

**HIGH COURT OF TRIPURA
AGARTALA**

RFA 02 OF 2011

1. Sri Rabindra Kumar Das,
S/o Late Atul Chandra Das.

2. Sri Narayan Chandra Das.

Both are of Udaipur Town,
P.O. & P.S. Radhakishorepur,
District-South Tripura.

...Appellant-Defendants.

- Versus -

1. Sri Nripendra Kumar Das,
S/o Sri Surendra Kumar Das of
Village-Sonamura,
P.O. & P.S. R.K.Pur,
District-South Tripura.

2. Surendra Kumar Das (now deceased).

Substitute of plaintiff No.2 by his legal heirs
as per order No.39 dated 6.10.2010.

2. (a) Smt. Kamala Das,
W/o Lt. Surendra Kumar Das.

2. (b) Sri Rathindra Kr. Das.

2. (c) Sri Satindra Kumar Das.

2. (d) Sri Amrit Das.

2. (e) Smt. Jogamaya Das.

Both are sons and daughter of
Late Surendra Kumar Das of
Village- Town Sonamura,
P.O. & P.S. Radhakishorepur,
Udaipur, South Tripura.

At present plaintiff No.2 (c) has been
residing at C/o Sankar Chakraborty,
Matilal Colony, Airport No.1, Plot No.75,
Kolkata-28.

2. (f) Tutul Das,
W/o Sri Sudhan Das of
Village-Rajarbag,
P.O. & P.S. Radhakishorepur,
Udaipur, South Tripura.

...Respondent-Plaintiffs.

BEFORE
HON'BLE THE CHIEF JUSTICE MR.DEEPAK GUPTA
THE HON'BLE MR.JUSTICE S.C. DAS

For the Appellants : Mr.A.K.Bhowmik, Sr.Advocate,
Mr. Sekhar Dutta, Advocate,
Ms. A. Banik, Advocate.

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

Date of hearing : **29.04.2015**

Date of delivery of
Judgment and Order : **02.06.2015**

Whether fit for reporting : **No**

JUDGMENT & ORDER

(S.C.Das, J.)

This civil appeal under Section 96 read with Order XLI, Rule 1 of the Code of Civil Procedure 1908 is directed against the judgment and decree dated 18.04.2011 (decree signed on 25.04.2011) passed by learned Civil Judge, Sr. Division, Udaipur, South Tripura in Title Suit (partition) 17 of 1999.

2. Heard learned Sr. counsel Mr. A.K.Bhowmik assisted by learned counsel Mr. S. Dutta and Ms. A. Banik

for the appellants and learned Sr. counsel Mr. D. Chakraborty assisted by learned counsel Mr. H. Laskar for the respondents.

3. Respondent No.1 and his father Surendra Kumar Das, since deceased [the predecessor of respondent Nos. 2(a) to 2(f)], as plaintiffs (hereinafter mentioned as plaintiffs), filed Title Suit (partition) 17/99 in the Court of Civil Judge, Sr. Division, South Tripura, Udaipur against the appellants herein, arraying them as defendants (hereinafter mentioned as defendants) and prayed for partition of the suit land measuring 5.40 acres mentioning in Schedule-A of the plaint. Schedule-B and Schedule-C are part and parcel of Schedule-A land. Schedule-A land is a big pond with its banks and other attached vacant lands and Schedule-B land is a part of Schedule- A land wherein three small ponds were made and Schedule-C land is also a part of Schedule-A land where the plaintiff No.1 constructed his house under an agreement with the defendants.

