

**HIGH COURT OF TRIPURA
AGARTALA**

CRP No.44 of 2022

Sefali Datta, W/o Late Dinabandhu Datta, R/o- Vill & P.O- East Ratacherra, P.S & Sub Division- Kumarghat, District- Unakoti Tripura, Age-68

.....Petitioner(s)

Versus

1. Kananbala Dey @ Deb, W/o- Sri Dinesh Chandra Dey, R/o- 33, Bilukpath, South Basitnagar, P.O & P.S- Basitnagar, Guwahati- 29, District- Kamrup, Assam, Represented by the Attorney:- Nikhil Chandra Datta, S/o- Late Rajani Mohan Datta, Village- Fatikroy, Kumarghat, Unakoti, Tripura, [Plaintiff in T.S-29(P)/2017/ Decree Holder in Civil Misc (O) 36 of 2019]

.....Respondent(s).

2. Dilip Datta, S/o- Late Dinabandhu Datta, R/o- Vill & P.O- East Ratacherra, P.S & Sub Division- Kumarghat, District- Unakoti Tripura, Age 55

3. Suklarani Dey, D/o- Late Dinabandhu Datta, W/o- Rupesh Dey, R/o- P.O & P.S- Fatikroy, District- Unakoti Tripura, Age-48

4. Shipra Datta, D/o- Late Dinabandhu Datta, W/o- Dilip Datta, Village- Pechardahar, P.S- Kailashahar, Unakoti Tripura, Age-47 [Defendant in T.S.-29(P)/2017/ Judgment Debtor in Civil Misc (O) 36 of 2019]

.....Pro-forma Respondent(s).

For Petitioner(s) : Mr. Samarjit Bhattacharjee, Advocate.

For Respondent(s) : Mr. S.M. Chakraborty, Sr. Advocate,
Mrs. P. Chakraborty, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

JUDGMENT & ORDER (ORAL)

30/05/2023

Heard Mr. Samarjit Bhattacharjee, learned counsel for the petitioner and Mr. S.M. Chakraborty, learned senior counsel assisted by Mrs. P. Chakraborty, learned counsel for the respondents.

2. Petitioner is the Proforma Defendant No.4 in Title Suit Partition No.29 of 2017 who contested the suit by filing written statement apart from the Defendant No.1, but no decree was passed against the present petitioner by the learned Trial Court vide judgment dated 25.10.2017 and decree dated 19th September, 2018. The operative part of the judgment and decree reads as under :

“In the result, the suit of the plaintiff is decreed without cost as this is a partition suit and it is hereby declared that the plaintiff and defendant No.2 are owner of 0.22 acre each and defendant No.1 is the owner of 0.19 acre of the suit land as described in the schedule ‘B’ of the plaint.

Accordingly, the plaintiff and defendant No.1 & 2 are directed to amicably partition the suit land described in schedule ‘B’ of the plaint by metes and bounds within 30 days from today and failure to which any of them may move this court on the next date fixed for final partition of the suit land by metes and bounds by appointment of a survey commissioner.

Make necessary entry in the relevant Trial Register.

Prepare decree accordingly and put up before me for signature within 15 (fifteen) days from today latest on 04.09.2018.”

3. A final decree was prepared pursuant to the judgment which is at Page 26 of the memo of the instant petition. The present petitioner filed an application under Section 47 of the Code of Civil Procedure (CPC, for short) raising a plea that Case No. Execution 09(T)/2019 is not maintainable on the strength of power of attorney of the plaintiff decree

holder and needs to be verified regarding its genuineness. It also took a plea that some land has been transferred by way of sale to the petitioner and thus the present execution petition is not maintainable. Petitioner also pleaded that OP is not in possession of the suit land. The learned Executing Court dealt with this case in the following manner.

“It is further submitted that earlier partition suit vide No.TS 21(P) of 2016 was dismissed by the Civil Court and therefore the present execution case filed on the basis of the decree passed in subsequent partition suit vide No.TS 29(P) of 2017 is not maintainable.

In this context, I find, this Court passed final decree in TS 29(P) of 2017 following preliminary decree.

The objection about the dismissal of earlier partition suit vide TS 21(P) of 2016 as raised today in the execution petition cannot be entertained. Thus, I find, the matter of dismissal of earlier partition suit should have been raised during the trial of partition suit TS 29(P) of 2017. I am also of the view that the power of attorney cannot be challenged at this stage which was required to be challenged during the trial of TS 29(P) of 2017 about the sale of some land to petitioner and another I am also of the view that the same is a matter of trial and cannot be raised in the execution proceeding. Moreover, no document of sale is produced to substantiate the same. I am of the view that their share has already been determined in partition suit TS 29(P) of 2017 and this Court cannot go behind the decree unless cogent reason is shown.

Thus, considering all these aspects, I find, the objection petition filed by the petitioner/JD is liable to be rejected and stands rejected.

The case is disposed on contest.”

4. Mr. Samarjit Bhattacharjee, learned counsel for the petitioner, submits that the approach of the learned Executing Court in refusing to decide the issue under Section 47 of the CPC is not proper. Petitioner is also entitled to get a share in this portion of the suit land i.e. 0.22 acres. As such interference may be made in the impugned order.

5. Mr. S.M. Chakraborty, learned senior counsel for the respondents-decree holders, has strongly objected to the submissions made on behalf of the petitioner. He submitted that petitioner has no *locus standi* to maintain an application under Section 47 of the CPC since though the petitioner was Proforma Defendant No.4 and had contested the suit by filing written statement, but no decree has been passed against her. The decree is executable as against Defendant Nos.1 and 2. As such, the issues being raised before the Executing Court at this stage is not entertainable at the behest of a party against whom there is no decree.

6. I have considered the submissions made by the learned counsel for the parties and taken note of the materials placed on record. This Court is of the firm opinion that the issue raised by the petitioner, who was a Proforma Defendant in the Title Suit and against whom no decree has been passed by the learned Trial Court, is not entertainable in a

petition under Section 47 of the CPC as neither the decree is executable against her, nor these issues had been raised at the time of the suit. In case the petitioner was aggrieved by the judgment and decree, petitioner may have been advised to choose the correct remedy. However, resistance to execution of the decree by a party against whom no decree has been rendered, would really amount to abuse of the process of Court. In this regard, one may usefully refer to the opinion of the Apex Court rendered in the case of ***Rahul S. Shah v. Jinendra Kumar Gandhi and others in (2021) 6 SCC 418*** at Para 42.8 which is extracted hereunder makes it further clear :

“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.”

7. The Apex Court, considering the abnormal delay in execution of decrees and consequent denial of the fruits of litigation to the decree holder, has specifically directed the Executing Court to dispose of the execution proceedings within 6(six) months from the date of filing which may be extended only by recording reasons in writing for such

delay. As such, the Executing Court is under a huge obligation to ensure that frivolous applications to delay the execution of the decree are not encouraged.

8. On perusal of the impugned order and on merits also, this Court does not find any substance in the plea raised by the petitioner. Accordingly, the instant petition is dismissed.

Stay order, if any, stands vacated.

Pending application(s), if any, also stands disposed of.

Send down the LCRs forthwith.

(APARESH KUMAR SINGH), CJ

