THE HIGH COURT OF TRIPURA
AGARTALA

RFA NO.09 OF 2010

Smti. Arun Bala Banik,
W/O Late Nityananda Banik,
C/O Shri Pradip Sengupta,
R/O Melarmath, Agartala,
P.O. Agartala, Pin-799001,
P.S. West Agartala,
District-West Tripura.

.... *Appellant*

- Vs –

1. Shri Swapan Kr. Banik,

2. Shri Mohan Kumar Banik,

3. Shri Keshab Banik,

4. Shri S.K. Saha,

All are sons of Late Nityananda Banik,
All residents of 226, Office Lane, Agartala,
P.O. Agartala, Pin-799001, P.S. West Agartala,
District-West Tripura.

.... *Respondents*

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA
HON'BLE MR. JUSTICE S.C. DAS

For the appellant	:	Mr. D. Chakraborty, Sr. Advocate Mr. H. Laskar, Advocate
For the respondents	:	Mr. D.C. Roy, Advocate
Date of hearing	:	**12.08.2015**
Date of delivery of Judgment & order	:	**30.09.2015**

Whether Fit for Reporting :

Yes	No
√	

JUDGMENT & ORDER

(S.C. Das, J.)

This appeal under Section 96 of the Code of Civil Procedure, 1908 is directed against judgment and decree of dismissal dated 26.07.2010 passed by learned Civil Judge, Senior Division, Court No.2, Agartala in Title Suit No.20 of 2006.

2. We have heard learned senior counsel, Mr. D. Chakraborty, assisted by learned counsel, Mr. H. Laskar for the appellant and learned counsel, Mr. D.C. Roy for the respondents.

3. The appellant, as plaintiff instituted Title Suit No.20 of 2006 seeking declaration of her right title interest in the suit land described in Schedule B of the plaint and also prayed for cancellation of the Power of Attorney dated 02.01.2006(*Exbt.1*) and Sale Deed dated 21.01.2006(*Exbt.2*) described in Schedule A(I) and A(II) respectively, of the plaint.

4. In a nutshell, the case of the plaintiff is that she purchased the suit land described in Schedule B of the plaint by registered deed of purchase dated 30.06.1973 and she was the owner-in-possession of the suit land. Her husband died in the year 1976(approximately) and she has got five sons and four daughters. The defendant-respondent Nos.1, 2 and 3(hereinafter mentioned as, 'defendants') are her sons and they were residing with her in the huts constructed by her on the suit land described in Schedule B of the plaint. Her other two sons, namely Sekhar Banik and Ratan Banik were residing separately in their own accommodation elsewhere and she was in joint mess with her three sons, *i.e.* the defendant Nos.1, 2 and 3. Her three daughters were already given in marriage and the youngest one, Smt. Mita Banik was residing with her and the defendants in the same house.

She had a civil suit with her neighbor, Parswanath Roy & others, *i.e.* Title Suit No.14 of 2001, wherein besides her, the defendant Nos.1 and 3 and her son Sekhar Banik were also arrayed as defendants and that suit was decided in favour of Parswanath Roy and others and therefore a Title Appeal No.33 of 2005 was filed by the plaintiff and her sons which was pending.

In the month of December, 2005 the defendant No.1 who was her elder son told her that for conducting the suit/appeal as well as for getting gas pipeline in the house a power of attorney was required to be executed by her and she was initially reluctant to execute any power of attorney but the defendant No.1 insisted for the power of attorney time and again and lastly she was told that if the power of attorney not executed, her sons, *i.e.* the defendant No.1 and 3 and Sekhar Banik may have to go to jail, and out of fear of harassment of her sons she agreed to execute a power of attorney.

