

THE HIGH COURT OF TRIPURA AGARTALA

RSA NO.61 OF 2007

1. Smt. Anita Ghosh(Das),

W/O Sri Pradip Ghosh,
village Bathkhauri,
PS Salema, Kamalpur,
District Dhalai, Tripura.

At present C/O Debabrata Banerjee, Village &
P.O. Siddhi Ashram, PS Amtali, District Tripura West.

2. Smt. Jyotsna Ghosh (Das),

W/O Shri Bimal Kumar Ghosh
Village Bhatkhauri,
PS Salema, Kamalpur,
District- Dhalai Tripura.

At present Krishnanagar, Kadamtali, Agartala
PS West Agartala, District Tripura West.

3. Smt. Maya Debnath(Das),

W/O Shri Manu Debnath
Village-Bhatkhauri,
PS Salema, Kamalpur,
District Dhalai, Tripura.

At present Village Rakhaltali, PS Salema, Kamalpur
District Dhalai, Tripura

..... Appellants

- Vs -

1. Shri Nripendra Chandra Das,

S/O Lt. Upendra Ch. Das,
Village Bhatkauri,
PS Salema, Kamalpur,
District Dhalai, Tripura.

2. Shri Suniti Das,

W/O Lt. Upendra Ch. Das,
Village Bhatkhauri,
PS Salema, Kamalpur,
District Dhalai Tripura.

.....Respondents

**BEFORE
THE HON'BLE MR. JUSTICE S.C. DAS**

For the appellants : Mr. D.R. Choudhury, Advocate.
Mr. D. Deb, Advocate.

For the respondents : Mr. D.K. Biswas, Advocate
Mr. G.K. Nama, Advocate.

Date of hearing & delivery
of Judgment & order : 16.12.2015

Whether Fit for Reporting :

Yes	No
	√

JUDGMENT & ORDER(ORAL)

This Second Appeal has been admitted for hearing on
the following substantial questions of law:-

"I) Whether the judgment and decree of both the courts below in rejecting claim of partition of the Plaintiff Appellants for Schedule-A of the suit land and the building on it passed on any evidence?

II) Whether the Exts. F, G & H the sale deeds in respect of the transfer of the joint properties of schedules A and B of the suit land by the only brother, the Defendant Respondent No.1 to his brother-in-law and re-transfer in the name of the Defendant Respondent No.1 are valid document of sale as per the provisions of Section 54 of the Transfer of Property Act?"

2. Heard learned counsel, Mr. D.R. Choudhury for the appellants and learned counsel, Mr. D.K. Biswas for the respondents.

3. The appellants as plaintiffs (hereinafter mention as 'plaintiffs') instituted Title Suit No. 27(Partition) of 2001 in the Court of learned Civil Judge, Senior Division, Kailashahar, North Tripura against the defendant-respondents (hereinafter mentioned as

‘defendants’) seeking partition of the property described in the schedule of the plaint. The defendants contested the suit by filing written statement and the Trial Court considering the pleadings of both the parties framed five issues namely:-

“1. Is there any cause of action to file this suit by the plaintiffs?

2. Whether the suit properties mentioned in schedule 'A', 'B' & 'C' are joint family properties, originally appertained to Late Upendra Ch. Das, father of the plaintiffs and defendant No.1?

3. Whether the suit lands are liable to be partitioned? If so, what should be the extent of share of the plaintiffs and defendants?

4. Whether the plaintiffs are entitled to get decree as prayed for?”

5. To what other relief or reliefs, parties are entitled?”

4. Both the side adduced oral and documentary evidence in support of their pleadings and the Trial Court by judgment dated 15.05.2006 decreed the suit partly, i.e., allowed partition of the property described in the schedule 'C' of the plaint and rejected the prayer of the plaintiffs in respect of partition of land described in schedule 'A' & 'B' of the plaint.

5. Aggrieved, the plaintiffs preferred Title Appeal No.32 of 2006 in the Court of District Judge, Kailashahar and the learned Addl. District Judge, Kailashahar by judgment dated 29.05.2007 allowed the appeal partly and accordingly, allowed partition of the property described in the schedule 'B' of the plaint, in addition to what has already been allowed by the Trial Court. The Appellate

Court rejected the prayer of the plaintiff-appellants in respect of partition of property described in schedule 'A' of the plaint. Hence, this Second Appeal.

