

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

CRP(C.R.P.Art.227) No.30 of 2023

Shri Konthoujam Dhananjoy Singh, aged about 71 years, S/o Late K.
Mukta Singh, a resident of Lalambung Makhong Naosekpam Leikai under
P.O. & P.S. Lamphel in Imphal West District, Manipur – 795004.

..... Petitioner/s

– Versus –

1. Shri Tongbram Lokendro @ Loken Singh, aged about 63 years, S/o Late T.
Iboton Singh, a resident of Lalambung Makhong Naosekpam Leikai under
P.O. & P.S. Lamphel in Imphal West District, Manipur – 795004.
2. Shri Tongbram Labango Singh, aged about 66 years, S/o Late T. Iboton
Singh, a resident of Lalambung Makhong Naosekpam Leikai under P.O. &
P.S. Lamphel in Imphal West District, Manipur – 795004.
3. Shri Tongbram Kamni Singh, aged about 61 years, S/o Late T. Iboton
Singh, a resident of Lalambung Makhong Naosekpam Leikai under P.O. &
P.S. Lamphel in Imphal West District, Manipur – 795004.
4. Shri Tongbram Kuber Singh, aged about 59 years, S/o Late T. Iboton Singh,
a resident of Lalambung Makhong Naosekpam Leikai under P.O. & P.S.
Lamphel in Imphal West District, Manipur – 795004.

.... Respondent/s

BEFORE
HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA

For the Petitioner/s : Mrs. G. Pushpa, Advocate &
Ms. Ranjeeta Th., Advocate
For the Respondent/s : None appeared
Date of Hearing : 06.06.2023 & 08.06.2023
Date of Judgment & Order : **15.06.2023.**

JUDGMENT & ORDER
(CAV)

[1] The petitioner/plaintiff approached this Court by way of the present petition under Article 227 of the Constitution of India challenging the correctness of the impugned order dated 17.04.2023 passed by the Ld. Civil Judge, Junior Division, Imphal West-I in Execution Case No.6 of 2012 (Ref: OS No.44 of 2008, CA No.6 of 2010). By the impugned order, the executing Court, i.e., the Ld. Civil Judge, Junior Divion, Imphal West-I framed 2(two) points for determination, i.e., (i) Whether the Respondents/Judgment Debtors (JDs) had violated the decree in favour of the petitioner/plaintiff? and (ii) Whether Respondent/Judgment Debtor(JD) Nos.2, 3 & 4 are agents or associates of Respondent/Judgment Debtor(JD) No.1? The Executing Court further directed the parties to produce witnesses to decide the above 2(two) points before passing a final order in the execution case.

[2] The issues involved in the present petition are- *(a) Whether a previous judgment is relevant and admissible in a subsequent civil proceeding of*

*the same suit property in terms of the provisions of Sections 40 to 43 of the Evidence Act? and (b) Whether the present case falls within the meaning of 'exceptional and rare case' warranting taking of evidence in an execution proceeding as contemplated by the Hon'ble Supreme Court in the recent case of **Rahul S. Shah v. Jinendra Kumar Gandhi: (2021) 6 SCC 418 @ Para 42.9?***

[3] The brief fact of the present case is that the petitioner/plaintiff filed a suit of permanent injunction being OS No.44 of 2008 in the Court of the then Civil Judge, Junior Division, Imphal against the respondent No.1 as defendant with respect to the homestead land under patta No.687/1049/687/715(old)/93(new) covered by C.S. Dag No.145 having an area of .0220 hectares situated in Village No.89-Khwai Lalambung, Imphal West. It is stated that the petitioner/plaintiff purchased the suit land from one Th. Ibotomba Singh with delivery of possession at Rs.14,500/- (Rupees fourteen thousand five hundred) vide a registered sale deed 29.08.1985 and he got mutated his name in the suit land. During the trial, respondent/JD No.1 did not produce any evidence in support of his written statement. Vide judgment and order dated 30.12.2009 in OS No.44 of 2008, the then Ld. Civil Judge, Junior Division, Imphal (now Imphal West-I) passed a decree in favour of the petitioner/plaintiff directing the respondent No.1/defendant and his agents not to commit trespass into any part of the suit land without permission of the petitioner/plaintiff to the extent of 0.025 acres of the suit land.

