

**THE HIGH COURT OF TRIPURA
AGARTALA**

RFA NO. 13 OF 2011

DEFENDANT-APPELLANTS :

1. Smt. Prabhati Basak,
M/O. Lt. Ramesh Ch. Basak,

2. Sri Sachinandan Basak,
S/O. Lt. Ramesh Ch. Basak,

3. Sri Rajib Basak,
S/O. Lt. Ramesh Ch. Basak,

4. Smt. Urmila Sarkar(Basak),
W/O. Sri Amar Sarkar,
D/O. Lt. Ramesh Ch. Basak,

-all residents of 52/D, Jodhpur
Garden, P.S.-Lake Thana,
Kolkata-200045, West Bengal,

5. Smt. Sarmistha Basak,
D/O. Lt. Ramesh Ch Basak,

6. Smt. Sarmila Basak,
D/O. Lt. Ramesh Ch Basak,

-both residents of Ujan Abhoynagar,
P.O- Abhoynagar, P.S.- East Agartala,
District-West Tripura, Pin-799005.

BY ADVOCATES :

Mr.D.R. Choudhury,
Mr.D. Deb,
Mr.R. Bhowmik,

- Versus -

PLAINTIFF-RESPONDENTS :

1. Sri Nandalal Basak
S/O. Lt. Gopal Ch. Basak.

2. Sri Binoy Kr. Basak
S/O. Lt. Gopal Ch. Basak,

- both residents of 504, Lake Gardens,
Kolkata – 45, West Bengal.

3. Smt. Ujjala Basak
W/O. Goutam Kr. Basak
Resident of C/521, Lake
Gardens, Kolkata – 45, West Bengal.

4. Smt. Nirjala Basak,
D/O. Lt. Haridas Basak.
Resident of 504, Lake Gardens,
Kolkata – 45, West Bengal.

DEFENDANT-RESPONDENTS :

5. Smt. Kamala Debbarma,
(Deleted vide order dated 14-09-2007)
W/O. Lt. Padma Mohan Debbarma,

6. Sri Paresh Chandra Debbarma,
S/O. Sri Rabindra Ch. Debbarma,

7. Smt. Jamuna Debbarma,
W/O. Sri Dilip Debbarma,

8. Smt. Bishnumala Debbarma,
W/O. Sri Mrinal Kanti Debbarma.

9. Smt. Sumitra Debbarma,
W/O. Sri Kartik Debbarma,

10. Smt. Dipika Debbarma,
W/O. Sri Biswajit Debbarma,

11. Smt. Kamala Debbarma,
W/O. Sri Padma Mohan Debbarma,

12. Sri Mangal Debbarma,
S/O. Lt. Mahendra Debbarma,

- ALL are residents of Abhoynagar
(Model village), PS-East Agartala,
District Tripura West.

PROFORMA-RESPONDENT :

13. Smt. Anita Bhowmik,
W/O. Lt. Debendra Kumar Bhowmik,
Indralok Housing Estate, B-9/5
Kolkata – 2.

BY ADVOCATES :

Mr.D.K. Biswas,
Mr.P.K.Dhar,
Mr.R.G.Chakraborty,
Mr.P.S.Deb,

RFA No. 06 of 2012

DEFENDANT-APPELLANTS :

1.Sri Paresh Debbarma,
S/O. Sri Rabindra Chandra Debbarma.

2. Smt. Jamuna Debbarma,
W/O. Sri Dilip Debbarma,

3. Smti. Bishnumala Debbarma,
W/O. Sri Mrinal Kanti Debbarma.

4. Smti. Sumitra Debbarma,
W/O. Late Kartik Debbarma.

5. Smti. Dipika Debbarma,
W/O. Sri Biswajit Debbarma.

6. Smt. Kamala Debbarma,
W/O. Late Padma Mohan Debbarma.

7. Sri Mangal Debbarma,
S/O. Late Mahendra Debbarma.

-All residents of Ujan Abhoynagar
(Model Village), P.O. Abhoynagar,
P.S. East Agartala,
District West Tripura.

BY ADVOCATES :

Mr.P.K. Dhar,
Mr.P. Deb,
Mr.R.G. Chakraborty,

- Versus -

PLAINTIFF-RESPONDENTS :

1. Sri Nandalal Basak,

2. Sri Binoy Kumar Basak,

-Both sons of Late Gopal Chandra Basak,
Residents of 504, Lake Gardens,
Kolkata – 45, West Bengal.

