court in respect of the relief the trial court had granted to the plaintiffs regarding the sale deed dt. 14.03.1980 being fraudulent, collusive and void. Consequently, it dismissed Title Appeal No. 08/2023 filed by the plaintiffs and allowed Title Appeal No. 13/2023 filed by the defendants.

39. Challenging the same this RSA has been filed.

The RSA:

40. Counsel for the appellants/plaintiffs contended that the presumption of 30 year old document does not apply if there is sufficient evidence of non-execution or fraud. He also contended that the death certificate of late Achir Ali issued in the year 2000 should have been accepted as genuine by the First Appellate Court.

41. The plaintiffs themselves had alleged about the existence of the sale deeds dt.14.03.1980 and dt. 28.03.1980 and sought their cancellation. Merely because the original of the documents were not filed by the defendants and only certified copies thereof were filed, it would make little difference, and the only question is whether Achir Ali did execute them. This is dependent on what the date of death of Achir Ali is.

42. As regards the date of death of Achir Ali, according to the plaintiffs he had died on 30.01.1978, but they have not explained why the entry regarding the date of death of Achir Ali was made only on 12.09.2000.

43. The lower Appellate Court had relied on the execution of Exhibit H, regd. sale deed on 05.09.1981 by Achir Ali in favour of a third party Md. Abdul Gaffar.

44. In my view, it had rightly held that there is a strong presumption of execution of registered documents such as Ex.H, and since it's valid execution was proved by the endorsements contained therein about presentation of it by Achir Ali in office of the Sub-registrar, he cannot be believed to have died on 30.1.1978.

45. The execution of the originals of sale deeds dt.14.03.1980 and dt. 28.03.1980 cannot be disbelieved if the executant Achir Ali had executed Exhibit-H document on 05.09.1981 subsequent thereto. Therefore, they cannot be said to have been procured by fraud.

46. In ***Lakhi Baruah v. Padma Kanta Kalita, Civil Appeal No. 3866 of 1996 dated 26.02.1996 (1 supra)***, the Supreme Court had held that court has discretion to refuse to give benefit of presumption under Section 90 of the Indian Evidence Act, 1872 to a certified copy of sale deed when due execution of the original appears to be doubtful. Since there is no such doubt in the instant case about their execution, the presumption under Section 90 of the evidence Act about the genuineness of original of the certified copy has to be taken in favor of defendants.

47. Moreover the registration of the said sale deeds dt.14.3.1980 and dt.28.3.1980 is itself public notice as per Explanation I to Section 3 of the

Transfer of Property Act, 1882 and the plaintiffs cannot plead ignorance of the same till 2012 when they filed the suit. By clever drafting of the plaint, they sought to get over the inordinate delay of 32 years in filing the suit for declaration. This conduct cannot be countenanced.

48. The aspect of non-joinder of the Masjid who owns a portion of B schedule land and the parents of defendant no.2 who own Schedule C land is also fatal to the claim of the plaintiffs as they are necessary parties to the suit.

49. The lower Appellate Court had correctly appreciated the evidence on record and applied the correct legal principles and there is no warrant to interfere with the same in exercise of power vested in this Court under Section 100 CPC.

50. Therefore, I do not find any merit in this RSA which is accordingly dismissed. No costs.

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

(M.S. RAMACHANDRA RAO, CJ)