[3.1] Being aggrieved by the judgment and order dated 30.12.2009 passed in OS No.44 of 2008, the petitioner/plaintiff preferred an Civil Appeal

being Civil Appeal No.6 of 2010 before the then Learned District Judge, Manipur East (now Imphal East). Vide judgment and decree dated 19.06.2012, the Ld. District Judge, Manipur East (now Imphal East) allowed the Appeal and modified the judgment and decree dated 30.12.2009 passed in OS No.44 of 2008 to the extent that the respondent/JD No.1 and his agents/associates were restrained permanently to trespass into the whole area of suit land described in the plaint and the order and appellate decree dated 19.06.2012 attained finality as the same was not challenged before any superior Court. The petitioner/plaintiff/decreed holder filed Execution Case No.6 of 2012 in the Court of Learned Civil Judge, Junior Division, Imphal West-I for execution of the appellate decree. Vide order dated 08.10.2018, the executing Court appointed a Commissioner for demarcation of the suit land. Thereafter, the Commissioner submitted a report dated 30.01.2021 along with Field Measurement dated 17.02.2019 holding that the decree holder was occupying a smaller area. In the execution proceeding, the Judgment Debtors raised the objection that the present execution case was filed against 4(four) brothers, i.e., respondent/JD Nos. 1, 2, 3 & 4 whereas the decree was passed against the respondent/JD No.1 only and hence, the decree is not binding on JD Nos.2, 3 & 4. It is also stated that there is no material to show that decree has been violated. The Ld. Executing Court was of the opinion that local Commissioner merely stated that the decree holder was occupying lesser area and the same did not prove violation of the decree by the Judgment Debtors, as the report of the Commission nowhere mentioned that Judgment Debtors had encroached or trespassed into the suit land. Accordingly, the executing Court framed 2(two) points for

determination, i.e., (A) Whether JDs have violated the abovementioned decree? and (B) Whether JD Nos.2, 3 & 4 acted as JD No.1's men or agents or associates? and directed the parties to produce witnesses.

[3.2] It may be pointed out that Respondent/JD Nos.2 to 3 also filed an original suit being OS No.17 of 2013 along with an application under Order 39 CPC being Judl. Misc. Case No. 121 of 2013/940 of 2013 inter-alia praying for injuncting the judgment and decree dated 30.12.2009 passed in OS No.44 of 2009 by Ld. Civil Judge Junior Division, Imphal and the order dated 19.06.2012 passed by the Ld. District Judge, Manipur East in Civil Appeal No.6 of 2012 against the plaintiff/petitioner herein and JD/Respondent No.1 herein as defendants. It is alleged that in the earlier suit, i.e., OS No.44 of 2008, the respondent/JD Nos.2 to 4 were not made parties and the decree was against the respondent/JD No.1 only. Vide order dated 10.05.2016 passed in Judl. Misc. Case No.121 of 2013/940 of 2013 (Ref: OS No.17 of 2013), the Ld. Civil Judge Junior Division, Imphal West-I rejected the application and it was held and observed that the respondent/JD Nos.1, 2, 3 & 4 herein (in the present case) are brothers living in the same un-partitioned household land.

[3.3] Being aggrieved by the order dated 10.05.2016, the respondent/JD Nos.2, 3 & 4 preferred an appeal being Misc. Civil Appeal No.4 of 2018 before the Ld. District Judge, Imphal West and the same was dismissed vide judgment and order dated 17.07.2018 being devoid of any merit.

