

IN THE HIGH COURT OF TRIPURA
AGARTALA

RSA No.05 of 2009 &
RSA No.06 of 2009

RSA No.05 of 2009

Appellants:

- 1. Ajijun Nur,**
son of late Haji Abdul Gafur,
- 2. Smti Sabjan Bibi,**
wife of late Mohibun Nur,
- 3. Md. Mohmudul Hasan,**
son of late Mohibun Nur
- 4. Smt. Khaleda Begam,**
daughter of late Mohibun Nur
- 5. Md. Mahbubur Rahaman,**
son of late Mohibun Nur,

[The appellants No.4 and 5 being
minor are represented by their
mother, the appellant No.2]

-all are residents of village –
Mohanpur, Noorpur, P.S.
Kailashahar, District – North
Tripura.

By Advocate :

Ms. P. Dhar, Advocate

- V e r s u s -

Respondents :

- 1. Smt. Furuja Begam,**
wife of Achadur Rahman, daughter
of late Almas Ali, resident of
Sultanpur, P.S Kailashahar, District -
North Tripura

2. **Smt. Samsun Nahar,**
daughter of late Almas Ali
3. **Smt. Ruksana Begam,**
daughter of late Almas Ali
4. **Smt. Sokina Begam,**
wife of late Almas Ali
5. **Asadur Rahaman,**
son of late Almas Ali
6. **Mujibur Rahman,**
son of late Almas Ali

-the respondents No.2 to 6 are residents of village Kanakpur, P.S. Kailashahar, District – North Tripura

By Advocate :

Mr. D.K. Biswas, Advocate

RSA No.06 of 2009

Appellants:

1. **Ajijun Nur,**
son of late Haji Abdul Gafur,
2. **Smti Sabjan Bibi,**
wife of late Mohibun Nur,
3. **Md. Mohmudul Hasan,**
son of late Mohibun Nur,
4. **Smt. Khaleda Begam,**
daughter of late Mohibun Nur
5. **Md. Mahbubur Rahaman,**
son of late Mohibun Nur,

[The appellants No.4 and 5 being minor are represented by their mother, the appellant No.2]

-all are residents of village – Mohanpur, Noorpur, P.S. Kailashahar, District – North Tripura.

By Advocate :

Ms. P. Dhar, Advocate

- V e r s u s -

Respondents :

- 1. Smt. Firuja Begam,**
wife of Achadur Rahman, daughter
late Almas Ali, resident of Sultanpur,
P.S Kailashahar, District : North
Tripura
- 2. Smt. Samsun Nahar,**
daughter of late Almas Ali,
- 3. Smt. Ruksana Begam,**
daughter of late Almas Ali,
- 4. Smt. Sokina Begam,**
wife of late Almas Ali,
- 5. Asadur Rahaman,**
son of late Almas Ali,
- 6. Mujibur Rahman,**
son of late Almas Ali,

-the respondents No.2 to 6 are
residents of village Kanakpur, P.S.
Kailashahar, District – North Tripura

By Advocate :

Mr. D.K. Biswas, Advocate

**BEFORE
THE HON'BLE MR. JUSTICE S. TALAPATRA**

Date of hearing : 22.04.2015

Date of delivery of
Judgment & Order : **08.05.2015**

Whether fit for reporting :

Yes	No
	✓

JUDGMENT & ORDER

These two appeals being RSA No.05 of 2009 and RSA No.06 of 2009 emerged from the common judgment and decree dated 26.06.2008 delivered in Title Appeal No.03 of 2008 and Title Appeal No.06 of 2008 by the Addl. District Judge, North Tripura, Kailashahar on affirming the common judgment and decree dated 20.12.2007 passed by the Civil Judge, Jr. Division, Kailashahar, North Tripura in Title Suit No.45 of 2006 but reversing the judgment and decree dated 20.07.2007 passed in Title Suit No.45A (Counter Claim) of 2006. The first appellate court by the impugned judgment has declared the sale deed dated 30.05.1974 (Exbt.4), the sale deed dated 25.03.1996 (Exbt.5) and the general power of attorney dated 19.01.1996 (Exbt.6) as void and inoperative. Thus the counter claim was decreed. Having regard to this feature, the appeals are heard together for disposal by a common judgment.

