

**HIGH COURT OF TRIPURA
AGARTALA**

R.F.A. 9 OF 2011

- 1. Shri Pulak Dutta,**
S/o Late Ranjit Kumar Dutta,
Presently residing at Town Pratapghar,
Central Road Extension,
C/o Shri Shyamal Chandra Lodh,
P.S. West Agartala,
P.O. Agartala,
District- West Tripura.
- 2. Smti Rashmi Saha (Dutta),**
W/o Shri Malay Saha,
D/o Late Ranjit Kumar Dutta of
Town Pratapghar, P.O. Agartala,
P.S. East Agartala,
District-West Tripura.

....**Plaintiff-Appellants.**

- Vrs -

- 1. Smti Bibha Dutta,**
W/o Late Ajit Kumar Dutta.
- 2. Shri Subhankar Dutta**
S/o Late Ajit Kumar Dutta,
Both are the residents of Jagatpur,
P.O. Kunjaban,
P.S. East Agartala, District- West Tripura.

.... **Defendant-respondents.**

- 3. Shri Dibankar Dutta,**
S/o Late Ajit Kumar Dutta,
Presently working in Gorkhabasti Branch of
Tripura Gramin Bank,
P.O. Kunjaban, Agartala,
West Tripura.

....**Pro-Defendant-respondent.**

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

For the appellants : Mr. D.R.Chowdhury &
Mr. D. Deb,
Advocates.

For the respondents : None.

Date of hearing : 09.04.2015

Date of delivery of judgment and order : 16.04.2015

Whether fit for reporting : Yes

JUDGMENT & ORDER

This appeal under Section 96 of the Code of Civil Procedure is directed against judgment and decree dated 15.07.2011, passed by learned Civil Judge, Sr. Division, Court No.1, Agartala, West Tripura, in Title Suit No.77 of 2007.

2. Heard learned counsel Mr. D.R.Chowdhury for the appellants. There was no representation on behalf of the respondents.

3. The appellants as plaintiffs instituted Title Suit No.77 of 2007 in the Court of Civil Judge, Sr. Division, Court No.1, Agartala, West Tripura seeking declaration of title and recovery of khas possession of the suit land described in the schedule of the plaint.

4. It is *inter alia* contended by the plaintiff-appellants (hereinafter mentioned as plaintiffs) that their father Ranjit Kumar Dutta purchased the suit land measuring about 11 gandas by three separate deeds of purchase dated 03.03.1969, 15.09.1970 and 07.09.1971, in a compact area and after purchase the said Ranjit Kumar Dutta constructed a house with semi permanent construction and was living there with other members of the family. At the relevant point of time, the said Ranjit Kumar Dutta was serving as an employee of Gauhati High Court, Agartala Bench and so he shifted to a quarters of the High Court at Ramnagar Road No.3 and was residing there till he expired on 14th July, 1986. After the death of Ranjit Kumar Dutta, his wife Smt. Gouri Majumder (Dutta) got a compassionate appointment in the High Court and she also continued to live in the quarters along with the plaintiffs till her death on 13.05.2007. The suit land was mutated in the name of Ranjit Kumar Dutta and Khatian No.1246 of mouja Agartala Sheet No.11 was prepared. In the year 1971, Ajit Kumar Dutta, the predecessor of the defendants, the elder brother of Ranjit Kumar Dutta came to India from Bangladesh and since he had no accommodation to stay at Agartala, Ranjit Kumar Dutta allowed his brother Ajit Kumar Dutta to reside in the suit land and accordingly Ajit Kumar Dutta with the present defendants started living on the suit land. After the death of mother of the plaintiffs, they

requested the defendants to vacate the suit land but the plaintiffs received no positive response from the defendants. On 20.09.2004 the plaintiffs served a legal notice through their Advocate to vacate the suit land within 15 days but the defendants did not vacate the suit land obeying the notice. Thereafter the defendants contacted with the plaintiffs and assured them that they would be vacating the suit land in the event a suitable alternative accommodation is available but ultimately they did not vacate the suit land. On 07.12.2005 the defendant No.1 refused to vacate the suit land stating that they shall not vacate the suit land and therefore the plaintiffs were left with no other alternative but to institute the suit for declaration of their title and for recovery of possession.