[3.4] Along with the present petition, the petitioner also filed an application being MC[CRP(C.R.P.Art.227)] No.28 of 2023 for exemption from

filing certified copy of the impugned order dated 17.04.2013 on the ground that the same could not be acquired in the present situation and the petition was filed along with the extract copy of the impugned order issued by the executing Court. Vide order dated 18.05.2023, this Court allowed the application being MC[CRP(C.R.P.Art.227)] No.28 of 2023 and on the same day, i.e., on 18.05.2023, this Court issued notice to the respondents returnable on 26.05.2023. Considering the prevailing law and situation, step was permitted to be taken by dasti and it was observed that prayer for interim relief would be considered on appearance of the respondents. The learned counsel for the petitioner filed an affidavit dated 26.05.2023 stating that the wives of the respondents refused to accept the notice on the instruction of their husbands. Vide order dated 02.06.2023, this Court recorded that service was complete and fixed on 06.06.2023 for further consideration of interim relief. The matter was heard on 06.06.2023 and 08.06.2023 and none appeared on behalf of the respondents.

[3.5] Mrs. G. Pushpa, learned counsel for the petitioner/plaintiff submits that there is a clear finding in the original decree dated 30.12.2019 and appellate decree dated 19.06.2012 that the respondent/JD had encroached upon the suit land, thereby implying their possession over extra area. She also refers to the Commission Report dated 30.01.2021 and Field Measurement conducted on 17.02.2019 by the Commissioner in presence of the parties and Field Staff of the office of the Sub-Deputy Collector, Imphal West (Central), Manipur. She has pointed out that the Commissioner has indicated that the petitioner/plaintiff is occupying a lesser space and respondents/JDs have been occupying excess area.

The Report indicated that the share portion of the decree holder to the extent of 15 ft. towards northern border and 19 ft. towards southern border were reduced and the same can be ascertained from field measurement (Annexure-A/12) dated 17.02.2019. It is also submitted that no further examination of witnesses is required in this regard and the same can be ascertained on a bare perusal of the Commission report dated 30.01.2021 and field measurement dated 17.02.2019.

[3.6] Regarding the second point framed in the impugned order by the executing Court, it is submitted by Mrs. G. Pushpa, learned counsel for the petitioner/plaintiff that the factum of the respondent/JD Nos.2, 3 & 4 being brothers of the respondent/JD No.1 is clear from the subsequent suit filed by the respondent/JD Nos.2, 3 & 4. In the order dated 10.05.2016 passed in Judl. Misc. Case No.121 of 2013/940 of 2013, the Ld. Civil Judge, Junior Division, Imphal West-I held that respondent/JD Nos.1 to 4 are brothers and this decision is relevant and admissible in the execution case as provided under Section 40 to 43 of the Evidence Act. It seems that in the present case, after losing in courts, the respondents/JDs are resorting to delaying tactics by raising objections at the execution stage and the petitioner/plaintiff/decreed holder is not able to enjoy the fruit of the litigation. Mrs. G. Pushpa, learned counsel for the petitioner/plaintiff also relies upon the judgment of **Ramrameshwari Devi v. Nirmala Devi reported in (2011) 8 SCC 249**, where the Hon'ble Supreme Court held that Court should not deprive winning party of the fruit of litigation and the losing party should be restrained from obstructing the execution case by employing dilatory practice and frivolous proceedings. She further submits that the

objection raised by the respondent/JD Nos.2 to 3 that they were not parties to the decree and are not bound by the same is nothing, but a delaying tactic to deny/delay the petitioner/plaintiff from enjoying the fruit of the decree. She prays that the impugned order be set aside and the executing Court may be directed to proceed as per law on the basis of admissible evidence without calling further evidence.

[4] Heard the learned counsel for the petitioner, perused the materials on record and connected case laws.

[5] It is the settled proposition of law with respect to Section 47 of CPC that all questions arising between the parties to the suit to which decree was passed or their representatives and relating to the execution, discharge or satisfaction of decree shall be determined by the executing Court and not by a separate suit. So this Court is of the view that the Executing Court was correct in framing 2(two) points for determination in para 11 of the impugned order. The 2(two) points read as: (A) Whether JDs have violated the abovementioned decree? and (B) Whether JD Nos.2, 3 & 4 acted as JD No.1's men or agents or associates? However, the issues involved in the present petition are whether fresh evidence is to be required to be taken to ascertain these 2(two) points or the same can be considered on the basis of the available materials on record.

