

**HIGH COURT OF TRIPURA
AGARTALA**

RFA No.12/2015

1. Smt. Pratima Paul, W/O. Sri Manik Lal Paul, D/O. Late Santosh Chandra Paul, Resident of Central Road Extension, Agartala, District-West Tripura, PIN-799001.

2. Smt. Nilima Paul (Debnath), W/O. Sri Tapan Kumar Debnath, D/O. Late Santosh Chandra Paul.

3. Smt. Anima Paul, W/O. Sri Nilanjan Chanda, D/O. Late Santosh Chandra Paul.

Sl. No.2 & 3 are residing at B.K. Road, Palace Compound, P.S. East Agartala, District-West Tripura, PIN-799001.

----- Plaintiff-Appellant(s).

Versus

Sri Biswajit Paul, S/O. Late Santosh Chandra Paul, Resident of B.K. Road, Palace Compound, P.S. East Agartala, District-West Tripura, PIN-799001.

----- Defendant-Respondent(s).

**BEFORE
HON'BLE THE CHIEF JUSTICE MR. SANJAY KAROL
HON'BLE MR. JUSTICE ARINDAM LODH**

For the appellants : Mr. S.M. Chakraborty,
Sr. Advocate,
Ms. B. Chakraborty, Advocate.

For the respondent : Mr. Sankar Deb, Sr. Advocate,
Mr. P.K. Pal, Advocate.

Date of hearing : 30.11.2018.

Date of judgment : 01.02.2019.

Whether fit for reporting : **YES.**

JUDGMENT & ORDER

(Sanjay Karol, C.J.)

Challenge, limited in nature, laid by the plaintiff-appellants is with regard to the findings returned by the trial Judge, holding him not to have any jurisdiction to partition the properties outside

the territorial limits of Agartala, notwithstanding the fact that the suit, inter alia, pertained to the partitioning of immovable properties situated both within and outside the territorial jurisdiction of the State of Tripura.

2. The plaintiffs filed a suit seeking partition of joint properties, both immovable as specified in Schedule-A and movable properties as specified in Schedule-B of the plaint. It is not in dispute that in the said Schedule, two of such properties are situate in Kolkata, description whereof is unambiguously clear, for in the written statement, in response to para-13 and 14 of the plaint, there is no categorical denial of such fact. In fact, pleaded "that the Baguihati properties are in the State of West Bengal outside the jurisdiction of this Learned Court."

3. Based on the pleadings of the parties, the trial Judge framed the following issues:-

1. Whether the suit is maintainable in its present form?
2. Whether the plaintiffs are entitled to get decree for partition of joint property as prayed?
3. Whether the plaintiffs are entitled to get one fourth share each?
4. To what other relief/reliefs the plaintiffs are entitled?"

4. While answering issue No.(1) as also issue Nos.(2) & (3), trial Judge, with respect to the immovable properties situate in Kolkata, has returned the following findings:-

“The landed property situated at Kolkata, West Bengal, cannot be divided and partitioned because of lack of territorial jurisdiction.

xxx xxx xxx xxx

There are lands of Kolkata and only mentioning of Go-downs at Gol Bazar, Agartala, which cannot be partitioned because of ambiguity of the description of the suit land as well as bar of territorial jurisdiction as some flats are situated even outside of our State.”

5. Insofar as the description of the property situate in Kolkata is concerned, as already observed, there is no ambiguity, in fact, for elucidation the property as described in the Schedule is reproduced as under:-

“(b) A flat situated at Raghunathpur, Baguiati, P.O. Jengra, Kolkata-59, West Bengal in the apartment name Sankhanir Apartment purchased from the joint property fund.

xxx xxx xxx xxx

(e) A flat on the first floor measuring 629 Sq.ft. with common area of 198 Sq.ft. in total 827 Sq.ft. situated and lying at the building ‘ARVIND TOWER’ being portion of premises 242/1B, Acharya Prafulla Chandra Road, Kolkata-700004, P.S.-Burtolla in the name of deceased father Santosh Chandra Paul.”

6. Insofar as the jurisdictional issue is concerned, one notices that the trial Judge failed to take note of Section 17 of the Code of Civil Procedure which reads as under:-

“17. **Suits for immovable property situate within jurisdiction of different Courts.**—Where a suit is to obtain relief respecting, or compensation for wrong to, immovable property situate within the jurisdiction of different Courts, the suit may be instituted in any Court within the local limits of whose jurisdiction any portion of the property is situate:

Provided that, in respect of the value of the subject-matter of the suit, the entire claim is cognizable by such Court.”

