

THE HIGH COURT OF TRIPURA
AGARTALA

RSA 70 of 2013

Sri Manik Chandra Dey,
S/O late Surendra Chandra Dey,
Resident of village & P.O Khilpara, P.S. R.K. Pur,
PIN- 799114, District- Gomati, Tripura.

... **Appellant**

- **Versus** -

1. **Sri Nirmal Chandra Dey,**
S/O late Surendra Chandra Dey,
Resident of village & P.O Khilpara, P.S. R.K. Pur,
PIN- 799114, District- Gomati, Tripura.

... **Plaintiff-Respondent**

2. **Sri Phanindra Chandra Dey,**
S/O late Surendra Chandra Dey,
Resident of village & P.O Khilpara, P.S. R.K. Pur,
PIN- 799114, District- Gomati, Tripura.

... **Defendant-Respondent**

Legal heirs of deceased Nani Gopal Dey

3. **Smt. Chandana Dey**
- 3(a). **Sri Rajesh Dey**
- 3(b). **Smt. Ruma Dey**
- 3(c). **Smt. Soma Dey**

Resident of village & P.O Khilpara, P.S. R.K. Pur,
PIN- 799114, District- Gomati, Tripura.

Legal heirs of deceased Nihari Dey

4. **Smt. Mira Dey (Das)**
W/O Sri Gouranga Das
Resident of village – Rajdhar Nagar, P.O Jamjuri,
P.S. R.K. Pur, PIN- 799113, District- South Tripura now
Gomati.
- 4(a). **Smt. Sita Dey**
W/O late Haradhan Dey
- 4(b). **Sri Rajib Dey** (minor)
S/O late Haradhan Dey
- 3(c). **Smt. Pinki Dey**
D/O late Haradhan Dey

Sl. No. 4(b) and 4(c) being minor are being represented by their legal guardian and next friend mother, the Proforma Defendant-4 hereinabove.

Sl. No. 4(a) to 4(c) are the residents of village- Khilpara, P.O. & P.S. R.K.Pur, PIN- 799114, Dist. South Tripura now Gomati

Legal heirs of deceased Patal Rani Dey (Bhowmik)

- 5(a) **Smt. Sabitri Bhowmik**
W/O late Swapan Bhowmik
Resident of Tripureswari colony, Chandrapur,
P.O & P.S. R.K. Pur, PIN- 799013, District- South Tripura
now Gomati.
- 5(b). **Sri Tapan Bhowmik**
- 5(c). **Sri Gautam Bhowmik**
- 5(d). **Sri Satya Bhowmik**
5(b) to 5(c) are sons of late Ganesh Chandra Bhowmik,
- 5(e) **Smt. Mani Bhowmik (Dey)**
W/O Sri Sridam Dey
D/O late Ganesh Chandra Bhowmik
- 5(f) **Smt. Swapna Bhowmik**
D/O late Ganesh Chandra Bhowmik
Under care of Smt. Sabitri Bhowmik,

All are resident of Tripureswari colony, Chandrapur,
P.O & P.S. R.K. Pur, PIN- 799013, District- South Tripura
now Gomati.

..... Proforma Defendant Respondents

**BEFORE
THE HON'BLE MR. JUSTICE U.B.SAHA**

For the appellant : Mr. KN Bhattacharji, Sr. Advocate.

For the respondents : Mr. B. Banerjee, Advocate

Date of hearing & delivery
of Judgment and Order : **06.07.2015.**

Whether fit for reporting : YES / No.

JUDGEMENT AND ORDER (ORAL)

The instant second appeal is filed under Section 100 of the Code of Civil Procedure against the appellate order dated 16.11.2013 passed in Title Appeal no. 17 of 2013 by the learned District Judge, South Tripura, Udaipur where-under the learned District Judge after rejecting the prayer for condonation of delay dismissed the appeal.

2. Heard Mr. KN Bhattacharji, learned counsel appearing for the appellant as well as Mr. B.Dutta, learned counsel appearing for the respondents.

