

**HIGH COURT OF TRIPURA
AGARTALA**

R.F.A. 8 OF 2006

Sri Kali Kinkar Chakraborty,
S/o Lt. Janendra Chandra Chakraborty of
Abhoynagar, P.S.- East Agartala,
Tripura West.

Represented by

Sri Pradip Kumar Saha (Attorney),
S/o Lt. Ananda Mohan Saha of
Jagaharimura,
P.S. East Agartala,
District- Tripura West,
As attorney of Sri Kali Kinkar Chakraborty.

.... **Appellant.**

- Vrs -

- 1. Sri Samir Chakraborty,**
S/o Lt. Janendra Chandra Chakraborty.
- 2. Sri Krishna Kumar Chakraborty,**
S/o Lt. Janendra Chandra Chakraborty.

Sl. Nos. 1 and 2 are the residents of Town Shib Nagar, near
M.B.B. Club, C.R. Road, Agartala, Tripura West.

- 3. Smt. Raisona Chakraborty,**
W/o Sri Ratan Chakraborty,
Resident of Chittaranjan Road,
P.O. Agartala, Tripura West,
PIN-799001.

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

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

For the appellant : Mr. G.S. Bhattacharjee,
Advocate.

For the respondent No.1 : Mr. P. Chakraborty, Advocate.

Date of hearing & delivery of judgment and order : 30.05.2015

Whether fit for reporting : No

JUDGMENT & ORDER (ORAL)

This appeal under Section 96 of the Code of Civil Procedure, 1908 is directed against the judgment and decree dated 29.03.2006, passed by learned Civil Judge, Sr. Division, Court No.2, Agartala, West Tripura, in T.S.(P) No.34 of 2005.

2. Heard learned counsel Mr. G. S. Bhattacharjee for the appellant and learned counsel Mr. P. Chakraborty for the respondent No.1. Other respondents have chosen to remain absent in the hearing.

3. The appellant as plaintiff instituted Title Suit (P) No.34/05 (hereinafter mentioned as plaintiff) seeking partition of the suit land described in the schedule of the plaint contending that the plaintiff is entitled to 1/5th share of the suit land. It is contended by the plaintiff that the suit land described in the schedule of the plaint originally belonged to his father Late Janendra Chandra Chakraborty and his father died leaving behind him and respondents (hereinafter mentioned as defendants) Nos. 1, 2 and 4, Lt. Parimal Chakraborty, since deceased,(the father of respondent No.3

herein) as his sons and Smt. Makhanbala Chakraborty, the defendant No.3 (since deceased and struck off) as his wife. There was no partition of the suit land between the plaintiff and the defendants and therefore, the plaintiff was not in a position to utilize his share of land in the un-partitioned property to the best of his utility and he also alleged that the defendant No.1 is in possession of the land in excess of his share and therefore, he proposed for amicable partition on 25.05.2005 but the defendants did not come up for an amicable partition and therefore, he instituted the suit claiming $1/5^{\text{th}}$ share in the suit land and for partition with metes and bounds.

4. Defendant No.1, Samir Chakraborty contested the suit by filing written statement, *inter alia*, contending that the suit land was already partitioned among the legal heirs of late Janendra Chandra Chakraborty and so, there was no question of any further partition of the suit land. It is contended by the defendant that the suit land was allotted in the name of his late father Janendra Chandra Chakraborty who died in the year 1958. It is also contended by the defendant that one Pranab Kanti Basu and another had filed a suit for declaration of title by adverse possession against the plaintiff and the defendants of this suit arraying them as defendants which was registered as T.S. 74/02 and in that suit, in Para 4 of the written statement the plaintiff also made a clear statement

that there was amicable partition of the suit land between the plaintiff and the defendants of this suit in the year 1984 and that Makhan Bala Chakraborty, the mother of the plaintiff and other defendants, sold out her share by a registered sale-deed dated 26.04.84 to the defendant No.1 and since it was clearly stated that there was an amicable partition of the suit land, it is an admitted position that partition of the suit land was effected between the legal heirs of Janendra Chandra Chakraborty and therefore, there is no question of further partition of the suit land.