7. The provisions are unambiguously clear and the law is well settled.

In *(Velugubantla) Papamma vs. Ravula Ramaswami and another*, **AIR 1933 Madras 622**, while dealing with the case where the property, subject matter of mortgage, was shifted from place A to place B and in relation thereto plaintiff filed a suit at place B, the Court held the suit to be maintainable in view of Section 17 of CPC.

In *Nrisingha Charan Nandy Choudhury vs. Rajniti Prasad Singh and others*, **AIR 1936 Privy Council 189**, the Court clarified that Section 17 can be utilized only if the Code applies to both the Courts.

In *Laxmibai vs. Madhankar Vinayak Kulkarni and others*, **AIR 1968 MYSORE 82** after elaborately discussing the case law prevalent in India, observed as under:-

“(13) Thus, from a reading of the section, it would be clear that the Courts in India would be competent to entertain the suit in respect of immovable property situate within the jurisdiction of different courts. The purpose of this section is obviously to avoid the multiplicity of proceedings.

XXX XXX XXX XXX

(15) Thus, it would appear that where there is a single cause of action in respect of properties comprised in the suit situate within the jurisdiction of different Courts, a suit may be instituted in a Court within the local limits of whose jurisdiction any of the suit property is situate.”

This Court is in agreement with the aforesaid proposition, more so, in view of the subsequent law laid down by the Apex Court in *Madhao s/o Shrihari Deshpande vs. Madhav s/o Trimbak Dharmadhikaree, (1988) 3 SCC 511*, wherein while dealing with the case where properties were situate in two different places, the Court found the suit instituted at one place to be totally maintainable.

Now, in the instant case, the plaintiffs had categorically averred that the suit for partition pertained to immovable properties, both within and outside the State of Tripura.

8. In fact, the trial Judge partly decreed the suit in relation to the properties situated in Agartala (State of Tripura).

9. Whether the plaintiffs were able to establish their case of joint ownership and have any right in the property situate in Kolkata is a different matter, but, however, in view of the settled position of law, suit *qua* the properties situated outside the territorial jurisdiction of State of Tripura could not have been

dismissed on the ground of lack of jurisdiction. The trial Judge did have jurisdiction to entertain the suit and pass necessary orders in relation thereto. As such, to this limited extent, the matter needs to be remanded back to the trial Judge for consideration afresh.

10. The judgment dated 25.4.2015 and decree thereof passed by learned Civil Judge (Senior Division), Court No.2, West Tripura, Agartala in Case No.T.S.(P) 22 of 2006, titled as *Smt. Pratima Paul & others vs. Sri Biswajit Paul*, accordingly, shall stand modified.

11. One notices that the suit pertains to the year 2006 and as such, expect the parties to fully cooperate, hence it is directed that the trial Court shall positively decide the issue of partitioning of the immovable properties situated in Kolkata, at the earliest, and not later than three months from today. Parties undertake to appear before the trial Judge on 15.02.2019.

12. The Registry is directed to forthwith remit the record to the trial Court. Also send a copy of the judgment to the trial Court.

13. This takes us to yet another issue and that being the glaring error committed by the trial judge in passing the judgment and decree by totally ignoring the elementary provisions of law. The trial Judge as on the date of the passing of the judgment had sufficient experience with himself. He was not a new inductee. It is a matter of record that periodical training is imparted to the Judicial Officers by the Tripura Judicial Academy established by the High Court of Tripura. Under these circumstances, it is

directed that the Judicial Officer who had passed the judgment and decree shall undertake a refresher course on all the provisions of the Code of Civil Procedure at the said Judicial Academy.

14. Copy of the judgment be also sent to the Director, Tripura Judicial Academy, Agartala. It is high time that such refresher courses are periodically conducted, on non-working days in the Academy with the use of technology. An officer need not necessarily travel to the Academy, for modern tools and gadgets, such as, Video Conferencing facility etc. can be fully utilized to optimize efficiency.

15. The appeal stands disposed of in the above terms. LCR be returned forthwith.

(ARINDAM LODH), J

(SANJAY KAROL), CJ

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