[2] The appellants in both the appeals filed under Section 100 of the C.P.C. are the plaintiffs, who instituted the suit for declaration of jote right, title and interest and also for confirmation of possession and consequential relief of permanent injunction in respect of the suit land as described in the schedule appended at the fag end of the plaint.

[3] While admitting the appeals, this Court by the order dated 03.04.2009 formulated the following substantial questions of law against the individual appeals:

RSA No.05 of 2009

(i) Whether the finding of the learned appellate court in concurrence with that of the learned trial court that the certified copy of the power of attorney was inadmissible in evidence in the facts and circumstances of the case, is in accordance with law?

(ii) Whether the finding of the learned appellate court in concurrence with that of the learned trial court that the title deeds of the appellants herein were baseless and imaginary is tenable in law?

(iii) Whether the finding of the learned appellate court in concurrence with that the learned trial court which based its findings on the admissible enquiry report in the revenue case No.REV/REVISION/ 36 that the appellants herein had no right, title and interest over the suit lane is in accordance with law? AND

(iv) Other substantial questions of law which may be pertinent for effective decision of the Second Appeal.

RSA No.06 of 2009

(i) Whether the declaration of the leaned appellate court that the registered sale deed 30.05.1974 (Exbt.4) being void ab initio as in accordance with law?

(ii) Whether the finding of the learned first appellate court below that the registered sale deed dated 30.05.1974(Exbt.4) was not proved merely because the vendee of the deed was not examined is in accordance with law?

(iii) Whether the finding of the leaned appellate court that the registered sale deed dated 30.05.1974(Exbt.4) was void as based no on evidence?

(iv) Whether the finding of the learned appellate court in concurrence with that of the learned trial court that the certified copy of the power of attorney was inadmissible in evidence in the facts and circumstances of the case, is in accordance with law?

(v) Whether the impugned decree is vitiated because of consideration of inadmissible and irrelevant evidence (Exbt.-D)? AND

(vi) Other substantial questions of law which may be pertinent for effective decision of the second appeal.

[4] Even though the appellants were given liberty to raise other substantial questions of law which may appear pertinent for effective decision of the appeals, Ms. P. Dhar, learned counsel appearing for the appellants has not raised any additional substantial question of law before or in the course of the hearing. On scrutiny, what appears that decision on the substantial questions as reproduced below would dispose these appeals substantially:

(i) Whether the declaration of the appellate court that the registered sale deed dated 30.05.1974 (Exbt.4) being void *ab initio* is in accordance with law?

(ii) Whether the finding of the appellate court that the certified copy of the power of attorney is inadmissible in evidence is in accordance with law?

(iii) Whether consideration of enquiry report submitted in the revenue case No.REV/REVISION/36/96 (Exbt.D) has vitiated the impugned judgment for its being inadmissible and irrelevant?

[5] The fact essential for appreciating those substantial questions of law is required to be introduced at the outset.

The plaintiff-appellants' case is that one Swab Ali was the original owner of the suit land and during his lifetime he sold the land to the proforma defendant No.4 namely, Satya Ranjan Das on 30.05.1974 by a registered deed with

simultaneous delivery of possession. The said proforma defendant No.4 had shifted his residence from Kailashahar to Agartala and executed a power of attorney dated 19.01.1996 nominating and constituting the proforma defendant No.5, Bhabatosh Das as his attorney in respect of the said land. On the strength of the said power of attorney, the proforma defendant No.5 executed the registered sale deed No.I-422 dated 25.03.1996 in favour of the plaintiffs. Later on, on discovery that in the said sale deed dated 25.03.1996 the land which has been sought to be transferred has been wrongly described. The land described in the deed dated 25.03.1996 did not belong to the proforma defendant No.4 and hence, a rectification deed sought to be registered. But the said deed admittedly has not been registered as yet. In the meanwhile, the plaintiffs came to know on 30.05.1996 that the defendant No.1 Almas Ali, since deceased and represented by the legal heirs defendants No.1(a) to 1(d), filed one revisional petition under Section 95 of the TLR & LR Act before the Collector, North Tripura, Kailashahar being No.REV/REVISION/36/96 challenging the validity of the sale deed dated 30.05.1974 holding that the deeds are forged. It is to be noted that the original defendant No.1 was the son of Swab Ali, the original owner of the suit land. It has been contended in that revisional proceeding that Swab Ali in his lifetime never transferred the suit land in favour of the proforma defendant No.4. But the

