

THE HIGH COURT OF TRIPURA AGARTALA

RSA NO.61 OF 2011

1. Sri Tushar Kanti Debkanungo,
S/o. Late Kritesh Ranjan DebKanungo.

2. Sri Tarun Kumar Debkanungo,
S/o. Late Kritesh Ranjan Debkanungo.

3. Smt. Tandra Debkanungo (Roy),
D/o Late Kritesh Ranjan Debkanungo,
W/o. Shri Ratan Roy.

(all are residents of Thana Road, Dharmanagar Town,
PO & PS Dharmanagar, District North Tripura).

... **Appellants**

- Vs -

1. Sri Kanchan Debkanungo,
S/o. Late Kailash Ranjan Debkanungo.

2(i). Smt. Sudha Rani Deb Choudhury,
W/O. Late Biraja Mohan Deb Choudhury,
C/O. Sri. Debashish Deb Choudhury,
Fair Price Shop, Gosala Bazar,
P.O & P.S.- Malingaon, Gauhati, Pin-781011.

2(ii)(a). Sri. Nilanjan Deb,
S/O. Late. Nirode Krishna Deb,
P.O Box 114553
EPH site, Voltas Ltd.
Abu Dhabi, United Arab Emirates.

2.(ii)(b). Smt. Anjana Deb,
D/O Lt. Nirode Krishna Deb,
W/O Sri Kalyan Debate,
C/O Deepti Kunj,
Ambedkar Nagar,
Near Kulwanti Hospital,
P.O- Kakadeo, Uttarpradesh,
Pin-208 025.

2(ii)(c). Sri Gautam Deb,
S/O Lt. Nirode Krishna Deb,
R/O Thana Road Bazar,
P.S. Dharmanagar,
P.O. Dharmanagar, North Tripura,
Pin-799250.

2(iii). Smt. Anjana Baidya,
W/O. Sri Goura Baidya,

Fatik Roy Bazar, Fatik Roy,
PO & PS-Kumarghat, Unokoti District,
Pin-799264.

2(iv). Smt. Shila Purkayasta,
W/O. Sri Ajoy Purkayasta,
Premtala, PO & PS: Kadamtala,
North Tripura, Pin-799261.

2(v). Smt. Sukla Deb,
W/O. Sri Sankar Deb,
Mayachari, Manik Bhandhar,
PO- Manik Bhandhar, PS Kamalpur,
Dhalai, Pin-799287.

2(vi). Smt. Shikta Dhar,
W/O. Sri Babul Dhar,
C/O. Sri Babla Paul(Flat Owner),
Near Central School, T.V.Center,
PO & PS- Silchar, Cachar, Assam,
Pin-788001.

2(vii). Smt. Shilpi Das,
W/O. Sri Shymal Das,
Chandkhira Bazar, Chandkhira,
District-Karimganj-Assam,
Pin-788710.

.....Respondents

3. Sri Tapan Debkanungo,
S/O. Late Kritesh Ranjan Debkanungo,
R/O. Thana Road, Dharmanagar Town,
PO & PS- Dharmanagar, District North Tripura.
Pin. 799250.

...Pro Forma Respondents

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

For the appellants : Ms. P. Dhar, Advocate.

For the respondent : Mr. A. K. Bhowmik, Sr. Adv.
Ms. A. Banik, Adv.

Date of hearing & delivery
of Judgment & order : **08.12.2015.**

Whether Fit for Reporting : **NO.**

JUDGMENT & ORDER (ORAL)

This second appeal has been admitted for hearing on the following substantial questions of law:-

“1. Whether the findings of both the courts below regarding the oral arrangement are perverse or not?

2. Whether both the courts below had not taken into consideration the Gift Deed in deciding the lis?”

2. Heard learned counsel, Ms. P. Dhar for the appellants and learned Sr. counsel, Mr. A. K. Bhowmik for the respondents.

3. The appellants, as plaintiffs (hereinafter mentioned as plaintiffs) instituted Title Suit No. 10 of 2008 in the court of Civil Judge, Senior Division, Dharmanagar, North Tripura against defendant-respondent No.1, Kanchan Debkanungo and defendant-respondent No.2, Smt Sandhya Rani Debkanungo, since deceased, the predecessor of the substituted respondents and pro-respondent No.3 (hereinafter mentioned as defendants) seeking rectification of deeds as mentioned in the second schedule of the plaint and also prayed for decree of declaration of right, title and interest and recovery of possession of property mentioned in the fourth schedule of the plaint.

