

IN THE HIGH COURT OF TRIPURA
A G A R T A L A

RSA NO.24 OF 2009

1. Md. Mamud Ali, son of late Kachim Ali
2. Smti. Duleja Khatun, daughter of late Kachim Ali
 - both are residents of village: Irani,
 P.S. Kailasahar, District : North Tripura
3. Smti. Jabeda Khatun, wife of Mullah Mamud Ali
 of Yubarajnagar, Kailasahar, North Tripura.
4. Smti. Samitra Bibi, wife of Renu Miah,
 daughter of late Jamila Khatun
 resident of Srinathpur, P.S. Kailasahar, District: North Tripura.
5. Smti. Mallika Bibi, wife of Yasin Ali,
 resident of village: Irani,
 P.S. Kailasahar, District : North Tripura
6. Shri Idrish Ali, son of Ramij Ali,
7. Shri Ismail Ali, son of late Ramij Ali
8. Smti. Esarun Bibi, wife of late Ramij Ali
 - all are residents of Village : Irani,
 P.S. Kailasahar, District : North Tripura
9. Smti. Jahanara Begam, wife of late Abdul Rahim.
10. Shri Nazir Miah, son of late Abdul Jabbar
11. Shri Abdul Nur alias Nur Mia son of late Nazir Mia
12. Smti. Ramjan Bibi, wife of Shri Sundar Ali
13. Mostt. Ajrun Bibi, daughter of late Abdul Sabur
14. Mostt Parbin Begam alias Ruhila Begam,
 daughter of late Abdul Sabur
 All are residents of village : Irani,
 P.S. Kailasahar, District : North Tripura

..... Appellants

Versus

1. Shri Abdul Mannan
2. Shri Abdul Rasid
both are sons of late Jahur Ali
residents of village: Irani Bazar,
P.S. Kailasahar, District- North Tripura
3. Md. Sahid Ali, son of late Nachim Ali
4. Smti. Chayarun Bibi,
wife of Raich Ali & daughter of late Amirunessa
5. Smti. Azirun Bibi, wife of late Komol Miah
6. Mosmt. Jaribun Bibi, wife of Sayed Miah
7. Mosmt. Aktarun Bibi, daughter of Shri Sahid Ali
8. Massabbir Ali, son of Sahid Ali
- all are residents of village : Rangauti (Khowra Bil)
P.S. Kailasahar, District : North Tripura.
9. Abdul Nur,
10. Rafat Ullah,
both are sons of late Raisat Ullah
11. Md. Ustar Ali, son of late Farjan Ali
12. Most. Kutubunnessa, daughter of Md. Maharam Ali
13. Shri Ansar Ali
14. Shri Akbar Ali
15. Shri Nekbar Ali
all are sons of late Taymuch Ali
16. Mosmt. Mayarunnessa, wife of late Taymuch Ali
- all are residents of village : Irani
Police Station- Kailasahar, District- North Tripura
17. Mosmt. Khairunnessa, wife of Md. Riakat Ali
18. Mosmt. Monwara Begam, wife of Maktadir
both are residents of village : Barkhola
P.S. Kailasahar, District : North Tripura.
19. Mosmt. Joyrunnessa, wife of Arjan Ali,
resident of village- Rangauti,
P.S. Kailasahar, District : North Tripura

20. Mosmt. Esarunnessa, wife of Renu Miah,
P.S. Kailasahar, District : North Tripura.
21. Mosmt. Fakrunnessa
22. Najma Begam
- both are daughters of late Taymuch Ali
23. Md. Dilbar Ali, son of late Taymuch Ali,
- All are residents of village Irani,
P.S. Kailasahar, District- North Tripura

..... Respondents

B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the petitioner : Mr. D. Chakraborty, Sr. Advocate
Mr. H. Laskar, Advocate

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

Date of hearing : 26.02.2015

Date of judgment & order : 30.04.2015

Whether fit for reporting :

Yes	No
	√

JUDGMENT & ORDER

This is an appeal under Section 100 of the CPC, questioning the legality of the Judgment dated 22/04/2009 delivered in Title Appeal No.36 of 2008 by the District Judge, North Tripura, Kailashahar.

[2] At the time of admission, the following substantial questions of law were framed by the order dated 31.07.2009 :

- (i) Whether the Lower Appellate Court has passed the Judgment and Decree in terms of the provisions contained under Order 41 rule 31 of the CPC in as much the learned First Appellate Court has not discuss all the evidences available on record, more particularly the Exhibit-D series and Exhibit-E series proved by the defendant appellants?
- (ii) Whether the plaintiff is entitled to the decree for partition of the suit property, in view of the Exhibit- D series and Exhibit- E series, sale deeds?

