

HIGH COURT OF TRIPURA

_A_G_A_R_T_A_L_A_

CRP. No.45 of 2021

For Petitioner(s)	:	Mr. P. K. Dhar, Sr. Advocate. Mr. A. Acharjee, Advocate.
For Respondent(s)	:	Mr. S. Bhattacharjee, Advocate. Mr. T. Chakraborty, Advocate.

HON'BLE THE CHIEF JUSTICE (ACTING)

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23/03/2023

Heard Mr. P. K. Dhar, learned senior counsel assisted by Mr. A. Acharjee, learned counsel appearing for the petitioners. Also heard Mr. S. Bhattacharjee, learned counsel and Mr. T. Chakraborty, learned counsel appearing for the respondent.

This petition has been filed under Article-227 of the Constitution of India for reversing/setting aside/modifying the order dated 06.11.2019 passed by the learned Civil Judge (Senior Division), Court No.1, West Tripura, Agartala in Misc. (Ex.) 05 of 2018 arising out of Ex.(T) 11 of 2017 allowing the objection under Section-47 of the Civil Procedure Code and holding that the original decree of Title Suit No.03 of 2002 and the subsequent decree passed by this Court in RSA. No.91 of 2011 is in executable.

The petitioners have prayed for the following reliefs:

- a. Admit this revision petition.
- b. Call for the records of Misc (Ex) 05 of 2018 arising out of Ex (T) 11 of 2017 from the file of learned Civil Judge (Senior Division) Court No.1, (Mrs. M. Bajerjee), West Tripura, Agartala and any other records which may be found relevant.
- c. Issue notice upon the respondent.
- d. And after hearing the parties, be pleased to pass appropriate order setting aside/quashing/ modifying the impugned order dated 06.11.2019 passed by the learned Civil Judge (Senior Division), Court No.1, West Tripura, Agartala in Misc.(Ex) 05 of 2018 arising out of Ex(T) 11 of 2017 and be pleased to interfere with the impugned order dated 06.11.2019 aforesaid and be pleased to pass appropriate direction upon the learned Executing Court below to proceed with the execution of decree in Ex(T)

11 of 2017 in terms of law and/or be pleased to pass any other appropriate order as may be deemed fit and proper for fair ends of justice.

e. In the interim be pleased to pass appropriate order staying operation of the impugned order dated 06.11.2019 passed by the learned Executing Court below in Misc (Ex) 05 of 2018 arising out of Ex(T) 11 of 2017.”

The case of the petitioners is that the petitioners filed Title Suit No.03 of 2002 which was decreed by the learned trial Court and appeal was preferred by some of the respondents which was partly allowed and RSA No.91 of 2011 arose which was decided in favour of the petitioners who were substituted on the death of their predecessor and the petitioners filed Ex (T)11 of 2017 for execution of decree and the respondents separately filed objection and application etc. which were registered as Misc (Ex) 05 of 2018, Misc (Ex)18 of 2017, Misc(Ex)19 of 2017 and Misc(Ex)20 of 2017.

The learned Executing Court passed order dated 06.11.2019 in Misc (Ex) 05 of 2018 holding that the decree in question was not executable and in view of such order, all other Misc (Execution) cases were disposed of and the main Ex(T) 11 of 2017 was dismissed and therefore, the petitioners have come up with the instant application under Article-227 of the Constitution of India against order dated 06.11.2019 passed by the learned Executing Court below in Misc(Ex) 05 of 2018.

The learned Court below after hearing the learned counsel appearing for the parties and after gone through the material evidence on record has observed as under:

“....Be it further observed that the Hon’ble High Court though opined that the present petitioner is not occupying any part of the suit land, but did not struck off her name or did not give any observation to execute the decree against the remaining defendants herein J.Ds.

This executing court is to execute the decree as it is passed by the trial court being confirmed and upheld by the Hon’ble High Court in which the relief was granted to the D.H. against all the J.Ds including the present petitioner.

Situated thus this court is to opine that as it cannot go beyond the decree, it is found to be inexecutable.

With the above said observation this instant execution petition is hereby allowed & disposed of on contest.
Make necessary entry.”

Mr. P. K. Dhar, learned senior counsel assisted by Mr. A. Acharjee, learned counsel appearing for the petitioners has submitted that the learned Court below appears to have acted in exercise of its jurisdiction illegally and with material irregularity in passing the impugned order by allowing objection under Section-47 of the Civil Procedure Code and by holding that the decree in execution was in-executable.

The learned Court below in passing the impugned order has exercised a jurisdiction not vested in it by law. The judgment and order sought to be executed in connection with Ex (T) 11 of 2017 is very much executable and there is no impediment to execute such judgment and decree in any way whatsoever.

Most of the judgment debtor of the judgment in original T.S. No.03 of 2002 and RSA No.91 of 2011 have left the suit land in question while some of the judgment debtors have amicably settled their disputes with the petitioners and as such, the suit land can be recovered by the petitioners through process of Court in executing the decree in question. He has further submitted that the present respondent does not possess the suit land in question and the respondent long back deserted the place and as such, she has got no *locus standi* even to contest the case in any way.

It is seen from the record that the decree in respect of 2.41 acres of land which bounded by East, West, North and South is dally with the execution petition schedule property. For the purpose of reference both the schedules may be reproduced herein below:

“Schedule of the suit land

Within District West Tripura, Sub-registrar office, Agartala P.S. Airport, Mouza Gandhigram within Khatian No.616/1 old Dag No.5610 at present

583, old Dag No.5610 at present 5832 old dag no. 5610 at present 6317, old dag no. 5612 at present 6320 within Khatina No.616/2 dag No. old 5612 at present 6323. Old Dag No.5613 at present 6325. Within kahatian No.616/3 old dag No.5613 at present 6328. Old dag No.6070 at present 6330. Khatian No.616/4 within dag No.6070 at present 6334. Bounded by North- Nal Rohini Bhowmik, South-Nal Naresh Bhowmik, West Nal Rohini Bhowmik at present Rai Haran Sarma, West Road. Within this land measuring 6 kanis 2 karas 6 dhurs (2.41 acres) approx.

Schedule of the decreetal land:

Within District West Tripura, Sub-registrar office, Agartala P.S. Airport, Mouza Gandhigram within Khatian No.616/1 old Dag No.5610 at present 583, old Dag No.5610 at present 5832 old dag No. 5610 at present 6317, old dag No. 5612 at present 6320 within Khatina No.616/2 dag No. old 5612 at present 6323. Old Dag No.5613 at present 6325. Within kahatian No.616/3 old dag No.5613 at present 6328. Old dag No.6070 at present 6330. Khatian No.616/4 within dag No.6070 at present 6334. Bounded by North- Nal Rohini Bhowmik, South-Nal Naresh Bhowmik, East Nal Rohini Bhowmik at present Rai Haran Sarma, West-Road. Within this land measuring 6 kanis 2 karas 6 dhurs (2.41 acres) approx.”

In view of above and after interacting with the learned counsel appearing for the parties, it is seen that the schedule of the property is one and the same and in the light of the above, the present petition stands allowed setting aside the order dated 06.11.2019 passed by the learned Civil Judge (Senior Division), Court No.1, West Tripura, Agartala in Misc. (Ex) 05 of 2018. Accordingly, the petitioners are at liberty to proceed with the matter in accordance with law.

Accordingly, the present writ petition stands disposed of. As a sequel, miscellaneous application(s) pending, if any, shall stand closed.

CHIEF JUSTICE (ACTING)

A. Ghosh