3. Smti. Ujjala Basak,
W/O. Goutam Kumar Basak,
Resident of C/501, Lake Gardens,
Kolkata – 45, West Bengal.

4. Smt. Nirjala Basak,
D/O. Lt. Haridas Basak,
Resident of 504, Lake Gardens,
Kolkata – 45, West Bengal.

DEFENDANT-RESPONDENTS :

5. Sri Ramesh Chandra Basak,
S/O. Late Gopal Chandra Basak,
Resident of Ujan Abhoynagar,
(Model Village), P.O. Abhoynagar,
P.S. East Agartala,
District West Tripura.

6. Smti. Anita Bhowmik,
W/O. Late Debendra Kumar Bhowmik,
Resident of Indralok Housing Estate,
B-9/5, Kolkata – 2, West Bengal.

BY ADVOCATES :

Mr.D.R. Choudhury,
Mr.D.K. Biswas,
Mr.S.Chakraborty,
Mr.D. Deb,
Mr.S. Sarkar,

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

Date of hearing : **29.05.2015.**

Date of delivery of
Judgment and Order : **04.06.2015.**

Whether fit for reporting : **No.**

JUDGEMENT AND ORDER

Both the appeals were heard together since in both the appeals a single Judgment and decree dated 15.09.2011 passed by learned Civil Judge, Senior Division, Court No.1, West Tripura, Agartala in Title Suit No.41 of 2004 has been challenged by different set of the defendant-appellants against the same set of plaintiff-respondents. Hence, this common judgment is passed which shall govern both the appeals.

2. In RFA No.13 of 2011, heard learned counsel, Mr. D. R. Choudhury for the appellants and learned counsel, Mr. P. K. Dhar for the respondent Nos.6 to 12. There was no representation on behalf of the respondent Nos.1 to 4 as well as proforma respondent No.13.

3. In RFA No.06 of 2012, heard learned counsel, Mr. P. K. Dhar for the appellants and learned counsel, Mr. D. R. Choudhury for the respondent No.5. There was no representation on behalf of the respondent Nos.1 to 4 as well as proforma respondent No.6. The case against respondent No.5 was abated since after his death he was not substituted.

4. Respondent Nos.1 to 4, namely, Nandalal Basak, Binoy Kumar Basak, Ujjala Basak and Nirjala Basak of both the appeals, as plaintiffs, (hereinafter mentioned as 'plaintiffs') instituted Title Suit No.41 of 2004 seeking declaration that the property mentioned in the schedule of the plaint, left behind by Late Gopal

Chandra Basak is an un-partitioned joint property of the plaintiffs and defendant Nos.1 and 10 and also prayed for cancellation of eight numbers of sale deeds mentioned in schedule-A of the plaint, which were executed by defendant No.1 in favour of defendant Nos.3 to 9 in respect of the land mentioned in the schedule of the plaint and also prayed for recovery of possession of the suit land from defendant Nos.3 to 9. The appellants of both the appeals and the proforma respondent, Smt. Anita Bhowmik were arrayed as defendants (hereinafter mentioned as 'defendants') in the suit.

5. It is undisputed rather admitted fact that the suit land measuring 0.313 acres described in the schedule of the plaint originally belonged to Gopal Chandra Basak. The said Gopal Chandra Basak died in the year 1975 leaving behind three sons, i.e., plaintiff Nos.1 and 2 and defendant No.1 and two daughters, namely, Amita Basak, mother of plaintiff Nos.3 and 4 and Smt. Anita Bhowmik, the proforma defendant No.10. It is also an undisputed rather an admitted position that after the death of Gopal Chandra Basak, the plaintiffs, defendant No.1 and proforma defendant No.10 became owner of the suit land.

6. Plaintiffs, *inter alia*, contended that they and defendant No.10 used to reside at Kolkata and time to time used to visit the suit land at Agartala and stayed there with defendant No.1. It is also the case of the plaintiffs that defendant No.1, Ramesh Chandra Basak, used to reside at Agartala all along with Gopal

Chandra Basak and after the death of Gopal Chandra Basak defendant No.1 continued to live in the suit land and was possessing the same on behalf of all the co-sharers. The plaintiffs contended that in the year 1998 defendant No.1 requested the plaintiffs to execute a power of attorney in his favour to deal with the suit land, but the plaintiffs proposed for amicable partition. Defendant No.1 on such proposal of amicable partition did not do so rather most wrongly and illegally sold out the suit land to defendant Nos.3 to 9 by executing the sale deeds mentioned in schedule A of the plaint. Defendant No.1, it is contended by the plaintiffs, had no absolute right, title and interest to transfer the suit land to defendant Nos.3 to 9 and, therefore, brought the suit and prayed for the decree of the suit.

