

**HIGH COURT OF TRIPURA
AGARTALA**

RFA 1 of 2024

Sri Dilip Sarkar and Anr.

---Appellant(s)

Versus

Smt. Sipra Sarkar and 09 Ors.

---Respondent(s)

For Appellant (s)	:	Mr. Dipak Deb, Advocate. Mr. D. Debnath, Advocate.
For Respondent(s)	:	Mr. Subham Majumder, Advocate.
Date of hearing and date of judgment and order	:	11.02.2025.
Whether fit for reporting	:	No

**HON'BLE MR. JUSTICE T. AMARNATH GOUD
HON'BLE MR. JUSTICE BISWAJIT PALIT**

Judgment & Order (Oral)

(T. Amarnath Goud, J)

This is an appeal under Section 96 of CPC against the judgment & Decree dated 07.10.2023 passed by the Ld. Civil Judge (Sr. Division), Court No.2, West Tripura, Agartala, in case No.T.S(P)92/2020.

[2] The plaintiff-appellants' case, in brief, is that the plaintiffs and proforma defendants no.5-10 are full-blooded brothers and sisters. The predecessor of the defendants no. 1 to 3 and the mother of pro-forma defendant no. 4 were the plaintiffs' full-blooded brother and sister respectively. The actual owner of the suit land Lt Madan Mohan Sarkar was the paternal grandfather of plaintiffs and proforma defendants no.5-10, was paternal grandfather-in-law of defendant no.1 and paternal great-grandfather of defendant no. 2 and 3 and maternal great-grandfather of proforma-defendant no.4. Lt Madan Mohan Sarkar died leaving behind his two sons named Ramani Mohan Sarkar (now deceased) and Sudhir Sarkar (now deceased). After the death of Lt Madan Mohan Sarkar, by way of inheritance his two sons named Lt Ramani Mohan Sarkar and Lt Sudhir Sarkar became the joint owners of the suit property. Subsequently, Lt Ramani Mohan Sarkar expired in the year 2002 leaving behind his three sons i.e. the two

plaintiffs and predecessor-in-interest of the principal defendants and seven daughters i.e. the pro-defendant nos.5 to 10 and the predecessor-in-interest (mother) of proforma-defendant no.4 i.e. Lt Sita Rani Chowdhury (Sarkar).

[3] Subsequently, the plaintiffs, predecessors of the defendants and proforma-defendant no.4 as well as the other proforma-defendants filed a partition suit b/n. TS(P) 118 of 2004 against their paternal uncle Sudhir Sarkar (now deceased) before the Court of Ld. Civil Judge (Jr. Division), Agartala, West Tripura and that suit was finally decreed on 17.07.2006 on being compromised among the parties. As per the said decree the plaintiffs, predecessor of the defendants and the proforma-defendants have jointly got the land measuring 1.99 acres reflected in the Schedule-B(1) of that said partition decree and Lt Sudhir Sarkar and others jointly got the land measuring 1.75 acres mentioned in the Schedule-B(2) of that decree. It is further asseverated that before filing of that partition suit and during the lifetime of Lt Ramani Mohan Sarkar, schedule-B(1) of that partition suit and other plots of land were bequeathed by Lt Ramani Mohan Sarkar being his share with his brother Sudhir Sarkar to both the plaintiffs and predecessor of the defendants named Late Pradip Sarkar by dint of a Registered WILL b/n.III-151 dated 17.06.1996. But, before institution of that partition suit the plaintiffs had no knowledge about the said will and they came to know about the will during the pendency of that suit i.e. TS(P) 118/2004. Thereafter, on mutual discussion a compromise was made among the parties and a decree on compromise was passed on 17.07.2006.

[4] It is the further asserted by the plaintiffs that in the partition suit TS(P) 118 of 2004 some other land of Late Ramani Mohan Sarka measuring 1.04 acres described in 'KA' Schedule of the Will dated 17.06.1996 and a small area of land measuring 0.01 acre being a dokan Viti under Sabek Plot No.PB-247-5079/P, Hal Plot No.5948, Khatian No.229 was not included in the schedule of the said partition suit.