5. The trial Court considering the pleadings of the parties, formulated 5(five) issues namely-

- i. Is the suit maintainable?
- ii. Was the suit land partitioned amicably in the year 1984?
- iii. Is the suit land liable to be partitioned now and whether the parties are entitled to get $1/5^{\text{th}}$ share each?
- iv. Is the plaintiff entitled to get the decree as prayed for?
- v. To what other relief, plaintiff is entitled?

6. In course of trial, the plaintiff examined himself as P.W.1 and proved the following documents:-

Exbt.1 : Certified true copy of Khatian 618 of Mouja-Agartala, sheet no-19 relating to the suit land.

Exbt.2 : Certified true copy of the map relating to the suit land.

Exbt.3 : Registered Power of Attorney, executed by the plaintiff in favour of Shri Pradip Kr. Saha.

7. The defendant No.1 examined himself as D.W.1 and in support of his case, proved the following documents:

Exbt. A : Certified true copy of the registered sale deed, dt. 27.4.84 executed by Smti. Makhan Bala Debi in favour of defendant No-1.

Exbt.B-1 & B series: Certified true copy of the Written Statement filed by the present defendants in T.S.74/02 and signature of the plaintiff therein.

Exbt.C: Certified true copy of Khatian 6043, of Mouja-Agartala Sheet No-19 relating to the suit land.

Exbt.D: Certified true copy of the Written Statement of T.S.74/02.

8. The trial Court by impugned judgment dated 29.03.2006 decided the issues against the plaintiff and dismissed the suit.

Hence, this appeal.

9. It is argued by learned counsel Mr.Bhattacharjee for the plaintiff-appellant that there is no document to show that there was partition of the suit land by metes and bounds and that the trial Court taking into consideration the

statements made in Exbt.A i.e. the sale-deed dated 27.04.1984 wrongly decided that the suit land was partitioned between the plaintiff and the defendants. He has contended that the plaintiff was a witness to the execution of that deed between Makhan Bala Chakraborty and defendant No.1 (mother and son) and he was simply an attesting witness to that deed and that he knew nothing about the contents of the deed. The trial Court taken into account the contents of the deed and the written statement (marked as Exbt. B series) submitted in T.S. 74/02 and arrived at a wrong decision. Whatever stated in the written statement in another suit cannot be an evidence to prove that there was a partition of the suit land between the plaintiff and the defendants by metes and bounds. He has also submitted that it is to be presumed that there was no partition between the plaintiff and the defendants and therefore, the plaintiff instituted the suit. Had there been any partition between them, there was no reason for the plaintiff to approach the Court for fresh partition. The trial Court misread the pleadings and evidence and wrongly dismissed the suit. Mr. Bhattacharjee, learned counsel for the plaintiff-appellant prayed for setting aside the decree of dismissal and further prayed for decree of the suit.

10. On the contrary, appearing for the defendant-respondent No.1, learned counsel Mr. Chakraborty has submitted that the plaintiff himself admitted partition by filing

written statement in T.S. 74/02 and also admitted partition being a witness to the sale-deed dated 27.4.1984, therefore, the plaintiff cannot take a different stand by filing a suit for partition of the suit land afresh. Learned counsel, therefore, prayed for dismissal of the appeal.