7. Defendant No.1 contested the suit by filing written statement, *inter alia*, contending that plaintiff Nos.1 and 2 had been residing at Kolkata and in course of their studies as well as thereafter in course of their service and settlement at Kolkata, defendant No.1 and their father, Late Gopal Chandra Basak, helped them providing funds. The mother of defendant Nos.3 and 4, namely, Amita Basak, was given in marriage in the year 1948 and Late Gopal Chandra Basak helped husband of Amita Basak also for business spending huge amount. Late Gopal Chandra Basak also purchased land for the house of plaintiff Nos.1 and 2 at Kolkata and they constructed house at Kolkata accordingly on the land purchased by Late Gopal Chandra Basak. It is also contended by

defendant No.1 that Late Gopal Chandra Basak during his life time had expressed his desire that the suit land at Agartala should be in the ownership and possession of defendant No.1 and the plaintiffs should not disturb or claim right therein. After the death of Gopal Chandra Basak, all the plaintiffs and defendant No.10 came to the house of defendant No.1 at Agartala and a meeting was held on 13th and 14th April, 1975 and in that meeting the plaintiff and defendant No.10 relinquished their rights in the suit land in respect of their shares in favour of the defendant No.1 and accordingly, defendant No.1 became absolute owner and possessor of the suit land. The suit land was a marshy land and he developed the suit land and thereafter sold it to defendant Nos.3 to 9 by executing sale deeds *bona fide* and they are in possession of the suit land. The Defendant No.1 also contended that after the plaintiffs and defendant No.10 relinquished their rights, defendant No.1 had been possessing the suit land in hostile assertion of his right, title, interest and possession and thereby acquired title by adverse possession. The plaintiffs and defendant No.10 has no right, title and interest in the suit land and the suit, therefore, should be dismissed.

8. Defendant Nos. 3 to 9 also contested the suit by filing written statement, *inter alia*, contending that the assertions made by the plaintiffs in the plaint were not wholly correct and that defendant No.1 was found in the ownership and possession of the

suit land and they *bona fide* purchased the suit land and possessing the same, and, therefore, the suit should be dismissed.

9. The learned trial Judge considering the pleadings of the parties formulated seven issues, namely, :-

"1. Whether the suit is maintainable in its present form and nature.

2. Whether the claim of the plaintiff is barred by limitation.

3. Whether the plaintiffs has any right title, interest over the suit land.

4. Whether the defendant No.1 has acquired any title over the suit land by adverse possession.

5. Whether the sale deeds mentioned in schedule A are liable to be cancelled.

6. Whether the plaintiffs are entitled to the decree as prayed for.

7. To what other relief parties are entitled."

10. In course of trial, plaintiff Nos.1 and 4, Sri Binoy Kumar Basak and Smt. Nirjala Basak respectively examined themselves as PW1 and PW2 and also examined two more witnesses, namely, PW3, Somesh Debbarma and PW4, Sri Kirit Mohan Sarkar. In support of their case the plaintiffs proved 14 item of documents, which are marked as Exhibits as follows :-

"1. Ext.-1 - Declaration dated 21.6.2009.

2. Ext.-2 - One receipt issued by Urban Cooperative Credit Society Ltd. dated 12.12.1997.

3. Ext.-3(series) – Six Nos. of Insurance settlement claim dated 25.5.1973, 16.7.1994, 30.4.1973, 27.6.1975 and 18.8.1984.

4. Ext.-4 – The letter addressed to Nandalal Basak from CESC Ltd. dated 01.1.1977.

5. Ext.-5 – Letter dated 07.3.1977 addressed to Nandalal by the CESC limited.

6. Ext.-6 – Certified copy of Sale deed No.1-2891.

7. Ext.-7 – Certified copy of Sale deed No.1-2892.

8. Ext.-8 – Certified copy of Sale deed No.1-2890.

9. Ext.-9 – Certified copy of Sale deed No.1-8959.

10. Ext.-10 – Certified copy of Sale deed No.1-9214.

11. Ext.-11 – Certified copy of Sale deed No.1-9214.

12. Ext.-12 – Certified copy of Sale deed No.1-8962.

13. Ext.-13 – Certified copy of Sale deed No.1-9210.

14. Ext.-14 – Khatian No.3797.”

11. Defendant No.1 examined himself as DW1 and also examined another witness, namely, Sri Anirudhya Debbarma as DW2. Defendants proved one document, namely, Exbt.-A, Khatian No.3797 of Mouja-Agartala, Sheet No.12.

