

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

RFA 03 OF 2009

1. Smti Pratibha Rani Saha,
wife of late Hiralal Saha
2. Sri Sankar Saha,
son of late Hiralal Saha
3. Smti Tandra Saha
wife of Shri Sudarshan Saha
4. Shri Krishna Lal Saha,
son of late Anath Bandhu Saha
5. Shri Gopal Saha,
son of late Hiralal Saha
- all are residents of 12/2, Old Thana Road, Banamalipur,
P.S. East Agartala, District : West Tripura

..... Defendant Appellants

-Vs-

1. Shri Badal Chandra Saha,
son of late Anath Bandhu Saha
2. Shri Chandan Saha,
son of late Hiralal Saha

- both are residents of 12/2, Old Thana Road,
Ganaraj Chowmohoni, Banamalipur, P.S. East Agartala,
District : West Tripura

.....Plaintiff Respondents
3. Smti Alo Rani Saha,
wife of Shri Sripada Saha,
daughter of late Hiralal Saha,
resident of Jail Ashram Road,
opposite side of Debendra Road,

P.S. East Agartala, District : West Tripura

4. Shri Subodh Saha,
son of late Suresh Saha,
resident of 12/2, Old Thana Road, Ganaraj Chowmohoni,
Banamalipur, P.S. East Agartala, District : West Tripura

.....Proforma Defendant- Respondents

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

For the appellants : Mr. D.R. Choudhury, Advocate
Mr. A. Bhowmik, Advocate

For the respondents : Mr. P. Dutta, Advocate

Date of hearing,
judgment & order : 07.08.2015

Whether fit for reporting :

Yes	No
	√

JUDGMENT & ORDER (Oral)

Heard Mr. D.R. Choudhury, learned counsel
appearing for the appellants No.1, 2, 4 & 5, Mr. A. Bhowmik,
learned counsel appearing for the appellant No.3 and Mr. P.
Dutta, learned counsel appearing for the plaintiff-respondents.

[2] This is an appeal filed under section 96 of the CPC against the judgment dated 26.08.2009 delivered in T.S.(P) 40 of 2006 by the Civil Judge, Senior Division, West Tripura, Agartala, Court No.2.

[3] The admitted facts are that the respondents No.1 and 2 instituted the suit, being Title Suit (Partition) No. 40 of 2006 seeking partition of the suit property as described in the schedule appended to the plaint, which is extracted hereunder :

SCHEDULE OF THE PROPERTY

District-West Tripura, Sub-Division-Sadar, Pargana-Agartala, P.S. East Agartala, Sheet No.14, Tehasil-East T.K. covered by Khatian No.30120(old), Dag No.11784, 11785 bounded :

In the North	- Ejmali Road
In the South	- Manik Sen and others
In the East	- Dr. Bholanath Saha
In the West	- Municipal drain and then main road.

[4] The total suit property is measuring 7 Gandas and 3 Karas as per the local measurement. It is not disputed that the suit property was originally owned by one Anath Bandhu Saha

and he is survived by his 3(three) sons namely Hiralal Saha, Krishna Lal Saha and Badal Chandra Saha (the plaintiff No.1) and two daughters namely Smti. Khushi Saha and Smti. Kadu Saha. The wife of Anath Bandhu Saha expired before his death. During his life time, Anath Bandhu Saha by executing 3 gift deeds in favour of his sons, namely Hiralal Saha, Krishna Lal Saha and Badal Chandra Saha, gifted almost equal amount of land and property to them. It is also not disputed that Badal Chandra Saha by the gift deed No.1-10123 dated 06.11.1970, was gifted 3 Gandas 1 Kara 2 Kranta and $8\frac{3}{4}$ Dhurs. It is also not in dispute that Hiralal Saha, Krishna Lal Saha and Badal Chandra Saha accepted those gifts and came into possession over the land as identified by their father, the donor Anath Bandhu Saha.

[5] The plaintiff No.1, Badal Chandra Saha did not have any confusion as regards the location of the land. He received the land as gift from his father and raised no dispute whatsoever till filing of the suit on 11.07.2006. By filing the suit, Badal Chandra Saha, the plaintiff No.1 and one Chandan Saha sought partition of the entire property of said Anath Bandhu Saha on the ground that there was no specific identification of the gifted