11. It is an admitted position that the plaintiff and all the defendants are the legal heirs of deceased Janendra Chandra Chakraborty. The suit land described in the schedule of the plaint originally belonged to Janendra Chandra Chakraborty and it is an admitted fact that he died in the year 1958 leaving behind the plaintiff and the defendants as his legal heirs who were equally entitled to the suit land. Defendant No.3 Makhan Bala Chakraborty, wife Lt. Janendra Chandra Chakraborty, mother of the plaintiff and other defendants died in the meantime and so defendant No.3 has been struck off. Defendant No.4, Parimal Chakraborty also died in the meantime and his legal heir Smt. Raisona Chakraborty has been added as respondent No.3 in this appeal. The plaintiff claimed that there was no partition of the suit land by metes and bounds. Defendant No.1 contested the suit by filing written statement that there was already a partition of the suit land. Other defendants neither filed any written statement nor contested the suit. The trial Court as it appears very meticulously discussed the pleadings and evidence on record and decided the issues against the

plaintiff. I have also meticulously gone through the pleadings and the evidence on record. Exbt. B/1 is the written statement submitted by the plaintiff, defendant No.1 and defendant No.3 Makhan Bala Chakraborty (since deceased) in TS 74/02. The signature of the plaintiff in the said written statement has been proved by the plaintiff and marked as Exbt. B series. It is, therefore, proved that the plaintiff and defendant Nos. 1 and 3 jointly filed a written statement in TS 74/02 wherein in Para 4 of the written statement, the present plaintiff and defendant Nos. 1 and 3 stated ---

"4. That the land in Schedule-A of the complaint is wholly a water tank just in front of the house of the Defendants. The plaintiffs never claimed to have used or possessed it until this suit. The plaintiffs are well aware that the said water tank has already been partitioned among the Defendants by a family settlement in the year 1984. The share of the mother, Defendant No.2 was purchased by Defendant No.3 Shri Samir Kr. Chakraborty who has his separate share in the pond. By a composite deed executed on 26.04.84 the sale of the mothers share and the partition of the pond property was registered. The Defendant No.3 thereafter earthfilled a part of his share in the year 1985-86. The Plaintiffs had no occasion to object or protest in such partition or earth filling. Now suddenly prompted by some oblique motive the Plaintiff have risen up to claim the property perhaps tempted by the value of the said property in the present market such an unholy motive cannot be indulged by the Court of law and hence the suit has to be dismissed."

12. The above statement made by the present plaintiff and defendant Nos. 1 and 3 clearly reveals that there was a partition of the suit land through a family settlement in the year 1984 and thereafter the defendant No.3, Makhan Bala

Chakraborty sold out her part of the land to the defendant No.1, i.e. her son Samir Chakraborty. The sale-deed executed by Makhan Bala Chakraborty in favour of Samir Chakraborty has been proved as Exbt.A and in that document it has been specifically mentioned that the suit land was partitioned mutually and Makhan Bala sold her part of the share to defendant No.1. In that sale-deed the plaintiff stood as a witness and signed the sale-deed. Parimal Chakraborty, since deceased, a brother of the plaintiff also stood as witness. The plaintiff and the defendant Nos. 1, 2 and 4 were all full blood brothers and defendant No.3 was their mother. While a deed was executed by the mother in favour of one of the sons and other sons were present as witnesses, it may be presumed in the circumstances that the parties to the deed and the witnesses knew the fact what was stated in the document. Further, as I find the plaintiff did not state anything in his pleadings about the sale-deed executed by Makhan Bala in favour of defendant No.1. He has suppressed the fact and claimed 1/5th share whereas the defendant No.3 Makhan Bala already sold her share to defendant No.1 and it was within the knowledge of the plaintiff. The plaintiff also did not make any averment in the plaint that he has no knowledge about the contents of the sale-deed. The stand of the plaintiff, therefore, suffers from suppression of material fact. From the averments made in the written statement of T.S.74/02 and

from the contents of the sale-deed dated 27.04.84, it is quite clear that there was a partition through family settlement between the plaintiff and the defendants in respect of the suit land and hence, in my considered opinion, the trial Court rightly dismissed the suit and I find no merit at all in the argument advanced by learned counsel Mr. Bhattacharjee to decree the suit.

13. Accordingly, the appeal stands dismissed with costs.

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

JUDGE