[3] The essential fact requires to be appreciated by this court may be noted at the outset.

A suit for partition being T.S.18(Partition)/2007 was instituted by the respondent Nos.1 & 2 and one Amirun Nesha, seeking declaration of shares towards partition of the joint property by the preliminary decree and if the partition be not effected on the basis of the preliminary decree amicably, on appointing a Survey Commissioner, the share is to be separated by metes and bounds with specific boundaries for each of the co-sharers, by drawing the final decree.

[4] The joint property has been described in the schedules of the land measuring 20(twenty) kanis 3(three) gandas 1(one) kara and 1(one) kranta, according to the local measurement. The entire suit land is described in the First Schedule whereas the land in the

Second and Third Schedules are components of the First schedule. According to the plaintiff, the original owner of the suit land was one Kachim Ali. He had 3(three) wives, all of whom were dead before Kachim Ali died.

[5] From the first wife, Kachim Ali had one son namely Jahur Ali. From the second wife, he had one son, namely Mahmud Ali and two daughters, namely Jamila Khatun and Duleja Khatun. From the third wife, he got one son, namely Ramij Ali and one daughter, namely Firoza Khatun. Jahur Ali married one Nasiba alias Nafisa Bibi and he had 2(two) sons from her, namely Abdul Mannan, the plaintiff No.1 and Abdul Rashid, the plaintiff No.2 and one daughter, namely Amirun Nessa, the plaintiff No.3. After Jahur Ali's death, his wife Nafisa Bibi and said 2(two) sons and 1(one) daughter became his heirs. Nafisa was also died leaving behind 2(two) sons and 1(one) daughter as her heirs. Thus, the plaintiffs are the legal heirs of Jahur Ali and Nafisa Bibi. Jamila Bibi died leaving behind 2(two) sons namely Ain Ullah, the defendant No.3(a), Wahid Ullah, the defendant No.3(b) and three daughters, namely Jubeda Khatun, defendant No.3(c), Samirta Khatun alias Samirta Bibi, the defendant No.3(d) and Mallika alias Malika Bibi, the defendant No.3(e). The defendant Nos. 1 to 3(e) are the ultimate heirs of the deceased second wife of late Kachim Ali, as stated.

[6] Kachim Ali had one son, namely Ramij Ali and one daughter, namely Firoza Khatun from his third wife. Ramij died leaving behind his wife, Esarun Bibi, the defendant No.4(d) and two

sons, namely Innuch Ali, the defendant No.4(b) and Md. Ismail Ali, the defendant No. 4(c) and one daughter, namely Jahanara Begum, the defendant No.4(e), all from the wife namely Esarun Bibi. Ramij also left behind another son, namely Idrish Ali, the defendant No.4(a) from his divorced wife, namely Joygun Bibi. Thus the defendant No. 4(a) to 4(e) are the heirs of said Ramij Ali. Said Firoza died leaving behind her heirs namely Nazir Miah (son), the defendant No. 5(a) and Abdul Nur, defendant No 5(b) and the daughter, namely Ramjan Bibi, the defendant No.5(c) and also another son, namely Abdul Shabur, who died leaving behind two daughters, namely Ajirun Bibi, the defendant No.5(d)(i) and Parbin Begum, the defendant No.5(d)(ii). Thus the defendant Nos. 5(a) to 5(d)(ii) are the heirs of late Firoza Khatun and as such, the defendant No.4(a) to 5(d)(iii) are the total ultimate heirs of the third wife of Kachim Ali. Thus the plaintiffs and the defendant No.1 to 5(d)(ii) as noted above, are the heirs of Kachim Ali, holding different proportion of shares over his property as described in the First Schedule, appended to the plaint.