plaintiffs' case is that the original defendant No.1 tried to dispossess the plaintiffs from the suit land on 10.11.1996 but for the timely resistance, the said bid could not succeed. The defendants No.2 & 3 had collaborated the original defendant No.1. The plaintiffs' further case is that they had come into the possession of the suit land from the date i.e. 25.03.1996 when the registered sale deed was executed in their favour for the proforma defendant No.4 by the proforma defendant No.5. As the defendants had been trying to interfere with their possession, the plaintiffs instituted the suit. The defendants No.1,2 & 3 by filing the written statement not only disputed the claim of the plaintiffs they raised the counter claim praying for cancellation of the registered sale deed No.I-3754 dated 30.05.1974 and also for declaration that the power of attorney dated 19.01.1996 executed by the proforma defendant No.4 in favour of the proforma defendant No.5 is void and illegal. The defendants asserted in their written statement and counter claim that the suit land was originally owned and possessed by Swab Ali, who died leaving behind the defendant No.1 as his heir. After death of Swab Ali, the defendant No.1 was exclusively owning and possessing the suit land by amicable arrangement and partition with other heirs of Swab Ali. At no point of time the proforma defendant No.4 possessed or purchased the suit land from Swab Ali. According to the defendants No.1,2 & 3, the proforma defendant No.4 was a

resident of Bangladesh and he never migrated to India. The proforma defendant No.5 for wrongful gain forged the name and signature of the proforma defendant No.4 in collusion with the plaintiffs. The power of attorney in question by dint of which the subsequent transfer of the suit land has been caused in favour of the plaintiffs is illegal and void. Since the defendant No.4 had not gathered title by any valid transfer, the sale deed No.I-3754 dated 30.05.1974 is liable to be cancelled and the subsequent transfer of the suit land by the sale deed No.I-422 dated 25.03.1996 as well be declared cancelled and inoperative. Even the power of attorney dated 19.01.1996 be declared cancelled and inoperative for being a collusive document.

[6] The disputes are apparent and accordingly for adjudication of the suit and the counter claim as many as 8(eight) issues were framed by the trial court which includes the basic disputes as reflected in the consolidated substantial questions of law as culled out by this Court.

[7] By the common judgment dated 20.12.2007 the trial court on appreciation of the evidence led by the plaintiffs has held that:

(i) The power of attorney (Exbt.6) is a secondary evidence and unless the provision of Section 65 of the Evidence Act is satisfied that cannot be admitted in the

evidence. Even though the notice was served under Section 66 of the Evidence Act on the proforma respondent No.4 for production of the original power of attorney within fortnight, but from the order dated 11.11.1998 it surfaces that the plaintiffs did not take any step for ensuring such production. Such order for production was passed by the trial court on 29.08.1998. Ultimately, on 03.10.1998, the proforma respondent No.5 died (reflected in the order dated 11.11.1998 in the suit). Hence, the power of attorney was not in the evidence and as consequence of that the sale deed dated 25.03.1996 (Exbt.5) was declared not considerable in law. Thus, the trial court came to the conclusion that the plaintiffs failed to prove their title over the suit land.

(ii) While deciding on the question whether the title deeds of the plaintiffs are fraudulent, collusive or forged, the following finding has been recorded:

Inquiry report i.e. Ext. D speaks that once said Bhabatosh Das appeared before the authority pretending himself as Satya Ranjan Das for mutation. Even as per Ext.C and Ext.D physical existence of Sri Satya Ranjan Das is not proved. Mere registration of a document does not mean that the same shall be considered and unimpeachable piece of evidence. Ext.C also shows that Title-deeds of the plaintiff reflects the plot numbers and area of land belongs to one Hatim Ali. Above all, Ext.E shows that suit land is still lying against the name of Suab Ali as per record of settlement. So, under this circumstances this court is of firm opinion that the Title deeds of the plaintiffs are baseless and imaginary one.