[5.1] In the present case, it is admitted fact that a decree has been passed in favour of the petitioner/plaintiff and against the respondent/Judgment Debtor No.1 and the decree is confirmed in appeal and hence the same attains finality as it is not challenged before higher Court. It is also a fact that in a subsequent

proceeding suit initiated by respondent Nos.2 to 4 against the petitioner/plaintiff and respondent/JD No.1, the Ld. Civil Judge, Junior Division, Imphal West-I passed order dated 10.05.2016 (Annexure-A/15) holding that respondent/JD Nos.1 to 4 are brothers staying together in un-partitioned property. This finding was upheld in the appeal also and attained finality.

[6] In the present case, it is to examine whether the finding in the subsequent suit that the respondents/JDs are brothers is admissible in the present execution case in view of the provisions of Sections 40 to 43 of the Evidence Act and whether additional evidence is required to be taken to ascertain encroachment by the respondents/JDs. It will be fruitful to consider the applicable law in this regard.

[7] In the case of **Tirumala Tirupati Devasthanams v. K.M. Krishnaiah, (1998) 3 SCC 331**, Hon'ble Supreme Court held that a judgment in an earlier civil suit would be admissible and could be relied upon as evidence in a subsequent suit as provided by Sections 40 to 44 of the Evidence Act. Relevant para are reproduced below:

"7. In view of the above contentions, the following three points arise for consideration:

(1) Whether the judgment in OS No. 51 of 1937 of the Sub-Court, Chittoor dated 15-6-1942 declaring the title of the TTD, was admissible and could be relied upon by the TTD as evidence in the present case, even though the present plaintiff was not a party to OS No. 51 of 1937?

(2) Whether it was open to the second appellate court to reappreciate the evidence and hold that the oral evidence adduced by the parties was not acceptable and that in view of the recitals in Ex. B-6 delivery receipt dated 12-1-1946, the title of the TTD was to be deemed "extinguished", and whether this could be done when there was no such issue raised in the courts below?

(3) Whether, in case we should hold on Point 2 that the second appellate court could not hold that the TTD's title stood extinguished, the decree

for possession based on possessory title as granted by the second appellate court, could be sustained?

Point 1

8. It was argued by the learned counsel for the plaintiff-respondent that the earlier judgment in OS No. 51 of 1937 dated 15-6-1942 was rendered in favour of the TTD against Hathiramji Mutt, that the plaintiff was not a party to that suit and hence any finding as to TTD's title given therein is not admissible as evidence against the present plaintiff in this suit.

9. In our view, this contention is clearly contrary to the rulings of this Court as well as those of the Privy Council. In *Srinivas Krishnarao Kango v. Narayan Devji Kango*² speaking on behalf of a Bench of three learned Judges of this Court, Venkatarama Ayyar, J. held that a judgment not inter partes is admissible in evidence under Section 13 of the Evidence Act as evidence of an assertion of a right to property in dispute. A contention that judgments other than those falling under Sections 40 to 44 of the Evidence Act were not admissible in evidence was expressly rejected. Again B.K. Mukherjea, J. (as he then was) speaking on behalf of a Bench of four learned Judges in *Sital Das v. Sant Ram*³ held that a previous judgment not inter partes, was admissible in evidence under Section 13 of the Evidence Act as a "*transaction*" in which a right to property was "asserted" and "recognised".³³⁶ In fact, much earlier, Lord Lindley held in the Privy Council in *Dinomoni Chowdhurani v. Brojo Mohini Chowdhran*⁴ (ILR at p. 198) that a previous judgment, not inter partes was admissible in evidence under Section 13 to show who the parties were, what the lands in dispute were and who was declared entitled to retain them. The criticism of the judgment in *Dinomoni v. Brojo Mohini*⁴ and *Ram Ranjan Chakerbati v. Ram Narain Singh*⁵ by Sir John Woodroffe in his *Commentary on the Evidence Act* (1931, p. 181) was not accepted by Lord Blanesburgh in *Collector of Gorakhpur v. Ram Sundar Ma*⁶.