[7] The legal heirs, as stated, belong to Sunni community and as per their personal law of inheritance, they are entitled to different shares, which are illustrated below. Initially the share would be divided between the descendants of Kachim Ali, as under:

<u>Name of the heirs</u>	<u>Share</u>
Jahur Ali	2/9 th
Mahmud Ali	2/9 th

Ramiz Ali	2/9 th
Jamila Bibi	1/9 th
Duleza Bibi	1/9 th
Firoza Khatun	1/9 th

[8] The plaintiff therefore, claimed to have 2/9th of the share in the joint property as described in the First Schedule. The plaintiffs have further stated that their mother, Nasiba Bibi got 4(four) and ½(half) kanis of land from Kachim Ali which is also part of the First Schedule land by the registered sale deed No.91 of 1347 TE dated 17th Jaistha, 1347 TE having transferred and executed by Kachim Ali alias Md. Kachim in her favour on the occasion of marriage of Jahur Ali in lieu of dower money ₹200(two hundred). Thus, the plaintiffs would get their share over the said 4(four) and ½(half) kanis of land in addition to what they would get as the heirs of Kachim Ali. This 4(four) and ½(half) kanis of land has been described in the Second Schedule. It is the claim of the plaintiffs that the Second Schedule land be demarcated and extracted out of the First Schedule land. Moreover, the plaintiff No.1, Abdul Mannan purchased 1(one) and ½(half) kani land (0.20 acre) as described in the Third Schedule, by the registered sale deed No. 1-1963, dated 07.07.1984, executed by the co-sharer, namely Nazir Miah, the defendant no. 5(a) for 0.10 acre land and by registered sale deed No.1-2173, dated 14.08.1984 for a piece of land measuring 0.10 acre. That land is described in the Third Schedule appended to the plaint and that is to be included in the share of the plaintiffs, apart from their inherited share. The

Fourth Schedule appended to the plaint has been sold out by one of the co-sharers to various purchasers from the suit-land and those sold out land therefore, are required to be extracted on adjusting with the share of the legal heirs of Kachim Ali @ Md. Kachim who sold that land.

[9] The entire First Schedule land has been recorded in Khatian numbers 262/1, 262/2, 262/3, 262/4, 262/5 and 262/6 of Mouja Irani and Tehasil Tillagaon in the names of Jahur Ali and others. The plaintiffs have also pointed out that there are some incorrect recording in the Khatians. When Jahur Ali died on 30.03.1987, the plaintiffs obtained the survival certificate dated 30.12.2002 showing them alongwith their mother as the legal heirs of Jahur Ali.

[10] Be that as it may, since the plaintiffs are not enjoying their land as the legal heirs and the co-sharers, defendants No.1 and 4(a) to 4(c), despite the demand for partition by metes and bounds on various occasions did nothing positive acceding to their demand, they instituted the suit. The suit has been resisted by the defendant Nos. 1 and 4 by filing a composite written statement. While disputing the facts as narrated in the plaint, the defendant Nos.1 and 4 have stated as under :

(a) That deceased Ramij Ali i.e. the father of defendant No. 4a, b, c, & e and husband of defendant No.4(d) filed a petition against the present plaintiffs and others before the Ld. D.M. and Collector, North Tripura Kailasahar, for correction of the land record which was left by

deceased Kachim Ali and was recorded in the name of legal heirs of deceased Kachim Ali of previous khatian No. 614, 607 jer 725, 662, 723 and 730 respectively as the share of respective persons i.e. the share of Jahar Ali and Ramij Ali was not recorded correctly as because said Jahur Ali sold out 5 kanis of land from his share to one Gulabunneecha Begam and Nerunnecha Begam who were/are the wife of present plaintiff No.1 and 2 respectively more over the name and share of the mother of deceased Ramij Ali i.e. the wife of deceased Kachim Ali, the original owner of the suit land was wrongly omitted from the above Khatians.

(b) That receiving the said petition Ld. D.M and Collector, North Tripura, Kailasahar registered the same in his file as Case No. Rev/Revision/4C/1998, U/S 95 of TLR & LR Act 1960 and after observing all legal formalities and hearing both sides and considering other evidences the Ld. D.M & Collector, North Tripura, Kailasahar passed an order on 15/11/99 and as per order of the Ld. D.M & Collector, North Tripura, Kailasahar the khatian of present suit land was prepared, but the present plaintiff suppressing the facts filed the present suit."

[11] According to those respondents, Jahur Ali sold out 5(five) gandas of land from his share to one Gulabunnesha Begum and Meherunnesa Begum who are the wives of the plaintiff Nos. 1 and 2 respectively. Thereafter, having framed the issues for purpose of adjudication of the suit and on recording the evidence, the trial court, the Civil judge, Senior Division, North Tripura, Kailashahar, dismissed the suit on the ground that the plaintiffs failed to prove any cause of action in the suit. Moreover, it has been held that the plaintiffs are not entitled to call for the partition of the suit land. However, it has been also observed that no document has been

adduced by the plaintiffs to show that the suit land as stated in the plaint is the land left by Kachim Ali to be inherited by his successors. No survival certificate or any other document has been adduced to show the list of the survivors left by Kachim Ali. According to the trial court, the documents as filed by the plaintiffs failed to show any link to the suit land or to the land narrated in the kabins of the mother, as well as of the wives of the plaintiff Nos. 1 and 2. Hence it has been held that regarding the claims over the Second, Third and Fourth Schedule land, there has been no evidence.