4. It is *inter alia* contended by the plaintiffs that they are the legal heirs of Late Kritesh Ranjan Debkanungo and the defendant No. 1 is their uncle, i.e. the step brother of Kritesh Ranjan Debkanungo. Defendant No. 2, Smt Sandhya Rani Debkanungo is the step mother of Late Kritesh Ranjan Debkanungo. Pro-respondent No. 3, Tapan Debkanungo is also the son of Late Kritesh Ranjan Debkanungo.

5. They all used to reside in a joint mess in a common house. The suit property described in the schedule of the plaint, according to the plaintiffs, was purchased by Late Kritesh Ranjan Debkanungo from his own income. By a purchase deed dated 19.02.1958 (Exhibit-1) the said Kritesh Ranjan Debkanungo purchased three kani, one ganda and one kara of land in the name of defendant No.2, Smt. Sandhya Rani Debkanungo.

6. It is the case of the plaintiffs that there was an oral family arrangement between Kritesh Ranjan Debkanungo and defendant Nos. 1 and 2 and according to such oral arrangement Kritesh Ranjan Debkanungo, the predecessor of the plaintiffs as well as the defendants were in possession of particular part of the suit property and their respective possession was reflected in Khatian No.4125(Exhibit-3) and Khatian No.1398(Exhibit-4) of Mouja Dharmanagar.

7. Pursuant to such oral arrangement the defendant No.2 Smt. Sandhya Rani Debkanungo executed a registered gift deed on 07.06.2006(Exhibit-2) in favour of the plaintiffs and pro-defendant No.3 and on 22.03.2006 Smt. Sandhya Rani Debkanungo executed another gift deed in favour of defendant No.1, Kanchan Debkanungo (Exhibit-13).

8. It is alleged by the plaintiffs that the property which was owned and possessed by Kritesh Ranjan Debkanungo the predecessor of the plaintiffs and defendant No.3 was not properly reflected in the gift deed dated 07.06.2006 with fraudulent intention and, therefore, the plaintiffs approached defendant No.2 to execute the rectification deed, but the defendant No.2 refused to execute

any such deed and hence they have filed the suit seeking rectification of the deed executed by defendant No.2 and further for declaration of right, title, interest and recovery of possession, etc.

9. Defendant Nos.1 and 2 contested the suit by filing written statement denying the contention of the plaintiffs that the suit land was purchased by Kritesh Ranjan Debkanungo and further contended that defendant No.2 was the owner of the suit land and she executed the gift deed consciously, according to her own volition which has been duly accepted by the donees i.e. the plaintiffs and defendant Nos.1 and 3 and there was nothing wrong in the gift deed.

10. The trial court considering the pleadings of the parties framed six issues, namely:-

“i). Whether the suit is maintainable.

ii). Whether the plaintiffs have cause of action to sue the defendants.

iii). Whether the gift deeds bearing registration no.1-1529 dated 07/06/06 and no.1-719 dated 22/03/06 are fraught with fraudulent mistakes and liable to rectification therefor.

iv). Whether the plaintiffs and pro-forma defendant no.3 are entitled to declaration of their right title and interest over the suit land of the 4th schedule of the plaint and recovery of possession thereof evicting defendant no.1 therefrom.

v). Whether the plaintiffs are entitled to the decree as prayed for.

vi). Whether the parties are entitled to any other relief/relieves.”

11. In course of trial the plaintiff Nos. 1 and 2 examined themselves as PWs 1 and 2 and also examined three more witnesses, namely, Tarun Kanti Debkanungo, Sudhangushu Bikash

Dutta, and Bina Das. Plaintiffs also proved the following documents in support of their case:-

“Exhibit-1 registered sale deed no.916 dated 19/02/1958.

Exhibit-2 registered gift deed no.1-1529 dated 07/06/2006.

Exhibit-3 khatian no.4125 of Dharmanagar town mouja.

Exhibit-4 khatian no.1398 of Dharmanagar mouja.

Exhibit-5 khatian no.2095 of Dharmanagar town mouja.

Exhibit-6 registered deed no.1588 dated 13.03.1958.