In the last part of December, 2005 the defendant No.1 brought some written stamp papers and obtained her signature in the stamp papers. She put her signature in good faith blindly without knowing the contents thereof. Thereafter, on 02.01.2006 defendant Nos.1 and 3 took her to the Court in a crowded room and there she was taken in a room before an officer and the officer asked her whether she gave any power of attorney to Bhajan Banik, the defendant No.4 and at that time her son the defendant No.1 was pushing her from behind to admit that she gave the power of attorney, and accordingly she answered the query made by the officer saying, 'yes'. Thereafter her signature was taken on the backside of some papers and her thumb impression was also taken in the office and then she returned to the house with the defendants. She asked the defendant Nos.1 and 2 as to what was the nature and contents of the power of attorney but they refused to give any reply and did not say anything to her about the contents of the power of attorney. She alleged that thereafter she was kept in confinement by the defendants within the house and was not allowed to mix with anybody. Thereafter, on a day her son Sekhar Banik with his wife Jyoti Rani Banik and her other son Ratan Banik came to the house to see her but they were not allowed to enter in the house by the defendant Nos.1 and 2. The matter was reported to the local club *Egiye Cholo Sangha* and the Secretary of the local club took up the matter for amicable settlement and visited the house of the plaintiff for a couple of days but could not do anything.

Jyoti Rani Banik, wife of her son Sekhar Banik lodged a complaint to the Agartala Women Police Station on 09.03.2006 and the information was entered in G.D. Entry No.223 and 230 dated 09.03.2006 and thereafter police visited her house and she was rescued from the confinement of the defendants. She was taken to police station and from there she went to the house of her son Sekhar Banik and she was living with Sekhar Banik.

She got information through her son that the defendant Nos.1, 2 and 3 got the suit land transferred to them by registered sale deed through the defendant No.4 by virtue of the power of attorney executed by her on 02.01.2006. Thereafter her son Sekhar Banik obtained certified copy of those deeds and she came to know that the defendants fraudulently got the suit land transferred showing a consideration money of ₹4,80,000/-. She never received any consideration money and she did not consciously execute any power of attorney empowering defendant No.4 to transfer the suit land and that she executed the power of attorney on good faith that her sons obtained it for the purpose of conducting the case and for gas connection, etc.

She alleged that the defendants practiced fraud on her and thereby obtained the deed of power of attorney and procured deed of transfer dated 21.01.2006 in favour of defendant Nos.1, 2 and 3 and therefore she prayed for declaration that the registered power of attorney dated 02.01.2006 and sale deed dated 21.01.2006 were fraudulent and collusive and were *void ab initio* and liable to be cancelled. She also prayed for declaration of her right title interest in the land described in Schedule B of the plaint.

5. Defendant Nos.1, 2 and 3 contested the suit by filing a joint written statement, *inter alia* contending that after the death of their father Nityananda Banik, the defendant No.1 who was the eldest among the brothers and sisters was actually maintaining the family consisting of all the brothers and sisters except Ratan Banik who left the family with his wife after the death of their father and he was not keeping any contact with the family. The defendant Nos.1, 2 and 3 arranged marriage of their sisters, namely Gita Banik, Rita Banik and Shikha Banik by spending huge sum.

Their brother, Sekhar Banik also left Agartala and for long time and remained away from the family. In the year 1999 Sekhar Banik returned to Agartala and started business of electrical mechanical work. Ultimately, the defendant Nos.1 and 3 arranged a shop for Sekhar Banik and Sekhar Banik started business. After marriage, Sekhar Banik started dispute and difference in the family and ultimately with his wife he left the family. It is also alleged by the defendants that Sekhar Banik took loan from defendant No.3 and did not repay the amount. The defendants further contended that their family was peaceful but since after marriage, Sekhar Banik and his wife were creating trouble in the family and Sekhar Banik was not obeying the elder brothers.

It is further stated by the defendants that Pradyut Kumar Dhar, advocate, Gopinath Ghosh, Pranab Chanda and Chinmoy Chakraborty, all were the family friends of the plaintiff and defendants and they came forward for settlement of the dispute and there were several sittings for the settlement and ultimately a decision was taken that Sekhar Banik shall not get any share in the homestead and the defendant Nos.1 and 3 shall take all the responsibilities and liabilities of the loan taken from State Bank of India and the loan taken in the names of Mita Banik and Padma Banik and those were recorded in writing in presence of the well-wishers as well as the plaintiff on 27.11.2005. Sekhar Banik initially did not put his signature in the decision taken in the meeting but thereafter in terms of the decision, Sekhar Banik left the house and acted upon the decision. The well-wishers found that ₹5,13,233/- was payable by Sekhar Banik to Padma Banik, Rita Banik, Keshab Banik and Swapan Banik and on the other hand Swapan Banik and Keshab Banik were liable to pay ₹2,44,554/- to Sekhar Banik and that decision was accepted by Sekhar Banik and accordingly the resolution of disputes as decided by those well-wishers was accepted by Sekhar Banik.