[Emphasis supplied]

(iii) Having analysed the evidence led by the plaintiffs, the trial court has observed that the plaintiff No.1 stated that they were in possession of the suit land but due to short of rainfall they could not grow paddy in the year when they instituted the suit. On the other hand, the plaintiffs admitted by their pleadings as well as by the evidence that a proceeding under Section 145 of the Cr.P.C. was still pending before the Sub- Divisional Magistrate, Kailashahar on the dispute of possession of the suit land. The O.C., Kailashahar Police Station issued notice under Section 154 of the Cr.P.C. According to the trial court, the oral evidence of PW-1 was not supported by the other witnesses. On the other hand, the witnesses from the defendants (Dws-2 & 3) admitted that the suit land was lying vacant. Thus, the trial court has observed that since the plaintiffs failed to establish their title, they are not entitled to have the declaration confirming their possession over the suit land where they are not in possession at the time of institution of the suit. It appears that even the original deeds dated 30.05.1974 and 25.03.1996 were not produced in the counter claim. However, the original of the sale deed dated 30.07.1974(Exbt.3) and the sale deed dated 25.03.1996(Exbt.4) was produced in the suit. The trial court observed that by following the procedure, the

questioned deeds were not produced in the counter claim, the court could not take notice of those documents on the basis of their certified copies (Exbts.K & B).

(iv) The trial court thus dismissed the counter claim holding that no one can seek relief without producing the documents before the court as under the present circumstances the defendants, according to the trial court had chosen two fora simultaneously, firstly they challenged the legality of the deed before the District Collector and thereafter filed the counter claim. According to the trial court, no one can be allowed to raise the claim before two fora. The original registered kabala dated 30.05.1974 is on record but since that was not produced in the counter claim for granting relief, no relief can be granted in the counter claim.

[8] The defendants filed an appeal against the said judgment of dismissal of their counter claim in the court of the District Judge, North Tripura, Kailashahar being Title Appeal No.03 of 2008, whereas the plaintiffs filed a separate appeal against the said judgment and decree dated 26.06.2008 delivered in T.S. 45 of 2006. The appeal by the plaintiff was registered as Title Appeal No.06 of 2008. The appeal being RSA No.06 of 2009 preferred by the plaintiff is directed against the impugned judgment and decree dated 26.06.2008 delivered in

Title Appeal No.06 of 2008 (related to Title suit No.45 of 2006, renumbered from Title Suit No.40 of 1996) whereas the other appeal, Title Appeal No.05 of 2008 arises from judgment and decree dated 26.06.2008 delivered in Title Appeal No.03 of 2008 related to Title Suit (Counter Claim) 45A of 2006.

[9] Ms. P. Dhar, learned counsel appearing for the appellants has submitted that without any material on record the registered sale deed dated 30.05.1974 (Exbt.4) has been declared void *ab initio*. It appears that the signature of the Swab Ali was not disputed categorically by the defendants No.1,2 & 3. They have simply asserted that the deed dated 30.05.1974 (Exbt.4) allegedly executed by Swab Ali is invalid, illegal and fraudulent. They have further stated that the proforma defendant No.4 is a citizen of a foreign country, namely Bangladesh at the relevant point of time and he had never come to India or Kailashahar to purchase the suit land from Swab Ali. But nowhere the elements of fraud have been placed by the counter claimants on record in terms of Order VI Rule 4 of the C.P.C. which provides that in all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default or undue influence, particulars of those may if necessary, in the form as provided under Order VI Rule 4 of the C.P.C., with dates and times be stated and placed in the pleading. No particulars except that Satya Ranjan Das never visited Kailashahar have been stated. The said defendants

however have stated that Swab Ali never sold out any land. The deed dated 25.03.1996 was challenged with additional ground that the proforma defendant No.5 used the fraudulent document, the deed of power of attorney dated 19.01.1996. Even the original copy of the general power of attorney was not produced before the trial court but a certified copy has been brought on record. It is admitted fact that the defendant No.1 is not the sole legal heir of Swab Ali but for purpose of decision on whether Swab Ali transferred the suit land to the proforma defendant No.4 or not, may not be necessarily brought on record, as the defendant No.1 has claimed that by way of amicable partition he is now the exclusive owner and possessor of the suit land. This observation however will not eclipse the rights of the *bona fide* legal heirs of Swab Ali.