4. The case of the plaintiffs, in short, is that the suit land described in the Schedule of the plaint originally belonged to one Anil Chandra Sarkar and Sadhana Sarkar. In the year 1992, the plaintiff No.1 purchased 2.70 acres of land out of said 5.40 acres from the original owners on payment of consideration. Similarly, the defendant Nos. 1

and 2 also by three sale-deeds purchased 2.70 acres of land from the original owners and accordingly the plaintiff No.1 and defendant Nos. 1 and 2 got possession of the entire suit land measuring 5.40 acres. They were possessing the suit land with 50% share and enjoying the usufructs there from. While under such possession, the plaintiff No.1 and the defendants made three small ponds mentioned in schedule B-1, B-2 and B-3 of the plaint. Under an agreement dated 27.10.1992 signed by the plaintiff No.1 and the defendants, the plaintiff No.1 was allowed to construct his homestead on a vacant portion of the suit land which is described in Schedule 'C' of the plaint. It is the further case of the plaintiffs that plaintiff No.1 by a registered sale-deed dated 07.06.1997 sold out 0.80 acres of land out of his own share to his father, plaintiff No.2 and accordingly plaintiff No.2 became owner of 0.80 acres of the suit land.

The plaintiffs contended that they have approached the defendants for amicable partition since it was difficult to continue joint possession but the defendants did not agree to amicable partition. On 27.06.1999, the plaintiffs made formal request for partition of the suit land amicably by meats and bounds but it was turned down by the defendants and hence, the plaintiffs instituted the suit for declaration of their shares and for partition of the same.

5. The defendants contested the suit by filing written statement, *inter alia*, contending that the plaintiff No.1 purchased 2.70 acres of land and the defendants purchased 2.70 acres of land from the original owners and got joint possession of the suit land. The plaintiff No.2 had no interest in the suit land since the transfer deed executed by plaintiff No.1 in favour of plaintiff No.2 was a sham transaction and it was never acted upon. It is also contended by the defendants that under an agreement dated 27.10.1992 plaintiff No.1 constructed his hut in a portion of the vacant land and was living there with family including that of the plaintiff No.2. It is also contended by the defendants that plaintiff No.1 being a cousin brother of the defendant No.1 while came from Bangladesh, out of sympathy the defendant No.1 engaged him in his business but subsequently plaintiff No.1 started his own business and when the suit land was purchased in the year 1992, plaintiff No.1 proposed to engage in fishy culture in the suit pond and accordingly it was agreed that the plaintiff No.1 should pay Rs.50,000/- annually to the defendants till middle of April,1999 and thereafter the plaintiff No.1 shall execute a sale-deed of his share in the suit land to the defendants and accordingly in the month of April,1999 plaintiff No.1 handed over the possession of the suit land to the defendants and the defendants became absolute owner

of the entire suit land except the homestead portion of the land mentioned in Schedule-C of the plaint and hence, the plaintiffs are not entitled to get any decree as prayed for.

6. Considering the pleadings of the parties, the trial Court framed 5(five) issues namely—

- 1. Is there any cause of action to file the suit?*
- 2. Whether the suit land is liable to be partitioned as prayed for?*
- 3. Whether the plaintiffs seem to be owner by an oral agreement with the defendants as alleged?*
- 4. Whether the parties are entitled to partition of the suit properties? If so, to what extent?*
- 5. To what other relief or reliefs, the parties are entitled?*

7. In course of trial, plaintiff No.1 examined himself as P.W.1 and proved the following documents in support of his case:-

Ext. 1(series):Original of the registered sale-deed bearing No.1-2557, dated 07.09.92 executed by one Anil Chandra Sarkar & Anr in favour of the plaintiff No.1 in respect of 0.54 acre of land forming part of the suit land;

Original of the registered sale-deed bearing No.1-2560, dated 07.09.92 executed by one Anil Chandra Sarkar & Anr in favour of the plaintiff No.1 in respect of 2.16 acre of land forming part of the suit land;

Ext.2: Original of the registered sale-deed bearing No.1-1280, dated 07.06.97 executed by the plaintiff No.1 in favour of the plaintiff No.2(since deceased) in respect of 0.80 acre of land forming part of the suit land;

Ext. 3: Original of the unregistered deed of agreement dated 27.10.92 executed in between the plaintiff No.1 on the one hand and the defendants on the other hand in respect of 0.40 acre of land forming part of the suit land;