[12] Fundamentally based on this observation, the suit was dismissed by the judgment dated 01.08.2008, delivered in Title Suit 18(Partition) of 2007. Being aggrieved, the plaintiffs preferred an appeal under Section 96 of the CPC in the court of the District Judge, challenging the validity of the finding based on which the suit has been dismissed. The said appeal, being Title Appeal No.36 of 2008 has incorporated legal heirs of Amirun Nesha, who died before filing of the appeal, as defendant Nos. 3(a) to 3(f). The grounds of challenge as made in the said appeal include that the Revenue Court does not have any jurisdiction to decide the heir-ship, so can only be decided by the competent Civil court. The survival certificate that was issued is for a very limited purpose, to be used by the Government Department of Land Records and Settlement. The findings relating to the kabins and the description of land therein vis-à-vis the suit land have also been seriously criticized by the

plaintiff-appellants in the first appeal. By the impugned judgment dated 22.04.2009, the appeal was allowed holding that :

"9. The plaintiffs in support of the case submitted the certified copies of Khatian Nos. 262/1, 262/2, 262/3, 262/4, 262/5 and 262/6 and these documents have been marked as Exhibit-2 series. The plaintiffs also produced the sale deed dated 13.2.1347 TE and it has been marked as Exhibit-1. I have carefully gone through the Ext.2 series and I find that khatians have been prepared in the name of Jahur Ali and others, i.e., in the name of the legal heirs of late Kachim Ali. In order to discredit these documents the defendants have not filed any kind of evidence for not considering the Ext. 2 series in this case. From the Ext.2 series it can be held that Kachim Ali was the original owner of the suit land and thus, the legal heirs of Kachim Ali have right over the suit property, but the defendants are not paying any response for partition of the suit property. Thus, in my considered opinion, the plaintiffs are able to prove their case and they are entitled to get the decree, as prayed for.

Considering the claim of the plaintiffs I hold that the plaintiffs along with defendants No.1 to 5 are entitled to get two-ninth(2/9) share each from the suit land described in the schedule 1 of the plaint. Besides their share, the plaintiffs are further entitled to get land measuring four and half kanis, which the mother of the plaintiffs got from Kachim Ali by way of registered deed dated 17th jaistha, 1347 TE.

10. I have perused the judgment of the learned Civil Judge(Sr. Div), North Tripura, Kailashahar in details and I find that the learned Civil Judge(Senior Division) failed to appreciate the evidence on record properly and his findings is not based upon good reasoning and as such, it is liable to be set aside and accordingly, the judgment dated 01.08.2008 passed by the learned Civil Judge(Sr. Div), North Tripura, Kailashahar in Case No. Title Suit 18(Partition) of 2007 is hereby set aside."

Accordingly, the preliminary decree directing the parties to identify and extract 2/9th share from the suit property along with the land measuring 4(four) and ½ (half) kanis of land which their mother got by the registered deed. The parties were directed to make partition of the suit property by metes and bounds within a period of 2(two) months from that decree.

[13] Being aggrieved by the said judgment dated 22.04.2009, the present appeal has been filed by the defendants. The defendants' contention has been to some extent reflected in the form of the substantial question of law that by not considering Exbt.D series and Exbt.E series as introduced by the defendants in the records of evidence, the first appellate court has committed serious illegality. If Exbt.D series and Exbt.E series (the sale deeds) are considered then according to the defendant-appellants, the claim of the plaintiffs would fall through.

[14] Mr. D. Chakraborty, learned senior counsel appearing for the appellants, has submitted that the original owner, Kachim Ali transferred 3(three) gandas of land to Joygun Bibi, the divorced wife of Ramij Ali by sale deed, dated 02.03.1951. Joygun Bibi returned the said land to her divorced husband Ramij Ali by the sale deed dated 03.04.1958. Both the sale deeds, executed in favour of Joygun Bibi and executed by Joygun Bibi, have been marked as Ext.D series. On the death of Ramij Ali, his right over the said land devolved to the legal heirs i.e. defendant Nos. 4(a) to 4(e). Kachim Ali transferred the land measuring 4(four) kanis to his second wife,