10. For the aforesaid reasons, we reject the contention of the learned counsel for the respondent-plaintiff and hold that the TTD could rely on the judgment in OS No. 51 of 1937 as evidence to prove its title in regard to the suit property, even though the present plaintiff was not a party to that suit. Point 1 is held accordingly against the respondent."

2. AIR 1954 SC 379 : 57 Bom LR 678

4. ILR (1902) 29 Cal 190 (PC)

6. AIR 1934 PC 157 : 61 IA 286

[8] In the case of **K.G. Premshanker v. Inspector of Police, (2002)**

8 SCC 87, a 3-Judge Bench of the Hon'ble Supreme Court held that the previous judgment which attains finality can be relied upon as provided under Sections 40

to 43 of the Evidence Act. In civil case, it will operate as res-judicata and in criminal case as double jeopardy. Para 30 and 31 are reproduced below for clarity.

“30. What emerges from the aforesaid discussion is — (1) the previous judgment which is final can be relied upon as provided under Sections 40 to 43 of the Evidence Act; (2) in civil suits between the same parties, principle of *res judicata* may apply; (3) in a criminal case, Section 300 CrPC makes provision that once a person is convicted or acquitted, he may not be tried again for the same offence if the conditions mentioned therein are satisfied; (4) if the criminal case and the civil proceedings are for the same cause, judgment of the civil court would be relevant if conditions of any of Sections 40 to 43 are satisfied, but it cannot be said that the same would be conclusive except as provided in Section 41. Section 41 provides which judgment would be conclusive proof of what is stated therein.

31. Further, the judgment, order or decree passed in a previous civil proceeding, if relevant, as provided under Sections 40 and 42 or other provisions of the Evidence Act then in each case, the court has to decide to what extent it is binding or conclusive with regard to the matter(s) decided therein. Take for illustration, in a case of alleged trespass by *A* on *B*'s property, *B* filed a suit for declaration of its title and to recover possession from *A* and suit is decreed. Thereafter, in a criminal prosecution by *B* against *A* for trespass, judgment passed between the parties in civil proceedings would be relevant and the court may hold that it conclusively establishes the title as well as possession of *B* over the property. In such case, *A* may be convicted for trespass. The illustration to Section 42 which is quoted above makes the position clear. Hence, in each and every case, the first question which would require consideration is — whether judgment, order or decree is relevant, if relevant — its effect. It may be relevant for a limited purpose, such as, motive or as a fact in issue. This would depend upon the facts of each case.”

[9] In the case of **Satish Chander Ahuja v. Sneha Ahuja, (2021) 1 SCC 414**, a 3-Judge Bench of the Hon'ble Supreme Court held that reliance can be made on admissible evidence of a civil or criminal court both in the civil or criminal proceedings.

“164. We need to observe that in event a judgment of a criminal court is relevant as per Sections 40 to 43 of the Evidence Act in civil proceedings, the judgment can very well be taken note of and there is no embargo on

the civil court to place reliance upon it as a corroborative material. We may notice a judgment of the Madras High Court in *K. Subramani v. Director of Animal Husbandry*⁶¹ where the Madras High Court has made the following observations in para 7:

"7. A decision of the criminal court does not have the effect of binding nature on the proceedings before the civil court including the Motor Accident Claims Tribunal for the reason that the proof in both the civil and criminal cases are having two different categories of standards. In criminal cases, guilt of the accused must be proved beyond reasonable doubt, while in civil cases, the rights of the parties or matter in issue shall be decided on preponderance of probabilities. If a party to the case relies upon a decision of the criminal court and insists the civil court to give credence to the said decision, it is incumbent upon the party to gather further materials in the case, which would support the observations and the decisions of the criminal court. If any material is available in the case, which would corroborate or strengthen the decision of the criminal court, then, there is no embargo for the civil court to place reliance upon it."

