

**HIGH COURT OF TRIPURA
AGARTALA**

SAO 01 of 2023

Smt. Haridasi Paul **Appellant(s)**

Versus

Smt. Uma Deb and others **Respondent(s)**

For Appellant(s)	:	Mr. D. Debnath, Advocate
For Respondent(s)	:	Mr. S. Deb, Sr. Advocate Mr. Ranjit Dasgupta, Advocate
Date of hearing and delivery of judgment and order	:	05.10.2023.
Whether fit for reporting	:	Yes.

HON’BLE MR. JUSTICE T. AMARNATH GOUD

Judgment and Order (Oral)

Heard Mr. D. Debnath, learned counsel appearing for the appellant and Mr. S. Deb, learned senior counsel assisted by Mr. Ranjit Dasgupta, learned Advocate for respondents No.1 to 7.

[2] The instant appeal has been preferred under Section 104 read with Order XXI Rule 103 of CPC against the Order dated 27.07.2023 passed by the learned Addl. District Judge, Khowai Tripura, Khowai in case No. Civil Misc.(Appeal) 02 of 2022 arising out of Misc. Case No.45 of 2021 in Ex(T) No.25 of 2018.

[3] The case of the appellant in brief is that the petitioner-appellant filed an application under Order XXI, Rule 97 to 101 of CPC vide case No. Civil Misc.45 of 2021 in the Court of learned Civil Judge (Senior Division), Khowai Tripura to restrain the execution proceeding bearing No. Ex(T) 25 of 2018 claiming adverse possession over 50% area of the decreetal land/premises of the decree passed by the learned Civil Judge (Senior Division), Court No.2, West Tripura, Agartala in Case No. T.S. 49 of 2016 dated, 03.04.2018 in which, the appellant was not a party. Learned Civil Judge (Senior

Division), Khowai District by the judgment and order dated 29.09.2022 dismissed the said Civil Misc. 45 of 2022.

[4] Thereafter, being aggrieved, the appellant preferred appeal before the learned Addl. District Judge, Khowai Tripura District vide No. Civil Misc. (Appeal) 02 of 2022 which was also dismissed by the judgment and order dated 27.07.2023.

[5] Aggrieved by the orders passed by the lower appellate Court, appellant herein has preferred this instant appeal for redress by way of SAO (Second Appeal against Order) along with IA 01 of 2023 praying to stay the Execution Petition.

[6] The brief facts of the case are as under:-

The plaintiffs, Smt. Uma Deb and others preferred a suit vide No. T.S. 49 of 2016 before the Court of learned Civil Judge (Senior Division), Court No.2, West Tripura, Agartala seeking recovery of the suit land by evicting the defendants therefrom and the cause-title as per the suit is as under:

"T.S.49 of 2016

1. Smt. Uma Deb
W/O. Lt. Ashok Sankar Deb
2. Shri Ashis Deb,
S/O. Lt. Ashok Sankar Deb
3. Shri Biswanath Deb
S/O. Lt. Ashok Sankar Deb
4. Smt. Purnima Deb
D/O. Lt. Ashok Sankar Deb

All the above Sl. Nos. 1 to 4 are-
Residents of -
Teliamura, P.O. & P.S. Teliamura,
District- Khowai

5. Smt. Shikha Deb (Sen),
D/O. Lt. Ashok Sankar Deb
W/O. Sri Lal Mohan Sen

Resident of -
Dhaleswar, Road No.3,
P.O. Dhaleswar, P.S. East Agartala,
District-West Tripura

6. Smt. Rekha Deb (Sarkar),
D/O. Lt. Ashok Sankar Deb,
W/O. Lt. Subinoy Ch. Sarkar

Resident of -

Airport Road, Nutan Nagar,
P.O. Nutan Nagar, P.S. Airport,
District- West Tripura.