Ext.4(series): (1) True copy of Khatian bearing No.10 of Mouja Rajarbag standing in the names of the defendants and the plaintiff No.1 in respect of 0.13 acre of land relating to the suit land;

(2) True copy of Khatian bearing No.11 of the Mouja Rajarbag standing in the names of the defendants and the plaintiff No.1 in respect of 0.16 acre of land relating to the suit land;

(3) True copy of Khatian bearing No.305 of Mouja Rajarbag standing in the names of the defendants and the plaintiff No.1 in respect of 3.91 acre of land relating to the suit land;

(4) True copy of Khatian bearing No.1162 of Mouja Rajarbag standing in the names of the defendants and the plaintiff No.1 in respect of 0.73 acre of land relating to the suit land; and

Ext.5(series): Original of the statement of accounts of the expenditure of the defendant No.1 in respect of the pond within the suit-property for the year 1405 BS;

8. Defendant No.1 examined himself as D.W.1 and examined another witness namely D.W.2 Binoy Debbarma and in support of their case, the defendants proved the following documents:-

Ext. A (As a whole): Original of the letter dated 06.05.82 addressed to the defendant No.1 by the plaintiff No.1;

Ext.B (Series): Original of the statement of accounts of the expenditure prepared by the plaintiff No.1 in respect of selling of fishes, etc., of the tank within the suit-property for the years 1404 & 1405 BS;

Ext. C: Original of the registered sale-deed bearing No.1-2558, dated 07.09.92 executed by one Anil Chandra Sarkar & Anr in favour of the defendant No.2 in respect of 1.08 acre of land forming part of the suit land;

Ext.D: Original of the registered sale-deed bearing No.1-2559, dated 07.09.92 executed by one Anil Chandra Sarkar & Anr in favour of the defendants in respect of 0.54 acre of land forming part of the suit land;

Ext.E: Original of the registered sale-deed bearing No.1-2561, dated 07.09.92 executed by one Anil Chandra Sarkar & Anr in favour of the defendant No.1 in respect of 1.08 acre of land forming part of the suit land; and

Ext.F: Certified copy of registered sale-deed bearing No.1-2408, dated 12.03.75 executed by one Chand Miah Podder in favour of one Abdul Kader Podder in respect of 0.02 acre of land forming part of the suit land.

9. Learned Civil Judge, Sr. Division by impugned judgment dated 18.04.2011 partly decreed the suit and

hence, having felt aggrieved, the defendants preferred the present appeal.

10. It is an admitted position that the suit land measuring 5.40 acres described in Schedule-A of the plaint originally belonged to one Anil Chandra Sarkar and Smt. Sadhana Rani Sarkar and in the year 1992 the plaintiff No.1 purchased 2.70 acres of land and defendant Nos. 1 and 2 purchased 2.70 acres of land and both the plaintiff No.1 and the defendants got possession of the suit land from the original owner jointly and have been in possession of the suit land jointly. The plaintiffs contended that plaintiff No.1 by a registered sale-deed dated 07.06.1997 sold out 0.80 acre of land to plaintiff No.2. The defendants contended that it was a sham transaction between the son and father and that it was never acted upon. The trial Court rightly rejected the contention of the defendants since it was a transaction made by a rightful owner to another executing a registered sale-deed. This plea of the defendants seems to be a vague plea having no force at all.

11. The plaintiffs contended that they were in joint possession of the suit land along with the defendants. The defendants contended that from the year 1993, the plaintiff was engaged in fishy culture in the suit land and used to pay Rs.50,000/- annually to the defendants and that it was

agreed to transfer the suit land in the year 1999 i.e. after last day of Chaitra of the Bengali calendar month and accordingly in the April, 1999, the plaintiff handed over the possession of the suit land to the defendants and relinquished his right in the suit land but did not execute the sale-deed in favour of the defendants. The trial Court, as it appears, has rightly rejected the claim of the defendants since there is no such document that the plaintiff No.1 was doing fishy culture under a lease agreement and paid Rs.50,000/- per year to the defendants. The title deeds executed by the original owners are in the name of the plaintiffs and the defendants. Only there was an agreement between the plaintiff No.1 and the defendants in respect Schedule-C land where plaintiff No.1 constructed his homestead. Therefore, the claim of the defendants that they acquired title in the entire suit land has no basis and at least there is no basic document to prove the title of the defendants in the entire suit land.