165. We are in full agreement with the above view. There is no embargo in referring to or relying on an admissible evidence, be of a civil court or criminal court both in civil or criminal proceedings.

**61. 2008 SCC Online Mad 1384: (2009) 1 Mad LJ 363*

[10] As seen from the above cases specially **Tirumala Tirupati Devasthanams v. K.M. Krishnaiah: (1998) 3 SCC 331 (supra)**, it is clear that judgment in earlier suit is also admissible in evidence in the subsequent suit relating to the same suit land, even if one of them was not a party in the earlier suit.

[11] In **K.G. Premshanker v. Inspector of Police: (2002) 8 SCC 87 (supra)**, it was held that previous judgment which attains finality, will operate as res-judicata in subsequent civil suit between the same parties in view of the provisions of Sections 40 to 43 of the Evidence Act.

[12] In the case of **Satish Chander Ahuja (supra)**, it was held that reliance can be made on admissible evidence of a civil and criminal Court in subsequent proceedings. With respect to second point framed by the executing Court as to whether Respondent/JD Nos.2, 3 & 4 are agents of respondent/JD No.1, the same can be ascertained from the order dated 10.05.2016 passed by the Ld. Civil Judge, Junior Division, Imphal West-I in Judl. Misc. Case No. 121 of 2013/940 of 2013. It was held that the respondent/JD Nos.1, 2, 3 & 4 are brothers residing together in the same un-partitioned household land.

[13] This Court is of the opinion that in view of the decisions of the Hon'ble Supreme Court cited as above, no fresh evidence is required to be taken in evidence. There is already a finding of a Court between the parties in the subject matter and the same can be considered in deciding the second point for consideration.

[14] On bare perusal of the report of the Commissioner and the field measurement, it is seen that the Commissioner had clearly stated that the petitioner/plaintiff/decreed holder was occupying a lesser area, but did not specifically mention that the respondents/JDs were occupying more area. On joint measurement of the 2(two) adjoining lands, if one is having less area, it implies the other having more area.

[15] This Court is of the opinion that fresh evidence is not required to find out whether the respondents/JDs have encroached over the suit land and the same can be ascertained on careful examination of the Commission report along with field measurement which is accepted by both the parties.

[16] The Hon'ble Supreme Court, in the cases of **Ramrameshwari Devi v. Nirmala Devi: (2011) 8 SCC 249** and **Rahul S. Shah v. Jinendra Kumar Gandhi: (2021) 6 SCC 418**, cautioned the executing Court against the dilatory, unnecessary delay caused in the execution of the decree. In the case of **Rahul S. Shah (supra)**, the Hon'ble Supreme Court directed the High Courts to amend its civil rules in terms of certain directions issued so that an endeavor is to be made to expedite the process of execution and the directions read as under:

"42. All courts dealing with suits and execution proceedings shall mandatorily follow the below mentioned directions:

42.1. In suits relating to delivery of possession, the court must examine the parties to the suit under Order 10 in relation to third-party interest and further exercise the power under Order 11 Rule 14 asking parties to disclose and produce documents, upon oath, which are in possession of the parties including declaration pertaining to third-party interest in such properties.

42.2. In appropriate cases, where the possession is not in dispute and not a question of fact for adjudication before the court, the court may appoint Commissioner to assess the accurate description and status of the property.

42.3. After examination of parties under Order 10 or production of documents under Order 11 or receipt of Commission report, the court must add all necessary or proper parties to the suit, so as to avoid multiplicity of proceedings and also make such joinder of cause of action in the same suit.

42.4. Under Order 40 Rule 1 CPC, a Court Receiver can be appointed to monitor the status of the property in question as *custodia legis* for proper adjudication of the matter.

42.5. The court must, before passing the decree, pertaining to delivery of possession of a property ensure that the decree is unambiguous so as to not only contain clear description of the property but also having regard to the status of the property.

42.6. In a money suit, the court must invariably resort to Order 21 Rule 11, ensuring immediate execution of decree for payment of money on oral application.