7. Smt. Rina Deb (Shil),
D/O. Lt. Ashok Sankar Deb
W/O. Sri Gobinda Prasad Shil

Resident of -
Bank of Amar Sagar, Udaipur,
P.O. & P.S- Radhakishorepur,
District- Gomati

..... Plaintiffs

V E R S U S

1. Shri Biswanath Paul,

2. Shri Prabir Ch. Paul,

3. Shri Pradip Ch. Paul

All the above Sl. Nos. 1 to 3 are-
Ss/O. Lt. Gouranga Ch. Paul

4. Smt. Yamuna Paul,
W/O. Lt. Gouranga Ch. Paul,

5. Smt. Jayarani Paul
D/O. Lt. Gouranga Ch. Paul

6. Shri Nitai Ch. Paul
S/O. Lt. Gouranga Ch. Paul

All the above Sl. Nos. 1 to 6 are
Residents of -
Teliamura Bazar, P.O. & P.S. Teliamura,
District- Khowai

..... Defendants”

The schedule of suit property is reproduced as under:

“SCHEDULE OF THE SUIT LAND

Teliamura Mouja, Khatian No.60, Plot No.2362.
Land measuring 1½ gandas and a house standing thereon
accommodating the business and a shop. bounded by-

East	:-	Assam-Agartala Road
West	:-	Akshay Paul
North	:-	Sri Niranjana Chandra Deb
South	:-	Sukhada Sundari Saha at present the plaintiff”

Note: The present appellant, Smt. Haridasi Paul is not a party to the suit.

[7] The suit proceeded unchallenged and ex-parte and the Court of the learned Civil Judge (Sr. Division), West Tripura, Agartala found the following points for decision on observing the material proposition of law and on the pleadings of the plaintiffs’ side in the suit:

“POINTS FOR DECISION

- (1) Whether the plaintiffs are entitled for recovery of the possession of the suit land as described in the schedule of the plaint by way of evicting the defendants from the suit land?
- (2) Whether plaintiffs are entitled for cost of the incidental expenses incurred in the suit?”

[8] Thereafter, on point-wise discussions, the Court of learned Civil Judge (Sr. Division) on 03.04.2018, decreed the suit in favour of the plaintiffs, which reads as under:

“O R D E R

9. In the result, this suit stands decreed without contest and without costs that plaintiffs are entitled for recovery of the possession of the suit land measuring 1½ gandas of Mouja-Teliamura, Khatian no.60, plot no.2362 by way of eviction of the defendants from the suit land.

The defendants are hereby directed to handover the vacant possession of the suit land to the plaintiffs within 2(two) months from today.

With the above observation the suit is disposed of without contest and without costs.

Prepare decree accordingly.

Enter the result in Trial Register.”

[9] The plaintiffs/decreed-holder filed execution case vide No. Ex(T) 25 of 2018 for recovery of possession of the suit premises/shop premises in the Court of learned Civil Judge (Sr. Div.), Khowai, Tripura. The following order was passed by the Court below:

“Case No. Ex(T) 25 of 2018

12.09.2023

Today was fixed for hearing/necessary order.

Ld. Counsel Sri R. Dasgupta and C. Das are present on behalf of the DH- petitioner.

Ld. Counsel Sri N. Acharjee is present on behalf of the J.D. No.3 and submitted one petition for fixing another date for further hearing of the execution case.

The petition is hereby rejected since it is an old pending of 2018.

Heard and considered.

The DH-petitioner are hereby directed to furnish necessary writs before this Court on the next date.

Fix 27.09.2023 for furnishing necessary writs by the DHs.”

[10] The Appellant herein, who is not a party to the suit has obstructed the decree-holder by way of filing an application, i.e. Civil Misc. 45 of 2021 under Order XXI Rule 97-101 CPC in the Court of the Civil Judge (Sr. Division), Khowai, Tripura claiming that she is in adverse possession over 50% area of the decreetal land/premises.

[11] The said application was dismissed on 29.09.2022. The said order is as under:

“ORDER

27. As a sequel to the above findings, I hold that the petitioner even failed to establish her claim of possession over any part of the decreetal land and accordingly she is not entitled to any relief at all. The petition stands dismissed.

28. The petitioner is asked to pay an amount of Rs.20,000/- (Rupees Twenty Thousand) to the DH/OPs for resisting the execution without any just ground.”

