

THE HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_

CRP No.70 of 2012

Shri Ratan Debnath,
Son of Late Shyam Sundar Debnath
Resident of Village & P.O Kishoreganj, P.S. Kakraban,
District - South Tripura.

..... *Petitioner.*

– Versus –

Shrimati Anjali Debnath,
Wife of Late Suresh Debnath,
Housing Board, Chanban,
P.O. & P.S. R .K. Pur.

..... *Respondent.*

_B_E_F_O_R_E_
THE HON'BLE CHIEF JUSTICE MR. DEEPAK GUPTA

For the petitioner : Mr. A Dasgupta, Advocate.
For the respondent : Mr. A Sengupta, Advocate.
Date of hearing and : 02.03.2015.
delivery of judgment.
Whether fit for reporting : Yes.

JUDGMENT & ORDER (ORAL)

By means of this petition, the petitioner(*hereinafter referred to as the defendant*) has challenged the order dated 30th April, 2012 passed by the learned Civil Judge (Senior Division), South Tripura, Udaipur whereby two applications filed by the defendant were dismissed.

2. The first application was an application under Order XVIII Rule 17-A seeking permission of the Court to recall the plaintiff for

cross-examination and the ground given was that on the date when the plaintiff's witnesses were examined, counsel for the contesting defendant had fallen ill. He had taken '*no objection*' from the other side and thereafter proceeded to the hospital. The second application was under Order VIII Rule 1-A C.P.C for permitting the defendant to produce on record certain documents including a '*will*' and certain other records of right.

3. The plaintiff is the real sister of the two defendants. She alleged that the two defendants who are her brothers were owners of 2.80 acres of land in equal shares i.e. each of the brothers owned 1.40 acres of land. Her further case is that her brother proforma defendant no.2 Prabir Debnath sold 1.19 acres of land out of his share of 1.40 acres to the plaintiff for a consideration of Rs.1,65,000/-. Sale deed was duly registered. According to the plaintiff, thereafter an amicable partition took place and the three parties were put in possession of specified areas, as per their shares.

4. The defendant contested this claim and denied the execution of sale deed by Prabir Debnath in favour of the plaintiff or the execution of the sale deed by him. The partition was also denied and the defendant set up a case that in terms of the '*will*' of the father he and his brother had inherited the 2.82 acres of land in equal shares. Even if the statement of the defendant is accepted to be correct then both he and his brother were entitled to 1.41 acres

instead of 1.4 acres. Prabir Debnath had not denied the execution of the sale deed in favour of his sister and I fail to understand how the contesting defendant can deny the same.

5. In any event, issues in the suit were framed on 22.11.2011. Thereafter, the matter was listed on 04.01.2012 when both sides sought an adjournment. On 17.01.2012 the plaintiff was present along with one witness. Counsel for the defendants was not present and prayed for time and on his request, adjournment was granted. On the next date i.e. 24.01.2012 again the plaintiff was present along with her witness but the defendant no.1(petitioner herein) filed an application for adjournment on the ground that he had filed an appeal before the District Judge and prayed for some time to produce the stay order. Again a date was granted. On the next date i.e. 17.02.2012 no stay order was produced. Thereafter, on 01.03.2012 again the plaintiff was present with her witness but the defendants' side requested for an adjournment.

6. On the next date i.e. 09.03.2012 the plaintiff was present with two witnesses. The counsel for defendant no.1 submitted a petition that he would not cross-examine the plaintiff's witnesses as he had not gone through the case record and was not ready for the same. This application was contested by the other side. When the case was called both the counsel of the defendants were not present in Court. Instead their advocate-clerk appeared and filed

a petition that both the engaged counsel had fallen ill and had gone to their residence.

7. This sort of conduct is totally unacceptable. The counsel cannot take the Court for a ride. This was the fourth date on which witnesses were present. On earlier three dates the counsel had been accommodated and adjournment granted. On the fourth date the counsel first filed an application stating that he was not ready with the case but when this adjournment was not granted the counsel still went away, showed total disrespect to the Court and did not even care to appear when the case was called for. The evidence was rightly recorded by the learned trial Court on the said date. Thereafter, the application under Order VIII was filed and I am of the view that this application was rightly dismissed in view of the facts stated above.

8. As far as the other application for production of record is concerned, in the petition filed before this Court the petitioner has raised the following plea :

“4) That the Petitioner expressly stated in his Written Statement that they the plaintiff and the Respondent got the suit land from their father on the strength of the Registered “Will” which was executed by their father in their favour. But the sale Deed of the Respondent no.1 confirms that the Vendor (Respondent) of the suit land sold the same to the vendee the Respondent no.1 which he had purchased from his father. The Respondent no.1 did not produce Purchase Deed of the Respondent (Vendor) before the Court to prove her said claim.

5) *That the Respondent no.1 is the full blood sister of the Petitioner and the Respondent. Their father did not give her any property for her behavior and conduct. He was fully dissatisfied with her behavior and conduct. His other brothers and sisters also disliked her for her character and behavior. All the brothers and sisters did not keep any contact with her.*

6) *That according to the terms and conditions the Respondent, if he liked to dispose of his share, he had to propose first to the Petitioner. If he liked to dispose of his share, he had to propose first to the Petitioner. If he fails to purchase it, then and then only he has/had the right to sell it to other. He(Respondent) had a family dispute and he used to torture on his wife. She filed a maintenance Petition before the Court under section 125 Cr.P.C and the Court awarded maintenance allowance in her favour. The Respondent no.1 took the said advantage and according to her advice the Respondent had transferred his share over the suit properties in her favour to deprive the legitimate claim of the Wife Respondent."*

Now a new case is set up that the proforma defendant(Prabir Debnath) should have first offered the land for sell to the petitioner-defendant.

9. This case is not set up in the trial Court. I fail to understand how the production of the 'will' has any relevance with the matter in dispute. The points now raised are totally different from the points raised before the trial Court. Therefore, I find no merit in the petition which is, accordingly, dismissed with costs assessed at Rs.5,000/-. Exemplary costs have been imposed because of the fact that the defendant has totally misstated the facts. In case costs are not paid by the petitioner-defendant the trial Court shall

strike out the defence of the petitioner-defendant and proceed with the case in accordance with law.

10. The parties who are present in Court are directed to appear before the trial Court on **5th May, 2015** and the trial Court shall ensure that the suit is disposed of as early as possible and in any event not later than 30th October, 2015.

Send down the LCRs forthwith.

CHIEF JUSTICE

Sukhendu