5. The defendants contested the suit by filing written statement *inter alia* contending that Ranjit Kumar Dutta and Ajit Kumar Dutta were full blood brothers and the suit land was purchased in the name of Ranjit Kumar Dutta with contribution of consideration money equally paid by both the brothers. The plaintiffs and their mother knew the fact but they suppressed the fact and did not disclose it in their pleadings. Both the brothers were in very good relation and had confidence of one on the other. The suit land was owned by both the brothers in equal share and the defendants proposed the plaintiffs to have a partition by meats and bounds and both the parties approached Sri Saktimoy

Chakraborty, learned Sr. Advocate for proper advise as to how the partition can be effected and following his advice, the suit land was surveyed by a private Amin and demarcation exercise was completed by posting pucca pillars which are still in existence but subsequently the plaintiffs went back to the proposal of amicable settlement and refused to sign any memorandum of partition. It is further contended by the defendants that the predecessor of the plaintiffs namely Ranjit Kr. Dutta executed a written document declaring that he and his elder brother Ajit Kumar Dutta were the owner of the suit land in equal share and that Ajit Kumar Dutta is the co-owner of the suit land. It is also contended that for settlement of the matter amicably a meeting was convened in the local club namely 'Saiba Sangha' on 11.11.2001 and it was decided to have an amicable partition but the plaintiffs were reluctant to follow the decision of the club. The defendants denied the contention of the plaintiffs that Ajit Kumar Dutta was simply allowed by his brother Ranjit Kr. Dutta to reside on the suit land without having any right, title and interest and that the defendants never sought time from the plaintiffs to vacate the suit land. The defendants, therefore, prayed for disposal of the suit.

6. Based on the pleadings of the parties, the learned trial Judge on 10.06.2011 formulated four issues for decision namely-

- (A) *Whether the suit is maintainable in its present form and nature?*
- (B) *Whether the suit property mentioned in the schedule is a joint property of Ranjit Kumar Dutta and Ajit Kumar Dutta (now deceased)?*
- (C) *Whether any application was made by the plaintiffs to local club 'Saiba Sangha' for resolving the property dispute between the parties and whether the parties are bound by the resolution taken by the club on consensus?*
- (D) *Whether the plaintiffs are entitled to any relief for suppression of the material facts?*

7. In course of trial plaintiff No.2 Smt. Rashmi Saha examined herself as P.W.1 and she proved three purchased deeds in the name of Ranjit Kumar Dutta which are marked as Exbt. 1, Exbt.2 and Exbt.3 respectively and also proved a copy of the khatian No. 1246 marked as Exbt.4 and a revenue receipt marked as Exbt.5.

8. On behalf of the defendants two witnesses were examined namely D.W.1 Sankar Debnath, the Secretary of the local club namely 'Saiba Sangha' and D.W.2, the defendant No.2 Subhankar Dutta himself and the defendants proved the registered deed of declaration marked as Exbt.A.

9. Learned trial Judge decided material Issue No. B against the plaintiffs and accordingly dismissed the suit. Hence, this appeal.

10. It is an admitted position that the suit land was purchased by means of Exbt.1, Exbt.2 and Exbt.3 in the year 1969, 1970 and 1971 respectively in the name of Ranjit Kumar Dutta, the father of the plaintiffs. It is also an admitted position that Ranjit Kumar Dutta, the father of the plaintiffs and Ajit Kumar Dutta, the husband of defendant No.1 and father of defendant Nos. 2 and 3 were full blood brothers and Ajit Kumar Dutta with his family residing in the house constructed on the suit land from the year 1971. The plaintiffs contended that the house over the suit land was constructed by Ranjit Kumar Dutta but the defendants contended that it was constructed at the costs of both the brothers. According to the plaintiffs Ajit Kumar Dutta was inducted in the suit land to reside as a permissive possessor but according to the defendants Ajit Kumar Dutta started living on the suit land in exercise of his right in equal share of the suit land.

11. It is argued by learned counsel Mr. Chowdhury that Exbt. A is a document executed on 10.01.1974 but the plaintiffs denied execution of any such document by their father Ranjit Kumar Dutta and the defendants took no step to prove that the document was executed by Ranjit Kumar Dutta and under such circumstances Exbt. A cannot prove the title of Ajit Kumar Dutta to the 50% share of the suit land. Since Exbt.A has not been proved and since it is not a document of title, the defendants cannot claim equal share to the suit land.