Exhibit-7 registered deed no.2955 dated 01/06/1951.

Exhibit-8 deed no.3078 dated 06/06/1951.

Exhibit-9 registered deed no.45 dated 13/03/1958.

Exhibit-10 registered deed no.1-3598 dated 01/05/1956.

Exhibit-11 map of Dharmanagar no.19 sheet no.5(part).

Exhibit-12 work order dated 26/06/1969 issued by the minor irrigation division Agartala to Kritesh Ranjan Debkanungo.

Exhibit-13 gift deed no.1-719 dated 22/03/2006.”

12. Defendant Nos. 1 and 2 examined themselves as DWs 1 and 3 and also examined another witness namely, DW2 Ramendra Kumar Bhattacharji, but did not exhibit any document. They have however, relied on Exhibit. 1, 2, and Exhibit 13 proved by the plaintiffs. The trial court decided all the issues against the plaintiffs and accordingly dismissed the suit.

13. Aggrieved, the plaintiffs preferred Title Appeal No. 09 of 2010 in the court of Additional District Judge, Dharmanagar and the

learned Additional District Judge by the impugned judgment dated 03.06.2011 dismissed the appeal and hence this second appeal.

14. Burden lies on the plaintiffs to prove that there was an oral family settlement between the predecessor of the plaintiffs and defendants Nos. 1 and 2. There are neither pleadings nor evidence as to when and in what manner the oral family arrangement was made in respect of the suit property.

15. Learned counsel, Ms. Dhar has argued that Khatian No.4152 (Exhibit-3) and Khatian No.1398 (Exhibit-4) reflect the particular possession of Kritesh Ranjan Debkanungo (predecessor of the plaintiffs and pro-defendant No.3), Kanchan Debkanungo i.e. the defendant No.2, which means according to the oral family arrangement the possession was separated. On going through the said two Khatians, I find that both the Khatians were prepared in the name of defendant No.2 Smt. Sandhya Rani Debkanungo and Kritesh Ranjan Debkanungo and Kanchan Debkanungo were shown as permissive possessors as against particular plot of land. There is nothing to infer that khatian was created pursuant to any oral family partition. The title was with Sandhya Rani Debkanungo. She might have allowed the predecessor of the plaintiffs and defendant No. 1 to possess any particular plot of land but that does not mean it was pursuant to any family arrangement.

16. It is an admitted position that defendant No.2 executed a gift deed on 22.03.2006 (Exhibit-13) and thereby donated a part of her land with building to defendant No.2 Kanchan Debkanungo. Similarly by Exhibit-2, i.e. gift deed dated 07.06.2006 Smt. Sandhya Rani Debkanungo donated a particular plot of land with building to

the plaintiffs and pro-defendant No.3 who are the legal heirs of Kritesh Ranjan Debkanungo. There is no recital in the deeds that there was a family arrangement and pursuant to such family arrangement those deeds were executed. There is nothing to draw any inference that any fraud was exercised or there was mutual mistake of the parties while executing the gift deeds by defendant No.2.

17. The defendant No.2 has appeared in the witness box as DW3 and she categorically stated that she executed the gift deeds voluntarily without any influence from any corner and the gifts were accepted by the donee, i.e. the plaintiffs, defendant No.1 and pro-defendant No.3.

18. The trial court as well as the appellate court arrived at a consistent finding that the plaintiffs have failed to prove exercise of fraud or mutual mistake by the parties to the gift deed. The gift deeds were executed by Smt. Sandhya Rani Debkanungo in favour of her son and grand children and they have accepted the gift deeds without any reservation and subsequently brought the suit alleging that the gift deeds were not executed in terms of the oral family arrangement. The trial court as well as the appellate court rightly arrived at a conclusion that the plaintiffs failed to prove that there was any oral family arrangement and that the gift deed, i.e. Exhibit-2 was not executed in terms of the family arrangement.

19. The trial court and the appellate court duly considered the pleadings in respect of oral arrangement as contended by the plaintiffs and also considered the gift deeds executed by defendant

No.2, Smt. Sandhya Rani Debkanungo and I find no infirmity in the findings of the trial court and the appellate court.

20. There is no reason to interfere in the concurrent finding of the courts below and, therefore, the second appeal stands dismissed. Parties to bear their own costs.

21. Send back the LC records along with the copy of this judgment.

JUDGE

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