

**THE HIGH COURT OF TRIPURA
A G A R T A L A**

RFA NO. 05 OF 2008

Dr. Rakhal Chandra Majumder,
Son of Late Akhil Chandra Majumder,
Resident of Kailashahar Town,
Near Nagar Panchayat Office,
P.S.: Kailashahar, Distt.:North Tripura.

..... **Defendant-Appellant.**

- V e r s u s -

1. Shri Beni Benod Majumder,
Son of Late Akhil Chandra Majumder,
SE 142 Sectr-III, Salt Lake City,
Calcutta-700106.
2. Shri Bhanu Ranjan Majumder,
Son of Late Akhil Chandra Majumder,
11/7 Bijoynagar, (First Floor),
Kolkata-32.

..... **Plaintiff-Respondents.**

3. Shri Kanailal Majumder,
Son of Late Akhil Chandra Majumder,
Netaji Subhas Road, Shibnagar(West),
P.O.: Agartala College,
P.S.: East Agartala.

..... **Proforma-Defendant-Respondent.**

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

For the appellant : Mr. D.K. Biswas, Advocate.

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

Date of hearing and : 30.06.2014.
delivery of judgment
and order.

Whether fit for reporting : **NO.**

JUDGMENT & ORDER (ORAL)

(Deepak Gupta, C.J.)

By means of this appeal, the appellant who was defendant No.1 before the trial Court has challenged the preliminary decree passed by the learned Civil Judge (Senior Division), Kailashahar, North Tripura whereby the learned Civil Judge has held that the plaintiffs and defendants and their deceased brother Chinmoy Majumder would get 1/5th share in the suit property and has further directed that the share of Chinmoy Majumder would be disposed of in accordance with the Probate case arising out of the Will allegedly executed by Chinmoy Majumder regarding which Probate proceedings are pending in the Courts at Kolkata.

2. It is not disputed that the property about which the dispute arises belonged to the mother of the parties Smt. Surabala Majumder, wife of Late Akhil Chandra Majumder who left behind five sons namely Sri Benu Binode Majumder, Sri Bhanu Ranjan Majumder (plaintiffs), Dr. Rakhal Chandra Majumder, Sri Kanailal Majumder (defendants) and Chinmoy Majumder (since deceased). The parties are, therefore, brothers. Smt. Surabala Majumder had died after her husband Late Sri Akhil Chandra Majumder on 25-06-1985. The son Chinmoy Majumder died on 20-09-2006. The father had died much earlier in the year 1952. At the time of her death Surabala Majumder had five children who were entitled to inherit

the property in equal shares and, therefore, each of the children would get 1/5th share. As far as the share of Sri Chinmoy Majumder is concerned, that is disputed. With regard to the alleged Will of Sri Chinmoy Majumder, proceedings are pending before the Courts at Kolkata. The relationship between the parties is not denied and if this relationship is accepted to be correct, then each of the brothers would be entitled to 1/5th share. As such, the finding of the learned trial Court that each of the brothers is entitled to 1/5th share cannot be faulted. However, certain clarifications are required. It is clarified that the property can be divided into five shares out of which four shares will be partitioned and the fifth share of Sri Chinmoy Majumder shall be kept intact as it is till the Probate proceedings are decided and the share of Chinmoy Majumder will abide by the decision delivered in the Probate proceedings at Kolkata.

3. The second clarification which is required is that this partition will not affect the legal proceedings and the decree between the very same parties relating to the property of their father Late Sri Akhil Chandra Majumder. That decree is not the subject matter of dispute and the disposition of that property will be governed by the decree passed in the earlier suit.

4. The appeal is allowed to the limited extent that the share of Chinmoy Majumder shall not be divided at this stage but will abide by the decision of the Probate case.

5. With this modification, the appeal is disposed of.
6. Send down the lower court records forthwith.

JUDGE

CHIEF JUSTICE