

**HIGH COURT OF TRIPURA
AGARTALA
CRP No.46 of 2022**

Sri Pradip Majumder, son of late Binode Ranjan Majumder resident of Chanban, Udaipur Town, P.S. & PO: Radhakishorepur – 799120, District- West Tripura

..... Petitioner(s)

V E R S U S

Legal representatives of deceased Haripada Sarkar :

- 1(a) Smt. Manju Sarkar, wife of late Haripada Sarkar.
- 1(b) Smt. Himani Sarkar daughter of late Haripada Sarkar.
- 1(c) Smt. Sudipta Sarkar daughter of late Haripada Sarkar.
- 1(d) Sri Soumitra Sarkar son of late Haripada Sarkar.

Legal representatives of deceased Dulal Majumder :

- 2(a) Smt. Sutapa Majumder wife of late Dulal Majumder.
- 2(b) Sri Debabrata Das son of late Dulal Majumder.

All are resident of village : Chataria, P.S. & P.O. Radhakishorepur, District- Gomati, Tripura.

3(c) Smt. Payel Majumder daughter of Dulal Majumder, and wife of Sri Rajib Das, resident of village Jatanbari, P.S. & P.O. Natunbazar, District Gomati, Tripura.

.....Respondent(s)

For Petitioner(s) : Mr. D.K. Daschoudhury, Advocate.

For Respondent(s) : Mr. H. Laskar, Advocate,
Mr. D.K. Pal, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Date of hearing and judgment : 23rd May, 2023.

Whether fit for reporting : NO.

JUDGMENT & ORDER(ORAL)

Heard Mr. D.K. Daschoudhury, learned counsel for the petitioner and Mr. H. Laskar, learned counsel for the respondents.

[2] The defendant in Title Suit No.05 of 2006 is the petitioner being aggrieved by the order dated 02.06.2022 passed by the learned Civil Judge, Sr. Division, Court No.1, Gomati District, Udaipur in Case No. Ex(T) 01 of 2021 [Annexure-6] which reads as under :

“I have carefully examined the application for execution of decree passed in the above cited title suit certified copy of decree as well as of judgment and order dated 04.12.2006 delivered in the said title suit. It appears from the sub-para-4 of page-15 of judgment and order that Receiver of the suit land i.e. OC of R.K. Pur PS Udaipur in connection with Misc case 231 of 2005 of SDM's Court Udaipur was directed to hand over the possession of the decretal land to the plaintiff.

In the contents of the application for execution of such decree, decree holder sought for intervention of this Court to issue necessary order to the OC R.K. Pur PS to deliver the vacant possession of the decretal land by removing all constructions, if any, to the decree holders and at the time of execution process if it is so necessary to take police help.

Considering foregoing aspects it is apparent that the decree holder is not seeking the intervention of the Court for recovery of possession of decretal land from the defendants, but to get recovery of possession of the decretal land from the custody from the Receiver i.e. OC R.K. Pur PS.

So I am of the reasoned opinion that the instant suit is maintainable to the extent of directing the OC of R.K. Pur PS to make necessary arrangement for delivery of the possession of decretal land to the decree holder applicants.

In the above circumstances, taking into consideration of judgment, order and decree thereof in connection with above cited title suit, the OC, R.K. Pur PS Udaipur Gomati being receiver of the decretal land having competency in connection with Misc 231 of 2005 of SDM's Court Udaipur is directed to make delivery of possession of decretal land to the decree holder-applicant namely Smt. Manju Sarkar, Smt. Himani Sarkar, Smt. Sudipta Sarkar, Sri Soumitra Sarkar and Sri Dulal Majumder after observing all legal formalities and submit a compliance report on the next date.”

[3] The operative portion of the judgment of the trial Court dated 04.12.2006 passed by the learned Civil Judge Sr. Division, South Tripura, Udaipur, in Case No. Title Suit 05 of 2006, is quoted hereunder :

“7(e) From the discussion as made in the foregoing paragraphs, it transpires that it will be fit and proper if the cost of the suit is imposed on the defendant. Hence, I do it. Further it transpires that O.C., R.K. Pur P.S. who was appointed as receiver of the suit land in connection with the case No. Misc. 231/2005 which was pending in the court of SDM, Udaipur, be

directed to hand over the possession of the suit land to the plaintiff. Hence, I do it. Thus, Issue No.5 is decided accordingly. In the result, the plaintiffs have proved their case.