namely Ramija Khatun by a registered sale deed dated 13th Shrabana, 1337 TE (Exbt.E series). Thus, the defendant Nos. 1 to 2 and 3(a) to 3(e) are entitled to the said land. By another sale deed dated 14th Magh, 1333(Ext.E series), Kachim Ali sold the land measuring 3(three) kanis to his third wife, namely Massamat Rajima Bibi by the sale deed dated 14th Magh, 1333 TE (Exbt.E series). On the death of wife of the original owner, the defendant No. 4(a) to 4(c) and 5(a) to 5(ii) are entitled to the said land. Thus, a total land measuring 3(three) kanis in Exbt.D series and 4(four) kanis in Exbt.E series plus 3(three) kanis in Exbt.E series, 10(ten) kanis, corresponding to 4(four) acres of land, are liable to be deducted from the First Schedule of the suit land. According to the plaint, the partitionable land measures 4.83 acres, which has been described as a whole in the First Schedule. Mr. Chakraborty, learned senior counsel therefore, has submitted that without taking care of the lands described in Exbt.D series and Exbt.E series, any decree directing partition is bound to be illegal. The first appellate court while passing the impugned judgment did not at all take care of Exbt.D series and Exbt.E series. Thus the decree calls for and is liable to be interfered with.

[15] From the other side Mr G.K. Nama, learned counsel appearing vice Mr. S. Lodh, has submitted that there is no infirmity in the judgment and decree passed by the first appellate court. Exbt.D series is a deed executed by Kachim Ali alias Md. Kasim in favour of Joygun Bibi with a specific boundary. Later on, the land

described in Exbt.D series, measuring 3(three) kanis was transferred by Joygun Bibi to Ramij Ali after her divorce with Ramij Ali as the said land was transferred as the dower to Joygun Bibi for her marriage with Ramij Ali, son of Kachim Ali. Therefore, the said land has to be treated not included in the joint property but in the share of Ramij Ali and thereafter to the legal heirs of Ramij Ali.

[16] Similarly the land described in Exbt.-E series are the properties of Smt. Ramija Khatun and Smt. Rabija Bibi respectively measuring 4(four) kanis and 3(three) kanis. It appears clearly that those lands as described in the Exbt.D series and Exbt.E series are part and parcel of the suit property and therefore, those lands as well are to be extracted out from the suit property and that would be inherited by the legal heirs of Ramija Khatun and Rabija Bibi.

[17] This court finds sufficient force in the submission of Mr D. Chakraborty learned senior counsel. As such, after extracting out the land described in Exbt.D series and Exbt.E series, the remainder of the land is liable to be partitioned amongst the legal heirs of Kachim Ali and thus the plaintiffs are entitled to get $\frac{2}{9}$ th share of the said joint property vice Jahur Ali, father of the plaintiffs. There is no dispute that from the properties left by Kachim Ali, his direct descendants are entitled to the share over the properties as described in the First Schedule after deducting the property as described in Exbt.D series and Exbt.E series, on duly adjusting the land as described in the Third Schedule and Fourth Schedule of the plaint and also extracting the land described in the Second Schedule

of the plaint measuring 4(four) and ½(half) kanis, which is the exclusive property of Nasima Bibi, mother of the plaintiffs over which the plaintiffs are alone entitled to get their respective shares. The share that would be entitled to the descendants of Kachim Ali is in the circumstances as under :

Jahur Ali	2/9 th
Mahmud Ali	2/9 th
Ramij Ali	2/9 th
Jamila Bibi	1/9 th
Duleza Bibi	1/9 th
Firoza Khatun	1/9 th

The plaintiffs would get 2/9th share from the suit property after due adjustment, deduction and extraction as stated.

[18] Accordingly, the appeal is partly allowed and the plaintiff Nos. 1 to 5 are entitled to get 2/9th share from the suit property while the rest of the share be allotted in favour of the defendants after deduction of the land as described in Exbt.D series and Exbt.E series and also the land described in the Second Schedule and also making necessary adjustment of the Third and Fourth Schedule land of the plaint and also the properties of Exbts. A and B, the sale deeds executed by Jahur Ali. The parties are directed to make the partition of the suit properties by metes and bounds within a period of 3(three) months from the day on which the decree would be drawn up, failing which the plaintiffs would be at liberty to seek the

final decree for getting the plaintiffs' share demarcated and separated by metes and bounds with aid of the court by appointing a Survey Commissioner.

Sent down the LCRs forthwith.

JUDGE

Sabyasachi Ghosh