[12] Aggrieved by the above order passed by learned Civil Judge (Sr. Division), Khowai, Tripura, an appeal before the Appellate Court (Court of Addl. District Judge, Khowai, Tripura) has been filed by the petitioner therein and the same has been numbered as Civil Misc. (Appeal) 02 of 2022 filed under Order XXI Rule 103 CPC. After hearing the learned counsel appearing for the parties and on appreciation of the material evidence on record, the learned Appellate Court below dismissed the appeal by passing the following order on 27.07.2023:

सत्यमेव जयते

“ORDER

28. Due to the aforesaid findings, I hold that the appellant petitioner has failed to establish her claim of possession over any part of the decreetal land and the Trial Court has arrived at a correct finding after considering all the oral and documentary evidences. So, I do not find any ground to interfere with the order of Ld. Civil Judge (Sr.Div) Court No.2, Khowai dated 29.09.2022 in connection with case No. Misc 45 of 2021 arising out of Ex (T) 25 of 2018. But the cost which has been imposed upon the petitioner to pay an amount of Rs.20,000/- to the D.H /O.Ps appears to be exorbitant and meaningless because the statute provides every right to the petitioner for resisting the execution if he or she has any legitimate case. Right to appeal is a statutory right which can be exercised by any legitimate person to substantiate his or her claim. The present appellant is an aged lady about 90 years of age and she may not be knowing the intricacies of law, so for preferring appeal, I do not find prudent to impose cost of Rs.20,000/- upon the appellant petitioner. So I direct that the cost of Rs.20,000/- imposed upon the appellant-petitioner is hereby rejected and I order no cost to be paid by the appellant-petitioner to the D.H/O.Ps.

In the result the appeal is dismissed as it is devoid of merit.

The Stay Order, if any, shall stand vacated.

With the aforesaid observation the present appeal is disposed of on contest.....”

Therefore, aggrieved by the said Civil Misc. (Appeal) 02 of 2022 dated 27.07.2023 on the file of the Addl. District Judge, Khowai, the present SAO is filed.

[13] The matter came up for admission and hearing. Heard both sides.

[14] Mr. Sankar Deb, learned senior counsel appearing for the respondents/DHs raised a preliminary objection of maintainability and prayed to dismiss the SAO *in limine*.

[15] Mr. D. Debnath, learned counsel for the appellant with regard to the maintainability of the instant appeal has placed reliance on the judgment of the Apex Court in *Bhramdeo Chaudhary v. Rishikesh Prasad Jaiswal and another* reported in *AIR 1997 SC 856*, the relevant portion of the same is quoted hereunder:

“5. In short the aforesaid statutory provisions of Order XXI lay down a complete code for resolving all disputes pertaining to execution of decree for possession obtained by a decree-holder and whose attempts at executing the said decree meet with rough weather. Once resistance is offered by a purported stranger to the decree and which comes to be noted by the Executing Court as well as by the decree-holder the remedy available to the decree-holder against such an obstructionist is only under Order XXI Rule 97 sub-rule (1) and he cannot bypass such obstruction and insist on re-issuance of warrant for possession under Order XXI Rule 35 with the help of police force, as that course would amount to by-passing and circumventing the procedure laid down under Order XXI Rule 97 in connection with removal of obstruction of purported strangers to the decree. Once such an obstruction is on the record of the Executing Court it is difficult to appreciate how the Executing Court can tell such obstructionist that he must first lose possession and then only his remedy is to move an application under Order XXI Rule 99, CPC and pray for restoration of possession. The High Court by the impugned order and judgment has taken the view that the only remedy available to a stranger to the decree who claims any independent right, title or interest in the decretal property is to go by Order XXI Rule 99. This view of the High Court on the aforesaid statutory scheme is clearly unsustainable. It is easy to visualise that a stranger to the decree who claims an independent right, title and interest in the decretal property can offer his resistance before getting actually dispossessed. He can equally agitate his grievance and claim for adjudication of his independent right, title and interest in the decretal property even after losing possession as per Order XXI, Rule 99. Order XXI, Rule 97 deals with a stage which is prior to the actual execution of the decree for possession wherein the grievance of the obstructionist can be adjudicated upon before actual