The right, title, interest of the suit land is hereby declared in favour of the plaintiffs and the possession of the plaintiffs over the suit land is hereby confirmed and the defendant and his men and agents are hereby perpetually restrained from entering into the suit land. The receiver of the suit land i.e. the O.C. R.K. Pur PS in connection with Misc. 231/2005 of SDM's Court, Udaipur is hereby directed to hand over the possession of the suit land to the plaintiffs.

The defendant will bear the cost of the suit. A decree be prepared accordingly by the Sheristadar within 15 days from today and the Bench clerk is directed to send the case record to the Sheristadar for the purpose of preparing decree after observing all the formalities.

Every pages of the judgment are attested by my signatures. Return the documents to the proper parties after observing all the formalities as per the provisions of the order 13 Rule 9 CPC. The suit is decreed accordingly on contest. Announced in the open Court. Entered the result in the concerned trial register."

[4] The judgment of the trial Court has been restored by this Court in RSA No.48 of 2016 & RSA No.49 of 2016 vide judgment dated 15.07.2020 which is also quoted hereinafter :

"Having discussed as such, this court is of the view that the plaintiffs are entitled to get a declaration of right, title and interest of the suit land in his favour and he is also entitled to get a declaration in respect of possession of the suit land and accordingly, his possession over the suit land is confirmed. As consequence thereof, the plaintiff is entitled to a decree of perpetual injunction restraining the defendant or his man or agents from entering into the suit land and disturbing the peaceful possession of the plaintiff. As corollary, the impugned judgments and decrees are set aside. The judgment and decree of the trial court are restored."

[5] Perusal of the judgment of the trial Court as restored by the learned second appellate court shows that the suit property was under the custody of the receiver i.e. Officer-in-charge, R.K. Pur Police Station, Udaipur, Gomati Tripura in connection with Misc. Case No.231/2005 which was pending before learned SDM, Udaipur, Gomati Tripura. The receiver was directed to hand over the possession of the suit land to the plaintiff. The

learned Executing Court after consideration of the objection of the defendant/petitioner herein has only acted in furtherance of the decree as affirmed by the learned second appellate court by directing the receiver i.e. Officer-in-charge, R.K. Pur Police Station, Udaipur, Gomati Tripura to make delivery of possession of the decretal land to the decree holder-applicant/respondent herein after observing all legal formalities and to submit a compliance report.

[6] Learned counsel for the petitioner has referred to the order dated 01.08.2005 passed by the Sub-Divisional Magistrate [Annexure-1] under Section 145 of Cr.P.C. whereunder the property comprising Khatian Nos.815/4, 555/1, 266 & 554/2 measuring 4.0 acres was attached and Officer-in-charge, R.K. Pur Police Station, Udaipur, Gomati Tripura was appointed as a receiver of the disputed land. Both the party members and others were directed not to enter into the disputed land till finalization of the proceedings.

[7] The learned trial Court has after consideration of the evidence on record and the pleadings submitted by the parties framed five issues for consideration and thereafter proceeded to hold that the plaintiffs are entitled to right, title and interest of the suit land and their possession is confirmed and the defendant and their man and agents are perpetually restrained from entering into the suit land in respect of which the Officer-in-charge, R.K. Pur

Police Station, Udaipur, Gomati Tripura was appointed as a receiver in connection with Misc. Case No.231/2005.

[8] Learned Executing Court has only acted in furtherance of the decree passed by the learned trial Court as restored by the learned second appellate court by directing the receiver i.e. Officer-in-charge, R.K. Pur Police Station, Udaipur, Gomati Tripura to make delivery of the possession of decretal land to the decree holders. There is no infirmity in the impugned order dated 02.06.2022 passed by the learned Civil Judge, Sr. Division, Court No.1, Gomati District, Udaipur in Case No. Ex(T) 01 of 2021.

[9] Accordingly, the instant petition is dismissed. Pending application(s), if any, also stands disposed of.

(APARESH KUMAR SINGH), CJ