

THE HIGH COURT OF TRIPURA
AGARTALA

RSA NO.19 OF 2006

1. Smti. Anima Sinha,
W/O. Late Manigo Sinha alias
Lt. Maniraj Sinha,
Resident of Village-Vidyanagar,
Police Station-Kailasahar,
District:-North Tripura.
2. Shri Sukumar Malakar (Chowdhury),
S/O. Lt. Sasadhar Malakar (Chowdhury),
Resident of Durgapur, Kailasahar,
At present Boulapassa, Police Station-
Kailasahar, District:-North Tripura.

..... **Defendants No.1 & 2-Appellants.**

- V e r s u s -

1. Shri Manigo alias Prabhash Sinha,
S/O. Shri Prafulla Sinha,
Resident of village-Patharkandi,
Karimganj, Assam.

Represented by his Attorney,
Shri Mantosh Sinha,
S/O. Lt. Babulok Sinha,
Resident of village-Goldharpur,
Police Station-Kailasahar,
District-North Tripura.

..... **Plaintiff-Respondent.**

2. Shri Rakhal Das, Deed Writer.
3. Smti. Sipra Chowdhury, Deed Writer.
4. Shri Achaddar Ali, Deed Writer.

All are members of Kailasahar Deed Writers'
Association, Kailasahar, North Tripura.

..... **Defendant-Respondents.**

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the appellants : Mr. D. Chakraborty,
Sr. Advocate,
Ms. N. Majumder, Advocate.

For the respondents : None.

Date of hearing and delivery of judgment and order. : 03.07.2015.

Whether fit for reporting : **NO.**

JUDGMENT & ORDER (ORAL)

This regular second appeal is directed against the judgment and decree dated 14.02.2005 and 15.02.2005 respectively passed by the learned District Judge, North Tripura, Kailashahar in Title Appeal No. 07 of 2003 whereby he dismissed the appeal filed by the present appellants (hereinafter referred to as the contesting defendants) and upheld the judgment and decree dated 05.11.2003 passed by the learned Civil Judge (Senior Division), North Tripura, Kailashahar in Title Suit No.31 of 1998.

2. The facts necessary for decision of this case are that one Manigo Sinha alias Prabhash Sinha filed a suit. In this suit, he claimed that he was the son of Prafulla Sinha who was the real brother of Maniraj Sinha. It is also not disputed that the contesting defendant (appellant No.1 herein) Smt. Anima Sinha was married to Lt. Sri Maniraj Sinha.

3. The case of the plaintiff was that Maniraj Sinha was a Government servant and employed as a teacher with the Government of Tripura. He and wife Anima Sinha used to reside with one Babulok Sinha who was the husband of the elder sister of Maniraj Sinha who also was the aunt of the plaintiff. The plaintiff also came to Kailashahar in search of employment and started residing in the same house with Babulok Sinha, his aunt, uncle

Maniraj Sinha and the contesting defendant Anima Sinha. The case of the plaintiff is that he purchased about 11 gandas of land by three separate sale deeds registered on 13.9.1991 and 16.11.1992. This land was also mutated in his name in the khatian No.2556 under mouja-Kailashahar wherein owner was shown to be Manigo Sinha, S/O. Prafulla Sinha.

4. According to the plaintiff, his uncle Maniraj died and after the death of his uncle in the year 1995, the defendant Anima Sinha projected to the Revenue Authorities that her husband Maniraj was also known as Manigo Sinha and on that basis got the land mutated in her favour and then she executed a sale deed in favour of defendants 2 to 4.

5. This suit was contested by the defendant Anima Sinha only. The other defendants did not contest the suit. Her stand was that her husband Maniraj was also known as Manigo and that her husband was the son of Prafulla Sinha. Both the Courts below have come to a finding of fact that, in fact, Maniraj was not Manigo and that, in fact, the plaintiff Prabhash Sinha is the real Manigo Sinha whose name is reflected in the khatians. Even if there be dispute about the name, there is no dispute about the fact that the name of the father of Manigo Sinha in the revenue record is shown to be Prafulla Sinha. Prafulla Sinha appeared in Court as PW-8 and he stated that they are six brothers and two sisters. He clearly stated that Maniraj Sinha was his brother who had died at Kailashahar. He also stated that Maniraj was a teacher and he used to stay in the house of Babulok Sinha at Goldharpur. Prafulla Sinha clearly stated

that his son Manigo is also known as Prabhash Sinha. From the evidence of Prafulla Sinha, it is more than apparent that Manigo Sinha was none other than his son who is also known as Prabhash Sinha. The case set up by Anima Sinha that her husband Maniraj Sinha was known as Manigo Sinha and was the son of Prafulla Sinha has been belied by the statement of Prafulla Sinha himself and, therefore, both the Courts have rightly come to the conclusion that Maniraj Sinha was not the owner of the land and, therefore, the mutation made in favour of Anima Sinha was illegal and that the further sale deed made by Anima Sinha in favour of defendants 2 to 4 was also void and liable to be set aside.

6. As far as these findings are concerned, I am clearly of the view that these are pure findings of fact based on evidence and cannot be interfered with in the second appeal.

7. Mr. D. Chakraborty, learned Senior Counsel appearing for the appellants, has raised another submission. He submits that though only a decree for declaration has been sought and no prayer for possession was made in the suit or even at the time of the appeal, according to him, the purchasers are still in possession of the land.

8. This question need not bother me at this stage. I have gone through the judgment and decree of the trial Court. It is a judgment and decree for declaration simpliciter and it is not a decree for possession. The Appellate Court has only dismissed the appeal and, therefore, the only decree in favour of the plaintiff is to

the effect that the registered deed executed vide No.1-1085 dated 09.6.1997 by Anima Sinha in favour of the defendant No.2 is illegal and void and not binding on the plaintiff and the consequent khatian obtained by defendant No.2 on such transfer is also illegal. There is no decree for possession. It is not for this Court to decide whether it is the plaintiff or the defendants who are in possession but if the plaintiff files a suit claiming possession on the basis of this decree, the defendants shall be within their rights to raise all objections including the objection of adverse possession.

9. With this observation, the appeal is disposed of.

10. Send down the lower court records forthwith.

CHIEF JUSTICE