[10] Mr. D.K. Biswas, learned counsel appearing for the respondents has submitted that it would be apparent from the deposition of PW-3, Kalipada Dasgupta, who wrote the questioned sale deed dated 25.03.1996 that he wrote the sale deed at the instance of Ajijun Nur and Mahibun Nur and the said attorney was known to him. He has further submitted that the said attorney was no more alive. He has also stated that the original power of attorney executed by Satya Ranjan Das was produced before him at the time of writing the sale deed and on seeing the original deed of power of attorney dated 19.01.1996 he prepared the deed and the same was produced before the

Sub-Registrar, Kailashahar for its registration. The sale deed dated 30.05.1974 was written by one Bhupendra Das. He has retired from his profession for his illness. He has identified the handwriting of Bhupendra Das. In the cross-examination he has denied of his knowledge where the original deed of power of attorney was written. He has admitted that the attorney Bhabotosh Das, the proforma defendant No.5 is the son of the deed writer, Bhupendra Das. His license for deed writing was cancelled by the District Registrar (D.M. & Collector) after making a thorough inquiry in respect of writing the registered deed (Exbt.5). He has further stated that he has no idea where Satya Ranjan Das was residing. Mr. Biswas, learned counsel has submitted that the fraud is manifest on the face of the records and hence, the reversal judgment passed by the first appellate court in the counter claim does not suffer from any infirmity.

[11] This Court on scrutiny finds that the sale deed dated 25.03.1996 (Exbt.5) cannot be treated as the instrument of transfer of the suit land inasmuch as it has been admitted by the plaintiffs that the description of the land transferred by the sale deed dated 25.03.1996 does not tally with the suit land even though there is similarity in the boundaries but there is no sameness in respect of the plot number. Admitting said inadequacy, one rectification deed was presented for correction

but that was not registered. Existence of Satya Ranjan Das has not been proved. Even when the summon could not be served on him, the suit proceeded on serving the summon for the proforma defendant No.4 on the proforma defendant No.5. The proforma defendant No.5 had appeared even for mutation of the land. Nowhere Satya Ranjan Das appeared in person. Even during lifetime of the proforma defendant No.5 he did not produce the original power of attorney. However, a certified copy was produced which was a copy from the pasting. Thus, the court did not find any opportunity to see the handwriting of Satya Ranjan Das. Satya Ranjan Das was known by his invisibility. No trace either by way of signature or any other proof could be found of Satya Ranjan Das. As such, from the fact as surfaced from the testimony of PW-3, this Court would not interfere with the declaration made by the first appellate court that the sale deed dated 25.03.1996 (Exbt.5) and the deed of general power of attorney dated 19.01.1996 (Exbt.6) are product of fraud and hence, void and inoperative. But it is apparent that defendants did not take any step to prove that the sale deed dated 30.05.1974 (Exbt.4) was not executed by Swab Ali. Merely someone has stated that Swab Ali did not execute the said sale deed or Swab Ali did not transfer any land as demised in the said sale deed would by itself not render the said deed as fraudulent or void and inoperative. Thus, that declaration is interfered with. Since the plaintiff-appellants have

failed to prove their title over the suit land, the suit is bound to be dismissed inasmuch as both the courts are unanimous in their finding that the plaintiffs have failed to prove their possession over the suit land and there is no challenge against the said finding. Hence, the appeals are dismissed subject to interference made in respect of the declaration to the effect that sale deed dated 30.05.1974 (Exbt.4) is void and inoperative.

Draw the decree accordingly.

Send down the records thereafter.

JUDGE

Supay