12. Learned Civil Judge, Senior Division decided the materials issues in favour of the plaintiffs and decreed the suit in the following terms :-

"O R D E R

A. The plaintiffs are entitled to a decree that the properties mentioned in schedule A of the plaint are the un-partitioned joint property of the plaintiffs, defendant No.1 and proforma defendant No.10.

B. The plaintiffs are also entitled to get a decree that the sale deeds mentioned in schedule A of the plaint being illegal and as such void. The District Sub-Registry, Agartala, West Tripura is hereby directed to cancel those disputed deeds from the volume book.

C. The plaintiffs are entitled to get a decree for recovery of possession of the lands in possession of Defendants No.3 to 9 which the said defendants are possessing after their illegal purchases by virtue of disputed deeds as mentioned in schedule A of the plaint.

D. Cost of the suit are to be borne by the parties of their own."

13. No argument has been advanced by learned counsel for the appellants in respect of the maintainability of the suit. Though learned counsel for the appellant submitted that the suit is barred by limitation, but ultimately failed to convince the Court as to why the suit should be held as barred by limitation. The trial Court decided Issue No.2 assigning reason and I find nothing to disagree with the finding of the trial Court in respect of Issue No.2. The trial Court has decided Issue Nos.3 and 4 together and arrived at a finding that the plaintiffs, defendant No.1 and proforma defendant No.10 have equal share in the suit land (plaintiff Nos.3 and 4 one share) and also held that defendant No.1 has acquired no title by adverse possession.

14. Learned counsel, Mr. Choudhury and Mr. Dhar appearing for the appellants submitted that while the trial Court has arrived at a definite finding that the defendant No.1 has one share in the suit land, the Court should not have decided Issue No.5 in favour of the plaintiffs directing cancellation of all the sale deeds. At least defendant No.1 had salable interest in respect of his share in the suit land and, therefore, the sale deeds executed

by defendant No.1 were valid sale deeds and should not have been cancelled as a whole.

15. It is an admitted position that Late Gopal Chandra Basak was the owner of the suit land described in the schedule of the plaint measuring 0.313 acres. He died intestate leaving behind two daughters, three sons and defendant No.1 is one of the son. So, the suit land belonged to the three sons and two daughters in equal share and defendant No.1 was entitled to $\frac{1}{5}^{\text{th}}$ share and, therefore, he had a right to dispose $\frac{1}{5}^{\text{th}}$ share of the suit land to which he belonged.

16. Defendant No.1 set up a story that the plaintiffs and proforma defendant No.10 relinquished their rights in his favour, but there is no document in respect of such relinquishment and the trial Court rightly decided that the plaintiffs and defendant Nos.1 and 10 were equally entitled to the suit land. While defendant No.1 was entitled to $\frac{1}{5}^{\text{th}}$ share of the suit land, defendant Nos.3 to 9, who purchased the suit land from defendant No.1 would be entitled to that extent of the share of defendant No.1 and so, the decree directing cancellation of all the sale deeds mentioned in schedule-A of the plaint was altogether not permissible in law.

17. The plaintiffs instituted the suit only seeking declaration, cancellation of deeds and recovery of possession. The trial Court rightly declared that the suit land is un-partitioned property of the plaintiffs and the defendant Nos.1 and 10. The rest

of the reliefs granted by the trial Court directing cancellation of the sale deeds and recovery of possession are not sustainable since the plaintiffs did not come up with a suit for partition by metes and bound according to the entitlement of the plaintiffs and all the defendants. In the absence of partition of the suit land by metes and bound, the plaintiffs cannot get the decree of cancellation of the sale deeds as well as recovery of possession from the defendants.

18. The appeals, therefore, are partly allowed. The decree passed by the Trial Court that the plaintiffs and the defendant Nos.1 and 10 are the joint owner of the suit land is upheld. The rest of the decree declaring the sale deeds mentioned in the schedule A of the plaint as cancelled and decree of recovery of possession are set aside.

19. Parties to bear their own costs.

20. Send back the lower court records along with a copy of this judgment.

JUDGE