delivery of possession to the decree-holder. While Order XXI, Rule 99 on the other hand deals with the subsequent stage in the execution proceedings where a stranger claiming any right, title and interest in the decretal property might have got actually dispossessed and claims restoration of possession on adjudication of his independent right, title and interest de hors the interest of the judgment-debtor. Both these types of enquiries in connection with the right, title and interest of a stranger to the decree are clearly contemplated by the aforesaid scheme of Order XXI and it is not as if that such a stranger to the decree can come in the picture only at the final stage after losing the possession and not before it if he is vigilant enough to raise his objection and obstruction before the warrant for possession gets actually executed against him. With respect the High Court has totally ignored the scheme of Order XXI, Rule 97 in this connection by taking the view that only remedy of such stranger to the decree lies under Order XXI, Rule 99 and he has no locus standi to get adjudication of his claim prior to the actual delivery of possession to the decree-holder in the execution proceedings. The view taken by the High Court in this connection also results in patent breach of principles of natural justice as the obstructionist, who alleges to have any independent right, title and interest in the decretal property and who is admittedly not a party to the decree even though making a grievance right in time before the warrant for execution is actually executed, would be told off the gates and his grievance would not be considered or heard on merits and he would be thrown off lock, stock and barrel by use of police force by the decree-holder. That would obviously result in irreparable injury to such obstructionist whose grievance would go overboard without being considered on merits and such obstructionist would be condemned totally unheard. Such an order of the Executing Court, therefore, would fail also on the ground of non-compliance with basic principles of natural justice. On the contrary the statutory scheme envisaged by Order XXI, Rule 97, CPC as discussed earlier clearly guards against such a pitfall and provides a statutory remedy both to the decree-holder as well as to the obstructionist to have their respective say in the matter and to get proper adjudication before the Executing Court and it is that adjudication which subject to the hierarchy of appeals would remain binding between the parties to such proceedings and separate suit would be barred with a view to seeing that multiplicity of proceedings and parallel proceedings are avoided and the gamut laid down by Order XXI Rules 97 and 103 would remain a complete code and the sole remedy for the concerned parties to have their grievances once and for all finally resolved in execution proceedings themselves.”

[16] On the contrary, Mr. S. Deb, learned senior counsel appearing for respondents No.1 to 7 further contended that the present appeal preferred by the appellant is not maintainable. He submits that as per Section 104 of CPC, no appeal shall lie from any order passed in appeal under this Section and hence, this Section is not application for filing of this appeal. As such, he prays that, the instant appeal may be dismissed.

[17] For better appreciation of the facts of the case, the provisions of Section 104 CPC, Order XXI Rules 97 to 103 are quoted hereunder:

The provisions of Section 104 CPC read as under:

“104. Orders from which appeal lies.- (1) An appeal shall lie from the following orders, and save as otherwise expressly provided in the body of this Code or by any law for the time being in force, from no other orders:-

* * * * *

[(ff) an order under Section 35A;]

[(ffa) an order under Section 91 or Section 92 refusing leave to institute a suit of the nature referred to in Section 91 or Section 92, as the case may be;]

(g) an order under Section 95;

(h) an order under any of the provisions of this Code imposing a fine or directing the arrest or detention in the civil prison of any person except where such arrest or detention is in execution of a decree;

(i) any order made under rules from which an appeal is expressly allowed by rules:

[Provided that no appeal shall lie against any order specified in clause (ff) save on the ground that no order, or an order for the payment of a less amount, ought to have been made.]

(2) No appeal shall lie from any order passed in appeal under this section.”

Order XXI, Rules 97 to 103 read as under:

“97. Resistance or obstruction to possession of immovable property:-

(1) Where the holder of a decree for the possession of immovable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the Court complaining of such resistance or obstruction.

(2) Where any application is made under sub-rule (1), the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.

98. Orders after Adjudication:- (1) Upon the determination of the questions referred to in Rule 101, the Court shall, in accordance with such determination and subject to the provisions of sub-rule (2),-

(a) make an order allowing the application and directing that the applicant be put into the possession of the property or dismissing the application;

or

(b) pass such other order as, in the circumstances of the case, it may deem fit.