It is also contended by learned counsel Mr.Chowdhury that the khatian in the name of Ranjit Kumar Dutta was prepared in the year 2005 and at that time also no claim was raised by the defendants that the suit land belonged to Ranjit Kumar Dutta and Ajit Kumar Dutta equally and hence the finding of the trial Court that the plaintiffs are not entitled to get a decree as prayed for is unsustainable and therefore liable to be interfered.

Exbt. 1, Exbt.2, Exbt.3 and Exbt.4 amply proved the fact that the suit land was purchased by Ranjit Kumar Dutta and it was mutated in his name. Exbt. A is also a registered instrument executed by Ranjit Kumar Dutta wherein he has declared that the suit land was purchased jointly on payment of consideration money equally by him and his elder brother Ajit Kumar Dutta and that the suit land equally belonged to them. The plaintiffs contended that they knew nothing about the deed of declaration i.e. Exbt. A and that it was produced before the Court as a matter of surprise. The defendants contended that the plaintiffs knew the fact about the execution of the deed by their father Ranjit Kumar Dutta and that they have suppressed it in the plaint. After filing of written statement, the plaintiffs did not come up with a plea to declare that registered document as void or inoperative. Every registered instrument has a presumption of correctness unless the contrary is proved. Mere denial while

giving evidence is not enough to throw a registered instrument overboard. Ranjit Kumar Dutta, the predecessor of the plaintiffs and Ajit Kumar Dutta, the predecessor of the defendants were full blood brothers and they might have confidence of one on the other for which the purchased deeds were in the name of Ranjit Kumar Dutta. Since Ranjit Kumar Dutta himself has admitted by executing a deed of declaration that the suit land was purchased for both the brothers on payment of consideration equally, the plaintiffs who stepped to the shoes of Ranjit Kumar Dutta cannot go beyond what Ranjit Kumar Dutta had left for them. The argument of learned counsel Mr. Chowdhury that since signature of Ranjit Kumar Dutta has not been proved, Exbt.A cannot be taken into consideration is not an acceptable argument since Exbt.A is a registered instrument and the plaintiffs has not challenged Exbt.A by amending the plaint. The plaintiffs claimed their title based on the purchased deed of Ranjit Kumar Dutta and the khatian prepared in his name. The defendants claimed equal share to the suit land based on Exbt.A executed by said Ranjit Kumar Dutta. It is evident that there was cordial relation between the brothers and Ajit Kumar Dutta with his family i.e. the defendants had been living in the suit land from 1971 which clearly proves that Ajit Kumar Dutta had certain interest in the suit land for which he continued to possess the suit land uninterruptedly. Exbt.A since a registered instrument cannot

be thrown away on the ground that it does not confer transfer of title but it may well be accepted as a document of family arrangement for partition of a joint property which might be purchased in the name of one of the members of the family. There is no evidence that the relation between the two brothers were bad and that there was no such situation of purchasing the land in the name of one of the brothers based on the contribution of both the brothers. Therefore, I find nothing to interfere in the decision of the trial Court in respect of issue No.B.

12. Issue Nos. C & D, as it appears, were framed based on the allegation made in the written statement. There cannot be an issue framed on the basis of the allegation made in the written statement. Issues must be framed on the basis of the allegation made by the plaintiffs in their pleadings which is denied by the defendants in their pleadings. Issues are the conflict of the pleadings of the plaintiffs and the defendants. If the defendants make some allegations in the written statement that itself cannot formulate a conflict with the plaint to frame an issue. There is a wrong notion of the trial Judges and often it is found that issues are framed based on some pleadings of the defendants which is not at all called for. Issues must be framed on the basis of the allegation made by the plaintiff in the pleadings which is denied by the defendants

in their pleadings. No decision, therefore, is called for on Issue Nos. C & D.

13. In view of the discussions made above, I am of considered opinion that the appeal has no merit and it stands dismissed.

14. Costs of the appeal should be borne by both side equally.

15. Send back the L.C. records along with a copy of this judgment.

JUDGE