6. It is submitted by Mr. Choudhury, learned counsel for the appellants that the plaintiffs and the defendant No.1 are full blood brother and sisters. The defendant No.2 is the mother of the plaintiffs and defendant No.1. The suit property described in schedule 'A', 'B' & 'C' of the plaint belonged to Upendra Chandra Das, the deceased father of the plaintiffs and defendant No.1. It is alleged by the plaintiffs that in respect of schedule 'A' of the suit land the defendant No.1 obtained the power of attorney from the plaintiffs to look after and manage etc., of the schedule 'A' land and by misusing that power of attorney the defendant No.1 executed a sale deed in favour of his brother-in-law Asit Ranjan Debnath and again obtained a sale deed from Asit Ranjan Debnath in his name and so, that sale transaction of the 'A' schedule land was a fraudulent transaction for no consideration and, therefore, the schedule 'A' land was also liable to be partitioned equally between the plaintiffs and defendants.

The Trial Court as well as the Appellate Court has failed to consider the factual aspect that the transaction was not a sale as defined in Section 54 of the Transfer of Property Act and, so, the refusal of decree of partition in respect of 'A' schedule land was wrong and prayed for allowing the appeal to the extent of partition of 'A' schedule land.

7. Learned counsel, Mr. Biswas has submitted that the plaintiffs executed power of attorney empowering the defendant No.1, *inter alia*, to look after and manage as well as to sell the suit property. Pursuant to that registered power of attorney the defendant No.1 executed the sale deed in favour of Asit Ranjan Debnath. It was an out and out sale. Subsequent purchase by the defendant No.1 of that land cannot be termed as a fraudulent transaction and also cannot be termed that it was not a bonafide sale. There was no issue framed before the Trial Court that the sale was fraudulent and both the Trial Court as well as Appellate Court considered the factual aspect and rejected the case of the plaintiffs in respect of partition of 'A' schedule land. There is no infirmity in the judgment and, so, the Second Appeal has no merit for consideration.

8. It is an admitted position that the plaintiffs and the defendant No.1 are full blood sisters and brother and defendant No.2 is their mother. It is also an admitted position that they all inherited the property left by their predecessor Upendra Chandra Das. The Trial Court and the Appellate Court already decreed the suit allowing partition of the land described in schedule 'B' and schedule 'C' of the plaint. The Second Appeal has been filed simply because the Courts below dismissed the prayer of the plaintiffs in respect of partition of 'A' schedule land.

9. It is an admitted position that the plaintiffs executed a registered power of attorney in favour of defendant No.1 to look after, manage, sale etc., of the suit land described in schedule 'A' of

the plaint. The registered irrevocable general power of attorney has been proved as Annexure-1 by the plaintiffs and Annexure-I by the defendants. The document clearly shows that the plaintiffs by executing that deed of power of attorney authorized the defendant No.1, *inter alia*, to sell the suit property.

10. It is also an admitted position that the sale deeds proved as Exbt. 'F', 'G' & 'H' were executed pursuant to that registered power of attorney and those are sale for consideration. The plaintiffs did not come up with a prayer for cancellation of those sale deeds and also did not make any prayer that the power of attorney was obtained fraudulently. No issue was framed that the power of attorney was fraudulently obtained or that the sale deeds were mutual paper transaction between the defendant No.1 and Asit Ranjan Debnath. Asit Ranjan Debnath also has not been made party in the suit. While there was no prayer that those sale transactions were fraudulent, the sale transactions cannot be termed to be wrong and so, the Trial Court as well as the Appellate Court rightly refused prayer of partition of 'A' schedule land.

11. Learned counsel, Mr. Choudhury has argued that prayer for cancellation of that sale deeds is not required in a partition suit if it is found that the transactions were *void ab initio*. In support of his contention he referred the case of **Ganapati Santaram Bhosale and anr., v. Ramachandra Subbarao Kulkarni and ors.** reported in **AIR 1985, Karnataka 143.**

While going through that judgment it appears that it was relating to a property of join coparcener. The fact of this case is

completely different. Here the plaintiffs executed power of attorney in favour of the defendant No.1, *inter alia*, to look after, manage and sale the property mentioned in the document and pursuant to that power the defendant No.1 executed the sale deed in favour of one Asit Ranjan Debnath and subsequently re-purchased it from Asit Ranjan Debnath. So, it was a clear sale transaction between defendant No.1 and Asit Ranjan Debnath and unless those sale transactions were found to be void or declared fraudulent, the sale stands good and bound to be acted upon.

12. The judgment passed by the Trial Court as well as the Appellate Court, therefore, does not suffer from any infirmity and accordingly, I find no merit in this second appeal. The second appeal, therefore, stands dismissed.

13. Parties to bear their own costs.

14. Send back the L.C. records along with the copy of this judgment.

JUDGE

Sohanjit