Late Ramani Mohan Sarkar bequeathed the said portion of land and dokan Viti to the predecessor of defendants Late Pradip Sarkar by dint of the aforementioned registered wil reflected in the Schedule 'KHA' of that will and specifically described in the Schedule -C of the instant plaint. The plaintiffs further asserted that the subject matter of the present suit is the land of said registered Will by which Late Ramani Mohan Sarkar bequeathed his entire land to his three sons including the land mentioned in Schedule-B(1) of the decree passed in TS(P 118 of 2004, measuring 3.04 acres described in Schedule-A of this plaint. The plaintiffs further asserted that as per the registered Will (Exhibit-2) the plaintiffs and the predecessor of the defendants were the joint owners and the pro-forma defendants have no right in the said property. Late Ramani Mohan Sarakar did not leave any land for his 7 (seven) daughters and as per the Will the plaintiffs and the defendants are only entitled to get the suit land as per the arrangement reflected in the Schedule-B and Schedule-C of this plaint respectively.

[5] It is also asseverated in the plaint that from the month of July, 2020 on different dates and lastly on 05.09.2020 the plaintiffs have requested the defendants i.e. the legal heirs of Lt Pradip Sarkar, who died in the year 2018, for amicable partition of the Schedule-'A' land. Initially they did not our respond, but on 05.09.2020 they denied the proposal and expressed their unwillingness to make amicable partition of the suit land. They further stated that the cause of action arose on 05.10.2020 when the defendants denied the proposal of the plaintiffs.

[6] Thereafter, on perusal of material evidence on record and upon hearing both the parties, learned Court below finally has decided the suit filed by the plaintiff by its judgment & order dated 07.10.2023 passed in case No.T.S(P)92/2020 in the following manner:

ORDER

“Hence, in the light of the aforementioned discussion, the suit filed by the plaintiffs is dismissed with cost without granting any relief.”

[7] Aggrieved by the above-quoted order dated 07.10.2023 passed by the learned Court below, the plaintiff-appellants have filed the instant appeal.

[8] It is contended by the counsel for the appellant that learned court below has failed to consider that in the partition suit filed by the plaintiff appellants neither the portion of the land of the Defendants of the earlier partition suit being TS(P) 92 of 2020 nor the legal heirs of the defendant of the earlier partition shall have been made parties in the present partition suit. The Ld. Court below by travelling beyond the facts & circumstances of the present partition suit has looked into the matter & laws which are not applicable in deciding the present suit and thereby very illegally dismissed the present partition suit.

[9] It is further submitted that Ld. Court below failed to realize that where any contested decree or compromise decree will not be affected by any subsequent suit not amongst the same parties and where in the subsequent suit the land is question of other party of the earlier suit is not included will not be the embargo to pass the Decree of Partition of the land in the subsequent suit.

[10] After a bare perusal of the record and also having considered the submission as advanced by the counsel for the parties, it appears to this court that the present matter involves a dispute regarding joint property, wherein the parties are asserting their respective shares and ownership rights. Upon reviewing the records, this Court finds that the lower court has not conducted a thorough examination of the title documents, revenue records, and partition history to ascertain the true nature of ownership and possession. Additionally, the rights of all co-owners have not been properly evaluated, leading to an incomplete adjudication of the matter. Moreover, the appellant-plaintiffs are also at liberty to amend their petition and restrict themselves for seeking the legitimate portion of land as per their entitlement.

[11] In cases involving joint property, a detailed factual and legal analysis is required to determine each co-owner's entitlement. Since the lower court has not adequately addressed these aspects, this Court finds it appropriate to remand the matter back for fresh adjudication. The trial court is directed to re-examine the ownership records, assess the parties' respective shares, and decide the matter after giving all stakeholders a fair opportunity to be heard. The entire exercise shall be made within a period of six months from the date of delivery of this judgment.

[12] With the above observation and direction, the instant appeal is disposed of. As a sequel, miscellaneous application(s), pending if any, shall also stand closed.

[13] Send down the LCR alongwith the copy of this judgment.

B.Palit, J

T. Amarnath Goud, J



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