12. Learned Sr. counsel Mr. Bhowmik has contended that the watery portion of the pond cannot be partitioned without permission of the competent authority and therefore, some time should be allowed for seeking permission from the competent authority.

There was neither any pleading nor any evidence adduced by the parties in the suit regarding seeking of

permission from the competent authority. The watery portion of the suit land cannot be partitioned and hence, the trial Court determined the respective share of the parties in the suit land. We find that the trial Court in Para 11.1 of the judgment has described the total suit land in a table showing the entire area of 5.40 acres. After considering the title deeds and the Khatians (Exhibit-4 series), the trial Court in Para 11.2 of the judgment in Table-A described the suit land which was liable to be partitioned and the trial Court considering the title deeds and Khatians held that only 4.93 acres of land can be partitioned between the plaintiffs and the defendants and in Para 11.3 of the judgment has shown that 0.47 acres of land since not recorded in Khatians cannot be allowed partition.

13. We find total justification in the observation made by the trial Court. Where the parties could prove their title by dint of title deed and Khatian over 4.93 acres of land, the trial Court rightly held that the said area of 4.93 acres should be partitioned and accordingly in Para 11.4 the trial Court decided the particular share of the parties which reads as follows:-

“11.4. Within the immovable property measuring 4.93 acre as specified in the Table-A of paragraph No.11.2 above, the parties to the suit are entitled to their individual share in the property as specified in column 5 of the SHEDULE-I hereinabove given:

SCHEDULE-I					
Sl. No.	Parties to the suit	Share in the property		Total share in 4.93 acre of land	Remarks
		By purchase	By inheritance from plff.No.2		
1.	Plff.No.1	½ of 4.93 acre of land minus 0.72 acre of land transferred to plff.No.2 i.e. 1.745 acre	1/7 th of 0.72 acre of land owned by plff.No.2 by purchase i.e.,0.102 acre	1.847 acre	This share of land of plff.No.1 is inclusive of the land of: (a) RS Khatian No.305, Sabek plot No.1065 P, Hal plot No.1806 P, area 0.15 acre; and (b) RS Khatian No.10, Sabek plot No.1059 P, Hal plot No.1805, area 0.13 acre. -In total 0.28 acre of land forming part of the land described in the Schedule-C of the plaint.
2.	Plff.No.2(a) Plff.No.2(b) Plff.No.2(c) Plff.No.2(d) Plff.No.2(e) Plff.No.2(f)	Nil Nil Nil Nil Nil Nil	1/7 th of 0.72 acre of land owned by plff.No.2 by purchase i.e.,0.103 acre i.e.,0.103 acre i.e.,0.103 acre i.e.,0.103 acre i.e.,0.103 acre	i.e.,0.103 acre i.e.,0.103 acre i.e.,0.103 acre i.e.,0.103 acre i.e.,0.103 acre i.e.,0.103 acre	These shares of land of plffs No.2(a) to 2(f) and defts. No.1 & 2 are exclusive of the land of: (a) RS Khatian No.305, Sabek plot No.1065 P, Hal plot No.1806 P, area 0.15 acre; and (b) RS Khatian No.10, Sabek plot No.1059 P, Hal plot No.1805, area 0.13 acre. -In total 0.28 acre of land forming part of the land described in the Schedule-C of the plaint.
3.	Deft.No.1	1/4 th of 4.93 acre of land i.e.,1.2325 acre	Nil	1.2325 acre	
4.	Deft.No.2	1/4 th of 4.93 acre of land i.e., 1.2325 acre	Nil	1.2325 acre	
			Grand Total:	4.93 acre	
This land measuring 4.93 acre described in the SCHEDULE-I above by numbers in the relevant records-of-rights refers to part of the SCHEDULE-A land of the plain, butted and bounded as follows: On the North: by Matabbar Miah, Defendant No.1 and Plaintiff No.2, Prafulla Saha and Nirmal Saha, Jagabandhu Debnath, Rupban Bibi and Others (Legal Heirs of Rashid Miah), Birmohammad Podder; On the South: by PWD Road; On the East: by Matabbar Miah, Sahabuddin, Krishna Saha, Tamal Biswas; and On the West: by Samerendra Roy, Abdul Kader Podder and Others.”					