(2) Where, upon such determination, the Court is satisfied that the resistance or obstruction was occasioned without any just cause by the judgment-debtor or by some other person at his instigation or on his behalf, or by any transferee, where such transfer was made during the pendency of the suit or execution proceeding, it shall direct that the applicant be put into possession of the property, and where the applicant is still resisted or obstructed in obtaining possession, the Court may also, at the instance of the applicant, order the judgment-debtor, or any person acting at his instigation or on his behalf, to be detained in the civil prison for a term which may extend to thirty days.

99. Dispossession by decree-holder or purchaser:-

(1) Where any person other than the judgment-debtor is dispossessed of immovable property by the holder of a decree for possession of such property or, where such property has been sold in execution of a decree, by the purchaser thereof, he may make an application to the Court complaining of such dispossession.

(2) Where any such application is made, the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.

100. Order to be passed upon application complaining of dispossession:-

Upon the determination of the questions referred to in Rule 101, the Court shall, in accordance with such determination:-

(a) make an order allowing the application and directing that the applicant be put into the possession of the property or dismissing the application; or

(b) pass such other order as, in the circumstances of the case, it may deem fit.

101. Question to be determined:-All questions (including questions relating to right, title or interest in the property) arising between the parties to a proceeding on an application under Rule 97 or Rule 99 or their representatives, and relevant to the adjudication of the application, shall be determined by the Court dealing with the application and not by a separate suit and for this purpose, the Court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction to decide such questions.

102. Rules not applicable to transferee pendent lite:-Nothing in Rules 98 and 100 shall apply to resistance or obstruction in execution of a decree for the possession of immovable property by a person to whom the judgment-debtor has transferred the property after the institution of the suit in which the decree was passed or to the dispossession of any such person.

Explanation:- In this rule, "transfer" includes a transfer by operation of law.

103. Orders to be treated as decrees:- Where any application has been adjudicated upon under Rule 98 or Rule 100 the order made thereon shall have the same force and be subject to the same conditions as to an appeal or otherwise as if it were a decree."

[18] It reveals from record that the application was filed under Order XXI, Rule 103 of CPC against the judgment and order dated 29.09.2022 passed by the learned Civil Judge (Sr. Div.), Khowai in case No. Civil Misc.45 of 2021, which was attended by learned Addl. District Judge, Khowai District in case No. Civil Misc. (Appeal) 02 of 2022. The present appellant, in the Court below failed to prove her adverse possession over 50% of decreetal shop premises in respect of the true owner and on examining all the aspects, learned Court below has rejected the claim of the appellant on merits by order dated 27.07.2023. The Court below under Order XXI Rule 97-103 CPC has dealt the matter as if it is a suit by giving an opportunity to the third party/petitioner and passed an order. It is to be treated as decree under Rule 101 & 103.

[19] It is seen from the record i.e from the petitions filed by the appellant in the instant SAO as well as in the Civil Misc. (Appeal) 02 of 2022 and Civil Misc.45 of 2021, that one of the defendants, 'Sri Nitai Ch. Paul' is the son of 'Lt. Haribal Paul' and the present appellant herein, Smt. Haridasi Paul, wife of Lt. Haribal Paul is related to the

defendant in the suit. The name of the said defendant (respondent herein) reflected in the cause-title of the aforesaid petitions, is as under:

**“.....13. Sri Nitai Ch. Paul
S/O Lt. Haribal Paul
-all are residents of Teliamura Bazar,
PO & PS Teliamura, District Khowai, Tripura”**

It is reasonably presumed that appellant herein is the mother of the defendant. In view of the same, this Court has no hesitation to draw adverse inference against the appellant and the defendant to say that since the defendant had failed to succeed, they have found out a method by filing an application under Order XXI Rule 97 to 103 before the Court below contending that the appellant herein is a stranger/third party to the suit. Therefore, the judgment and decree and the execution proceeding is not binding on her. Admittedly, the appellant herein, failed to convince the Court below by producing any documentary evidence to say that the appellant is in adverse possession and he is having right over the property.

In view of the above, this Court draws an adverse inference against the appellant as well as the defendant as indicated above.