It is also contended by the defendants that pursuant to the decision taken in the meeting dated 27.11.2005 the plaintiff appointed defendant No.4 Bhajan Banik as her lawful attorney by executing power of attorney dated 02.01.2006 to execute and register the sale deed in favour of defendant Nos.1, 2 and 3. The deed of power of attorney was prepared by an advocate, namely Swapan Debnath and the plaintiff knowing fully well the contents of the deed of power of attorney executed it in her full sense and consciousness. The said attorney, *i.e.* Bhajan Banik who was the husband of third daughter of the plaintiff in terms of the *covenant* executed the sale deed on 21.01.2006 of the suit land in favour of defendant Nos.1, 2 and 3 and there was no fraud practice by the defendants. The plaintiff was never kept in confinement and she did not make any allegation before the police that she was kept in confinement. The complaint in the police station was lodged by wife of Sekhar Banik fraudulently with a view to take the ailing plaintiff in their custody and thereafter at the instance of Sekhar Banik the plaintiff instituted the suit against the defendants falsely alleging that the power of attorney was obtained exercising fraud and undue influence and that the sale deed was obtained by the defendant Nos.1, 2 and 3 through the power of attorney was *void ab initio*.

6. Sri Bhajan Banik who was appointed as the power of attorney by the impugned instrument dated 02.01.2006 was also originally arrayed as defendant No.4 and he also submitted a separate written statement, *inter alia* contending that the plaintiff was his mother-in-law and that he had good relation with the plaintiff and defendants and the other sons and daughters of the plaintiff. He knew about the family dispute of the plaintiff and defendants and also about the steps taken by the well-wishers for settling the dispute. He clearly stated that he was appointed as power of attorney by the plaintiff and his prior consent was taken before he was appointed as power of attorney. He agreed to be the power of attorney on the request of his mother-in-law, *i.e.* the plaintiff. In terms of the power of attorney he executed the sale deed in favour of defendant Nos.1, 2 and 3 on 21.01.2006 and that was within the knowledge of the plaintiff. He has also stated that Sekhar Banik took custody of the plaintiff wrongly and thereafter at the instance of Sekhar Banik the plaintiff instituted the suit.

7. The trial Court considering the pleadings of the parties framed following issues:-

> *"i. Is the suit maintainable in its present form and nature?*
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> *ii. Is the registered Power of Attorney dated 2.1.06 as described in item No.-1 of Schedule-'A' of the plaint obtained by fraud and if it is void ab initio?*
>
> *iii. Is the registered sale deed dated 2.1.06 described in item No.2, of Schedule-'A' of the means, without consideration, sham paper transaction and void ab initio?*
>
> *iv. Has the plaintiff right, title, interest over the suit land?*
>
> *v. Is the plaintiff entitled to get the decree of recovery of khash possession of the suit land?*
>
> *vi. What other relief/reliefs plaintiff are entitled to?"*

8. In course of trial plaintiff examined herself as PW1 and also examined five more witnesses, namely PW2 Samir Banik, brother of the plaintiff, PW3 Chanchal Nandi, Secretary of the local club, namely Agiye Cholo Sangha, PW4 Sekhar Banik, son of the plaintiff, PW5 Jyoti Rani Banik, daughter-in-law of the plaintiff(wife of Sekhar Banik) and PW6 SI Ila Deb of Agartala Women PS. She has also proved the impugned power of attorney dated 02.01.2006 which is marked as *Exbt.1* and the impugned sale deed dated 21.01.2006 which is marked as *Exbt.2* and also proved a copy of Khatian No.12 of Mouja Agartala Sheet No.6 in her name, marked as *Exbt.3*. A deed of cancellation of power of attorney dated 07.08.2007 marked as *Exbt.4* series and G.D. Entry No.223 Agartala Women PS dated 09.03.2006 marked as *Exbt.5.*

9. Defendant No.1, Swapan Kumar Banik examined himself as DW1 and also examined another witness namely DW2 Nitai Chowdhury, an advocate who prepared and identified the impugned sale deed dated 21.01.2006. The defendants proved the original deed of power of attorney dated 02.01.2006 marked as *Exbt.A*, the original sale deed dated 21.01.2006 marked as *Exbt.B,* and the complaint dated 12.03.2006 filed by the defendant Nos.1, 2 and 3 addressed to the Officer In-Charge of West Agartala PS marked as *Exbt.C* and a receipt of Agartala Municipal Council dated 02.02.2007 marked as *Exbt.D.*

10. Learned Civil Judge, Senior Division by impugned judgment and decree dated 26.07.2010 dismissed the suit of the plaintiff and hence this appeal.

