

**HIGH COURT OF TRIPURA
AGARTALA**

RSA 30 OF 2014

Sri Kajal Malakar,
S/o Late Chitta Ranjan Malakar,
Resident of Vill. Chandrai Chhara,
P.O. & P.S. Ambassa,
Dist. Dhalai, Tripura.

... **Appellant.**

- Vrs -

Smt. Mamata Malakar,
W/o Sri Kali Kumar Malakar,
Resident of Jawahar Nagar and at
present residing at Ambassa,
P.O. & P.S. Ambassa,
Dist. Dhalai, Tripura.

... **Respondent.**

RSA 42 OF 2013

Sri Kajal Malakar,
S/o Late Chitta Ranjan Malakar,
Resident of Vill. Chandrai Chhara,
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Dist. Dhalai, Tripura.

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**BEFORE
THE HON'BLE MR. JUSTICE S.C. DAS**

For the appellant : Mr. P. Chakraborty, Advocate.

For the respondent : Mr. D.K.Biswas, Advocate.

Date of hearing & date of : **10.07.2015**
Delivery of judgment &
Order

Whether fit for reporting : **No**

JUDGMENT & ORDER (ORAL)

Both the appeals are taken up for hearing and decision.

2. Heard learned counsel Mr. P. Chakraborty and Mrs. K. Roy for the appellants.

3. The respondent as plaintiff instituted Title Suit No.27 of 2008 in the Court of Civil Judge (Sr. Division), Kailashahar, North Tripura seeking declaration of right, title, interest and possession over the suit land as well as for permanent injunction against the defendant i.e. the appellant herein and his mother proforma-defendant Smt. Anita Malakar. By judgment dated 20.03.2010 learned Civil Judge, Sr. Division decreed the suit in part and both the plaintiff and principal defendant challenged the judgment by filing Title Appeal No. 7 of 2010 and Title Appeal No.8 of 2010 respectively. The appeal filed by the plaintiff i.e. Title Appeal

No.7 of 2010 was allowed and the appeal filed by the principal defendant i.e. Title Appeal No. 8 of 2010 was dismissed.

4. Aggrieved, the principal defendant challenged the judgments passed by the learned District Judge in Title Appeal No. 7 of 2010 and Title Appeal No. 8 of 2010 in the second appeals.

5. Husband of the plaintiff Kali Kumar Malakar and the father of principal defendant Chitta Ranjan Malakar were full blood brothers. The suit land described in the schedule of the plaint was allotted in the name of Chitta Ranjan Malakar and his wife Sabitri Malakar. Sabitri Malakar died leaving behind Chitta Ranjan Malakar as her only heir. Chitta Ranjan Malakar lived with Anita Malakar like husband and wife and because of their cohabitation Kajal Malakar i.e. the principal defendant who is the appellant of the present second appeal was born. Chitta Ranjan Malakar executed a Will bequeathing the suit land in favour of the plaintiff Mamata Malakar. The plaintiff set up her claim based on the Will. The principal defendant i.e. the appellant Kajal Malakar set up his claim on the basis of inheritance. The Will has not been challenged. The trial Court considering the fact that certain portion of the allotted land was acquired by the State Govt. and the compensation awarded was shared equally by the plaintiff and the principal defendant, decreed the suit also in equal share directing that the plaintiff and principal defendant shall be

owners of the suit land in equal share. The appellate Court held that the trial Court's judgment was absolutely wrong. If the Will was proved then the basis of the claim made by the plaintiff was justified the entire land shall belong to the plaintiff. If the Will goes, then the entire land shall belong to the principal defendant by way of inheritance. There cannot be a decision in the middle like a settlement on compromise. The Trial Court has held that the Will has been proved. The appellate Court also held that the Will has been proved. There is no issue framed regarding genuinity or authenticity of the Will. In the pleadings of the defendant also there was no challenge set up regarding genuinity and authenticity of the Will.

6. Learned counsel Mr. Chakraborty has submitted that in the Will the testator Chitta Ranjan Malakar only stated that the khatian prepared in his name, in place of his name the name of Mamata Malakar shall be inserted and he appointed two executors of the Will. Since there was no averment in the Will that Chitta Ranjan Malakar vested the right, title and interest of the allotted land by virtue of that Will, the Will in true sense did not transfer the property to the testatrix.

7. Mr. Chakraborty has also submitted that the allotted property was not subject to transfer and so the

second appeal should be admitted on the ground that the allotted property was not transferable.

8. In both the appeals, the appellant suggested following substantial questions of law:-

- A) Whether non-consideration of evidence on record and consideration of untenable evidence under Judgment perverse in the eye of law?*
- B) Whether the Allottee has got any right to transfer his allotted land within the period of restriction in the Order of Allotment issued by the Competent Authority and if it was transferred what shall be the consequence of such transfer?*
- C) Whether a person can file a suit for his right, title and interest and confirmation of possession over a land without having any possession over the same?*
- D) Whether the possession of a person is sin-qua-non for getting an order of perpetual injunction?*
- E) Whether the Respondent practiced fraud upon the Learned Courts below and also upon the Appellant to obtain the Decree of her suit by way of presenting a fake 'WILL'?*

9. On perusal of the impugned judgments, passed by the trial Court and the appellate Court, I find no perversity in the appreciation of evidence. The allotment order was made in favour of the testator, Chitta Ranjan Malakar and his wife Sabitri Malakar and it is undisputed fact that Sabitri predeceased Chitta Ranjan and thereafter Chitta Ranjan became the sole owner and he executed the Will bequeathing

the property. It was not a transfer in the sense of sale or gift rather, it was a settlement by a testamentary instrument.

10. Though there was nothing specific in the Will that the right, title and interest of the property was transferred but if the entire Will is read as a whole, the intention of the testator would be clear that he intended to transfer the suit land by that Will to the testatrix, Mamata Malakar. Under such facts and circumstances of the suit, I find no substantial question of law to formulate in both the appeals for further hearing.

11. The second appeals, therefore, stand dismissed as no substantial question of law is found.

JUDGE