land in question and therefore, no demarcation of the said gifted land was done by metes and bounds, though his sons were in possession of the dwelling huts standing on the suit land for their residential purpose. Due to non-identification of the respective shares in the gift deeds, mutation of the records of right by the competent authority was not permitted. Even their attempt to get the gifted land identified by consensus did not bring any result and hence the plaintiff No.1 along with the plaintiff No.2, Chandan Saha filed the suit as stated. It is pertinent to mention here that the suit has been instituted immediately after the death of Hiralal Saha, who expired on 17.03.2005. Chandan Saha, the plaintiff No.2 is one of the sons of Hiralal Saha, since deceased. Hiralal Saha had three sons, namely Chandan Saha, Gopal Saha, Sankar Saha and two daughters namely Smti. Alo Rani Saha and Smti. Tandra Saha. Smt. Prativa Rani Saha is the widow of late Hiralal Saha. All the legal heirs of Hiralal Saha have been impleaded as the defendants alongwith Krishna Lal Saha, son of late Anath Bandhu Saha in the suit, whereas as already stated, Badal Chandra Saha, one of the sons of Anath Bandhu Saha and Shri Chandan Saha, one of the sons of Hiralal Saha, are the plaintiffs in the suit.

[6] It is also admitted fact that Anath Bandhu Saha did not leave any property beyond the property covered by the said three gift deeds and after the gift was made, there were some inter-vivos transfers out of the gifted land by Krishna Lal Saha and Hiralal Saha. Krishna Lal Saha sold a part of his land received as the gift from his father to one Subodh Saha, whereas Hiralal Saha sold out part of his land to Sudarshan Saha, his son-in-law, by the registered sale deed No.1-2789 dated 10.03.2004, a piece of land measuring 2 karas. It is also not disputed that during the life-time, by executing two separate Wills, Hiralal Saha bequeathed his landed property measuring 3 karas, 1 ganda, 2 kranta and 3/5 dhur respectively to his son namely Sankar Saha and Gopal Chandra Saha. If the land as bequeathed to Sankar Saha and Gopal Chandra Saha and the land as transferred by a registered Sale Deed to Sudarshan Saha are summed up together, it would be apparent that the gifted land of Hiralal Saha has totally been transferred or bequeathed. Most interestingly it is to be noted that none of the plaintiffs has challenged the execution of the Wills. Rather they have admitted that there is existence of the Wills and according to that Will, after death of Hiralal Saha, the bequeathed

property has devolved to Sankar Saha and Gopal Saha and they are in possession and enjoyment of that property.

[7] This court is really at bay to understand how thereafter the suit for partition can be maintained. However, by the impugned judgment a preliminary decree has been passed by the trial court. During the trial, based on the pleadings, the issues and the answers thereof were made in the following manner :

Issue No.i) : Is the suit maintainable in its present form and nature?

Without any reasoning the answer that has been given by the trial court is :

“On the basis of case record and pleadings I am of the opinion that the present suit is maintainable.”

No further discussion, analysis or appreciation of the evidence has been made by the trial court.

Issue No.ii) : Whether the suit land is a joint family property of the plaintiff and defendants?

One line answer that has been given by the trial court is as follows :

“Present suit land is a joint family property.”

Again there is no discussion, no further analysis and appreciation of the evidence.

Issue No.iii) Is the suit property liable to be partitioned amongst the plaintiff and defendant as per plaint?

Further the trial court has answered in the following manner :

"The suit property is liable to be partitioned amongst the plaintiff and defendant as per plaints."

Issue No.iv) To what other relief the parties are entitled to get?

Answer has been given as under :

"No other relief is necessary."

This is what the entire appreciation is all about purportedly of the evidence and from the thin analogy it is clear that no exercise to appreciate the evidence was at all taken by the trial court.

[8] As stated earlier, the facts are mostly admitted by the parties. As the plaintiff No.1 was refused mutation by the settlement authority he filed the suit with the co-plaintiff. So far the plaintiff No. 2 is concerned, from the reading of the entire

plaint, this court does not find any cause for institution of the suit. From the records, particularly from the wills, it evinces that it has been clearly stated that in lieu of the share, the plaintiff No.2 has been given the equivalent cash on the prevailing market rate. Acceptance of such cash has been acknowledged by the plaintiff No.2, by executing an affirmed acknowledgment dated 13.06.2003 (Exhibit- B). By that acknowledgement in the form of agreement he has categorically stated that he would not claim any property from the property that would be left by his father, Hiralal Saha.

[9] Having situated thus, this court has no other option but to allow this appeal and set aside the impugned judgment and decree. Accordingly, the impugned judgment and decree is set aside. In the result, the suit stands dismissed.

Before pertaining with the records, it is to be stated that if the plaintiff No.1 had any difficulty regarding location of the land, he had other effective remedy, but that remedy was not in institution of a partition suit.

[10] In the result, this appeal is allowed. Draw the decree accordingly.

Send down the LCRs forthwith.

JUDGE

Sabyasachi B