11. At the very outset, we are shocked to see the judgment passed by the learned Civil Judge, Senior Division. A Civil Judge, Senior Division is a quite senior officer and it is expected that he knows the ABC of writing a judgment.

The word, "judgment" as defined in Section 2(9) of the Code of Civil Procedure reads thus—

> "*(9) "judgment" means the statement given by the Judge on the grounds of a decree or order;"*

What a judgment should contain is indicated in Order XX Rule 4(2) of the CPC which reads thus—

> "*(2) Judgments of other Courts.—Judgments of other Courts shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision.*"

A judgment in a suit or proceeding is not merely a decision of the Court. It must reflect the case of the parties, the evidence recorded during trial and the findings of the Court with reasons while arriving at the decision. A judgment should clearly reflect on the basis of what the Court has arrived at the conclusion of the *lis*. A Court writes a judgment for the Court in deciding a suit or proceeding, for the purpose of the parties in the litigation, for the appellate Court to examine it as well as for the society as a whole. So, it is expected that the judgment reflects the facts or pleadings of the litigating parties, the issues involved to be decided, the evidence recorded during trial and the finding of the Court with reasons for arriving to a conclusion. Unfortunately, in this judgment there is practically nothing. The judgment impugned, in the eye of law, cannot be termed as a judgment of a Court of Law in a civil suit.

12. In para 4 of the judgment the learned Civil Judge, Senior Division has mentioned 8(eight) issues stating that those issues were framed but nothing has been mentioned on which date those issues were framed, whereas the record shows otherwise.

Order dated 28.02.2007 passed by the learned Civil Judge, Senior Division shows that six issues were framed and those issues have been reflected hereinbefore in para 7 of the judgment. The record of the trial Court does not show any reference that after 28.02.2007 issues were re-casted or re-framed on any other occasion. It is quite surprising from where the learned trial Judge mentioned those eight issues in para 4 of the judgment.

13. The plaintiff originally instituted the suit against four defendants, *i.e.* her sons, defendant Nos.1, 2 and 3 who are arrayed as respondents in this appeal and her son-in-law, *i.e.* defendant No.4. The defendant No.4 was the attorney appointed by the plaintiff by dint of the impugned deed of power of attorney dated 02.01.2006. The said defendant No.4 contested the suit by filing written statement. He has not been arrayed as a respondent in this appeal. At the time of hearing of the appeal it is transpired that the name of defendant No.4 has been struck off by order dated 28.11.2007 pursuant to a prayer made on behalf of defendant No.4. Order dated 28.11.2007 passed by the learned trial Judge reads as follows:

> "*28.11.07*
>
> *Ld. Advocates for the both sides are present.*
>
> *Ld. Advocate for the defendant No.4 by a petition filed under order 14 rule 5 of CPC on 12.11.07 prays for striking out the issue No.2 framed in this suit in relation to the registered Power of a Attorney dated 2.1.2006 as described in item No.1 in schedule of the plaint.*

Referring the reply of the Ld. Advocate of the plaintiff dated 21.11.07, Ld. Advocate for the defendant No.4 submits that he prays before the court to strike out his(Defendant No.4's) name from this suit as presently he has become unnecessary party as per provision of order 1 rule 10.

Ld. Advocate for the plaintiff submits that he has got no objection for striking out the name of defendant No.4 as presently he has become an unnecessary party and so does not press the application dated 12.11.07.

Heard both sides elaborately.

In the changed circumstances the name of defendant No.4 has been allowed to be struck out in this suit and accordingly the issue No.2 has also been struck off.

At this stage both sides submits that the W/S/. filed by the defendant No.4 and so as his examination in chief submitted have also got no effect as the name of defendant No.4 is struck off in this suit.