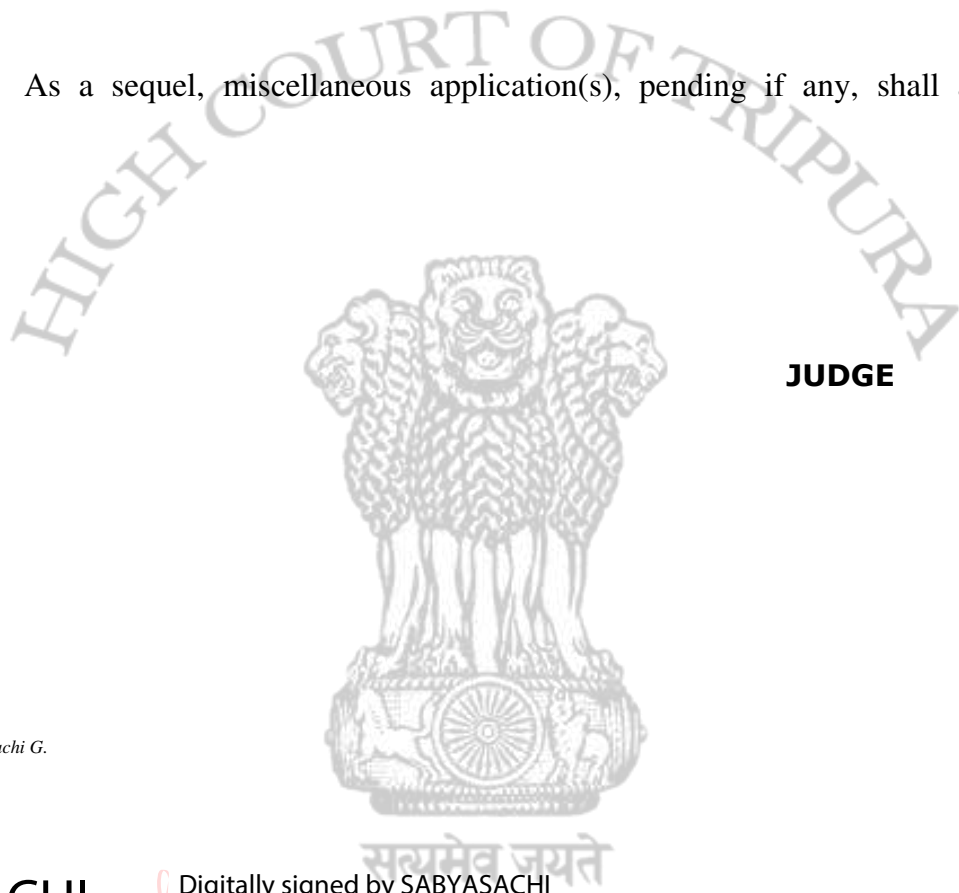
[20] Insofar as the challenge to the proceeding dated 12.09.2023 in the case No. Ex(T) 25 of 2018 dated 12.09.2023 is concerned, it is only a docket proceeding and it is not an order affecting the right title and interest. The Court below by docket proceeding dated 12.09.2023 has only rejected the request for adjournment and the same also cannot be under challenge. Insofar as the order dated 27.07.2023 in case No. Civil Misc. (Appeal) 02 of 2022, which is under challenge is concerned, the same is answered above.

[21] The present SAO has also been filed under Order XXI, Rule 103 of CPC. As per Rule 103, it relates to Rule 97 to 101 and none of the rules comes to the rescue of the appellant for preferring the present appeal. Section 104 of CPC prescribes no appeals lie except on the enumerated provisions of the Code.

[22] Since the claim of the appellant has been rejected by the Court below in case No. Civil Misc. (Appeal) 02 of 2022 by order dated 27.07.2023, if the same is read in consonance with the Rule 103 of CPC, it needs to be treated itself as a decree. Hence, the appellant herein, aggrieved by the said decree, ought to have preferred a regular appeal under the Code of Civil Procedure but not an appeal against the order.

In view of the above, the SAO is not maintainable and accordingly, the same is dismissed.

As a sequel, miscellaneous application(s), pending if any, shall also stand closed.



JUDGE

Sabyasachi G.

**SABYASACHI
GHOSH**

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