3. Facts, needed to be discussed, are as follows:-

The predecessor in interest of the respondent no. 3(a) to 3(c) and the respondent Nirmal Chandra Dey filed a suit for partition of the land, in question, before the learned Civil Judge (Junior Division), South Tripura, Udaipur (hereinafter referred to as the trial Court). The appellant being defendant also filed the written statement. The learned trial Court, after going through the pleadings in the plaint and the written statement, framed the issues which are as follows:

- “(i) Whether the suit is maintainable in its present form and nature ?**
- (ii) Whether the suit property is a joint property and if so, what extent of share the parties are entitled to?**
- (iii) Whether the plaintiff is entitled to get the reliefs, as prayed for?**
- (iv) To what other relief or reliefs the parties are entitled to?”**

3a. To establish the case of the plaintiffs, the respondents have adduced one witness namely Sri Nirmal Chandra Dey, respondent no.1 herein as PW-1 and also exhibited some documents. The defendant appellants also examined two witnesses, namely, Sri Manik Chandra Dey, appellant herein and one Sri Ranindra Chandra Dey, as DW-1 and DW-2, respectively.

3b. The learned trial Court decreed the suit partly stating, *inter alia*, that the parties will get the share in the suit land in the manner as indicated below:

“ Defendant no.2, Fanindra Chandra Dey will get 2/6th share in the suit land. The plaintiff no. 1 and 2 each will get 1/6th share in the suit land. The defendant no.1 will get 1/6th share of the suit land while defendant no. 3(b) , 3(c) and 3(d) will together get 1/12th share of the suit land while Mira Dey (3a) will get 1/12th share.”

3.c. Preliminary decree was passed on 11.10.2007 and thereafter, an application was filed by the plaintiffs on 03.03.2010 for final decree. On 17.02.2011, the Survey Commissioner went to the spot for partition and

the Survey Commissioner submitted his report on 25.03.2011 but the lawyer of the appellant did not give any information or co-operate with him as he was appointed by the Legal Services Authority. The learned counsel of the defendant appellant also did not take any steps. Preliminary decree was prepared in the year 2007 and thereafter final decree was prepared as per the report of the Survey Commissioner. The appellant filed an appeal against the said decree along with an application for condonation of delay of 5 years and 286 days. The said appeal was registered as Title Appeal 17 of 2013 and the condonation application was registered as Civil Misc. 16 of 2013.

3.d. The learned appellate Court after hearing the parties and considering the reasons for delay, as explained in the condonation petition dismissed the condonation petition giving reasons and consequent thereto dismissed the appeal. Hence, the Second Appeal.

4. Mr. KN Bhattacharji, learned senior counsel appearing for the plaintiff submits that the learned first appellate Court while considering the prayer for condonation of delay did not consider the fact that the learned counsel appearing for the defendant appellant did not co-operate with them. He also submits that even in a case for 12 years delay, an appeal was admitted by the Apex Court.

5. Mr. B. Dutta, learned counsel appearing for the respondent plaintiffs submits that in the instant appeal there is no question of substantial law as the question of limitation is a mixed question of law and fact.

6. This Court has gone through the order of the learned first appellate Court in Civil Misc. 16 of 2013 arising out of T.A. 17 of 2013. It appears from the order that the learned appellate Court passed a

detailed order giving reasons stating inter alia that from the petition it is found that the delay was caused because of the laches on the part of the lawyer but it is surprising that the execution petition no. Ex(T) 5 of 2012 was filed in the year 2012 and, thereafter, notice was served but the appellant petitioner did not take any steps for want of advise. It is also stated that there is nothing before the Court to show that the case with merit will be frustrated if the prayer for condonation of delay is not allowed. He has also considered the decision of the Apex Court in AIR 1998 SC 2276 wherein the Apex Court held that the law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribed and the Courts have no power to extend the period of limitation on equitable grounds. Delay, if not properly or satisfactorily explained, cannot be condoned.

7. This Court has also gone through the application for condonation of delay filed by the appellant petitioner. According to this Court also the delay has not been properly explained. More so, a second appeal cannot be admitted mere on the ground of question of law. It is settled position of law that the second appeal can be admitted on substantial questions of law. The question of limitation is a mixed question of fact and law. Thus, according to this Court, there is no substantial question of law in the instant appeal. Hence, the same is dismissed.

8. No order as to costs.

JUDGE