Prayer of both sides is allowed and accordingly the W/S filed by the defendant No.4 and so as his examination in chief as submitted with affidavit is also kept aside from this suit.

At this stage both sides fairly submit that this case may be proceeded from the stage of earlier order passed on 9.8.07.

considered.

Plaintiff shall produce her witness Sri Sekhar Kr. Banik(P.W.4) on the next date.

Summons may be re-issued upon the Officer In charge of Women P.S. for deposition on the next date.

Fix 10.12.07 date for re-examination/cross-examination of P.W.4, Swapan Kr. Banik, O/C Women P.S., Agartala"

It is, therefore an admitted position that there was no objection from the side of the plaintiff in striking out the name of defendant No.4 from the array of defendants in the suit.

14. The plaintiff instituted the suit alleging practice of fraud and undue influence in the matter of execution of the deed of power of attorney dated 02.01.2006. It is an admitted position that originally the attorney was arrayed as the defendant and he filed written statement, *inter alia* stating that he was asked by the plaintiff to be her attorney and accordingly he agreed to be the attorney of the plaintiff and the deed of power of attorney was accordingly executed and pursuant to that deed of power of attorney he executed the sale deed. So the defendant No.4, Bhajan Banik is a necessary party for deciding the suit and in absence of him the allegation of fraud as alleged by the plaintiff cannot be decided.

15. Ordinarily, it is the prerogative of the plaintiff, as to against whom he/she will proceed, for relief in the suit. If a necessary party is not arrayed as defendant, the suit will come within the mischief of *non-joinder* of necessary parties. The whole case of the plaintiff is that she did not appoint Bhajan Banik(defendant No.4) as her attorney to execute any sale deed, whereas Bhajan Banik by filing written statement stated that on the request of the plaintiff he agreed to be an attorney and the plaintiff knew the contents of the power of attorney and in terms of the power of attorney he executed the sale deed dated 21.01.2006. While the whole case of the plaintiff stands on the allegation that the power of attorney was obtained from her fraudulently and if the person who was appointed as power of attorney not arrayed as the defendant, the suit is definitely bad for *non-joinder* of necessary party. Order dated 28.11.2007 clearly reveals that on the basis of an application moved on behalf of defendant No.4 to strike out his name from the array of the defendants, the plaintiff did not oppose the prayer. Learned counsel of the plaintiff has clearly stated that he had no objection in striking out the name of defendant No.4 and that the defendant No.4 was arrayed as an un-necessary party.

16. A constitution bench of the Supreme Court in the case of ***Udit Narain Malpaharia v. Additional Member Board of Revenue, Bihar & Anr.*** reported in ***AIR 1963 SC 786***, in para 7 of the judgment has clearly defined as to who are necessary party or proper party. The Court has held that a necessary party is one without whom no order can be made effectively; a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision of the question involved in the proceedings.

17. The plaintiff instituted the suit for declaring *Exbts.1 and 2(Exbts.A and B) i.e.* the power of attorney dated 02.01.2006 and the sale deed dated 21.01.2006 as *void*. The defendant No.4 being the appointed attorney by the impugned instrument dated 02.01.2006 executed by the plaintiff was definitely a necessary party for deciding the issue and in his absence the suit cannot be decided and is bound to be held that the suit suffers from *non-joinder* of necessary party.

18. Learned senior counsel, Mr. Chakraborty for the appellant has failed to justify the exclusion of defendant No.4 from the array of the defendants and since in our opinion the defendant No.4 was a necessary party and in his absence the suit cannot be decided and therefore we are of considered opinion that the suit was bad for *non-joinder* of necessary party and hence was not maintainable and consequently the appeal is also not maintainable and is liable to be dismissed.

19. The plaintiff in her pleadings and in her evidence admitted execution of the impugned power of attorney dated 02.01.2006. Her case is that she was duped by her sons, the defendant Nos.1 to 3. She did not execute the deed of power of attorney appointing the defendant No.4 to execute any sale deed. But since the defendant No.4 has been struck off from the array of the defendants, we are of considered opinion that the discussion on other issues has become redundant.

20. In view of the discussions made above we find no merit in the appeal and hence the appeal stands dismissed.

21. Send back the L.C. record along with a copy of the judgment.

JUDGE **CHIEF JUSTICE**