14. In our considered opinion, the trial Court rightly decided the shares of the plaintiffs and defendants in 4.93 acres of land. The share of the parties in the remaining land of 0.47 acres has been determined in Para 11.6 of the judgment but that has not been decreed by the trial Court since the parties were not having with the record of right in their name of the said 0.47 acres of land. After determining the particular share in the suit land the trial Court has decided that the prevailing market value of the property should be determined and the highest market price should be obtained for giving compensation to those share holders of the land who will relinquish their share. Since the suit land is a pond, there is no other way of effecting partition except that what has determined by the trial Court. In Para 14 of the judgment, the trial Court held thus---

“14.It is hereby declared that the plaintiff No.1, the LR. of the plaintiff No.2 i.e., plaintiffs No.2(a) to 2(f), the defendant No.1 and the defendant No.2 are entitled to their individual share in the property as specified in column 5 of the SCHEDULE-I of paragraph 11.4 above.

It is hereby ordered and decreed that the property specified in the SCHEDULE-I of paragraph 11.4 above excluding the property specified in column ‘Remarks’ thereof i.e., $4.93 - 0.28 = 4.65$ acre of the suit-property be, subject to reserved bidding, sold to the shareholder who will offer to pay the highest price above the valuation to be made by the Court, allowing him to retain the property sold on payment of just compensation to other shareholders in proportion to their rights and interests as determined hereinabove with reference to the property in question.

It is hereby further ordered that a commission under Order 26, rule 9, CPC do issue to a Commissioner to be therein named, to ascertain the

prevailing market-value of the suit-property specified in the SCHEDULE-I of paragraph 11.4 above according to the rights of the parties as hereinabove declared.

The sale being held, the shareholders whose shares are thus purchased shall execute and register a deed of conveyance within 1(one) month from the date of realization of money in favour of the purchaser in respect of the shares sold, failing which the purchaser will be entitled to have the deed of conveyance executed through Court. The purchaser will also be put in possession of the purchased property thereafter.

And it is hereby further ordered and decreed that the money realized by such sale shall be paid into the Court with the Nazir, DJ's Court, South Tripura, Udaipur and shall be duly paid (after deduction therefrom of the expenses of the sale) to the shareholders whose shares are thus purchased, in proportion to their rights and interests as determined hereinabove with reference to the property in question.

The suit is hereby dismissed in respect of the property as specified in the SCHEDULE-II of paragraph 11.4 above.

Accordingly the suit of the plaintiffs partly succeeds and is hereby partly decreed in Preliminary form on contest as against the defendants No. 1 and 2. The suit, however, partly fails and is hereby partly dismissed accordingly.

SCHEDULE-I & SCHEDULE-II as given just below the foregoing paragraphs No. 11.4 & 11.6 respectively, shall form part of the decree.

Since the defendants No. 1 & 2 contested the plaintiffs' right to claim partition of the suit-property, all costs upto the time of Preliminary decree shall be borne by the defendants No.1 & 2 in equal share.

Costs to be incurred after the Preliminary decree and till the Final decree shall be apportioned according to the shares each party has, to the suit-property.

The further hearing of this suit is adjourned, and the parties are at liberty to apply to this Court from time to time as they may be advised."

15. We find nothing wrong in the observation made by the trial Court as reproduced hereinabove. The appeal is,

therefore, found to be devoid of any merit and hence it stands dismissed with costs.

JUDGE

CHIEF JUSTICE