42.7. In a suit for payment of money, before settlement of issues, the defendant may be required to disclose his assets on oath, to the extent that he is being made liable in a suit. The court may further, at any stage,

in appropriate cases during the pendency of suit, using powers under Section 151 CPC, demand security to ensure satisfaction of any decree.

42.8. The court exercising jurisdiction under Section 47 or under Order 21 CPC, must not issue notice on an application of third party claiming rights in a mechanical manner. Further, the court should refrain from entertaining any such application(s) that has already been considered by the court while adjudicating the suit or which raises any such issue which otherwise could have been raised and determined during adjudication of suit if due diligence was exercised by the applicant.

42.9. The court should allow taking of evidence during the execution proceedings only in exceptional and rare cases where the question of fact could not be decided by resorting to any other expeditious method like appointment of Commissioner or calling for electronic materials including photographs or video with affidavits.

42.10. The court must in appropriate cases where it finds the objection or resistance or claim to be frivolous or mala fide, resort to sub-rule (2) of Rule 98 of Order 21 as well as grant compensatory costs in accordance with Section 35-A.

42.11. Under Section 60 CPC the term "... in name of the judgment-debtor or by another person in trust for him or on his behalf" should be read liberally to incorporate any other person from whom he may have the ability to derive share, profit or property.

42.12. The executing court must dispose of the execution proceedings within six months from the date of filing, which may be extended only by recording reasons in writing for such delay.

42.13. The executing court may on satisfaction of the fact that it is not possible to execute the decree without police assistance, direct the police station concerned to provide police assistance to such officials who are working towards execution of the decree. Further, in case an offence against the public servant while discharging his duties is brought to the knowledge of the court, the same must be dealt with stringently in accordance with law.

42.14. The Judicial Academies must prepare manuals and ensure continuous training through appropriate mediums to the court personnel/staff executing the warrants, carrying out attachment and sale and any other official duties for executing orders issued by the executing courts.

43. We further direct all the High Courts to reconsider and update all the Rules relating to execution of decrees, made under exercise of its powers under Article 227 of the Constitution of India and Section 122 CPC, within one year of the date of this order. The High Courts must ensure that the

Rules are in consonance with CPC and the above directions, with an endeavour to expedite the process of execution with the use of information technology tools. Until such time these Rules are brought into existence, the above directions shall remain enforceable.”

[17] In para 42.9 of **Rahul S. Shah (supra)**, Hon’ble Supreme Court held that taking of evidence during execution proceeding should be resorted to ‘only in exceptional and rare cases’ where the fact could not be ascertained from available materials or by resorting to appointment of Commissioner, or production of electronic evidence, photograph, etc.

[18] In view of the above settled propositions of law and findings, this Court is of the opinion that fresh evidence is not required to determine the 2(two) points for determination framed by the Ld. Executing Court in para 11 of the impugned order and the same can be decided by referring to the relevant and admissible evidence, i.e., Commissioner report, field measurement and findings in the connected cases, etc. in terms of the provisions of Section 40 to 43 of the Evidence Act.

[19] Accordingly, the Petition is partly allowed. Framing of two points for determination in para 11 of the impugned order dated 17.04.2023 is upheld. However, the direction in para 11 of the impugned order dated 17.04.2023 to the effect of leading of evidence by adducing fresh witnesses, is set aside and the executing Court is directed to decide the 2(two) points for determination framed in para 11 on the basis of the available and admissible evidences as observed above.

[20] Since the execution case is pending for more than 10 years, the executing Court shall make an endeavor to dispose of the execution case as expeditiously as possible, preferably within a period of 3(three) months from the date of receipt of this order.

[21] The Petition along with applications, if any, is disposed of in terms of the above observations and directions. No costs. It is made clear that this Court does not express any opinion on merits of the case and anything stated herein shall be confined to the issues involved in the present case.

[22] Send a copy of this order to the Ld. Civil Judge Junior Division, Imphal West-I for information and further proceeding.

JUDGE

FR/NFR

-Larson