

**HIGH COURT OF TRIPURA
AGARTALA
CRP NO.64 OF 2022**

Shri Swadesh Ch. Shil

..... **Petitioner(s)**

Vs.

Shri Atul Ch. Shil and ors.

..... **Respondents(s)**

For the Petitioner(s) : Mr. S. Deb, Sr. Advocate.
Mr. B. Debnath, Advocate.

For the Respondent(s) : Mr. S.S. Debnath, Advocate.

Date of hearing and delivery of
Judgment & Order : 12.04.2023.

Whether fit for reporting : YES/NO.

HON'BLE THE CHIEF JUSTICE(ACTING)
JUDGMENT AND ORDER(ORAL)

This present CRP has been filed under Article 227 of the Constitution of India praying for exercising the supervisory jurisdiction over the Courts below in respect of the order passed on 09.06.2022 in Civil Misc(Appl)03 of 2021 by the learned District Judge, South Tripura, Belonia between the Shri Swadesh Shil, appellant-defendant and Shri Atul Ch. Shil and Smt. Minoti Rani Shil, plaintiff-respondents whereby and whereunder, the learned District Judge declined to interfere with the order of the learned Trial Judge, Civil Judge(Jr. Division), Belonia Sub-Division passed on 27.04.2021 in Misc(Inj)10 of

2019 whereby the learned trial Judge restrained the defendant opposite party i.e., the petitioner herein from entering into the suit land on possession of the plaintiff till the disposal of the original case.

2. The brief fact of this present CRP is that the respondents filed Title Suit No.19 of 2019 in the Court of the learned Civil Judge, Junior Division, Belonia claiming for decree for declaration of title and injunction. They also filed an application for a temporary injunction in the suit. The said suit was preceded by an application before the legal services authority, Belonia. The said authority returned a finding that the petitioner herein has been in possession of the major part of the allotted lands in favour of the plaintiff respondents, the subject matter of the suit. Various other field survey reports also justify that the petitioner has been in possession over the major part of the suit land which also stands confirmed by the report of the Survey Commissioner appointed by the learned Trial Court. Both the Courts below granted temporary injunction against the petitioner.

3. Hence the present petition has been filed by the petitioner herein praying for the following reliefs:-

"i. Issue notice upon the respondents and each one of them to show cause as to why the order passed on 09.06.2022(Annexure L supra) refusing to interfere with the order passed on 27.04.2021 shall not be quashed and reversed.

ii. Call for records; and
iii. In the interim and order in terms of i) above
and.
iv. After hearing the parties be pleased to make
Rules absolute."

4. Heard Mr. S. Deb, learned Sr. counsel assisted by Mr. B. Debnath, learned counsel appearing for the petitioner as well as Mr. S.S. Debnath, learned counsel appearing for the respondents.

5. Mr. S. Deb, learned Sr. counsel appearing for the petitioner/ defendant-opposite party submits that the Courts below without considering the various reports, but simply basing on the fact that the khatian stands in the name of the plaintiff-respondents, granted temporary injunction against the petitioner.

6. On the other hand, Mr. S.S. Debnath, learned counsel appearing for the respondents submits that this present petition has been filed under Article 227 of the Constitution of India but there is no jurisdictional error in the order passed by the Court below. This petition should have been filed under Article 115 of CPC. The petitioners-defendant opposite party has occupied the impugned land in recent times.

7. Heard both sides and perused the evidence on record.

8. It is seen from that the record, the Survey Commissioner has been appointed by the learned Trial Judge in Misc(Inj)10 of 2019 arising out of T.S.19 of 2019, and the survey commissioner clearly and categorically found the possession for the petitioner herein. The said report of the Survey Commissioner is given herein under:-

" Subject:- Field enquiry report of case No.Misc(injunction)10 of 2019.

Shri Atul Shil and other Vs. Shri Swadesh Shil of Matai
Hon'ble Madam,

In compliance with out Order in Misc(Injunction)10 of 2019, Shri Atul Ch. Shil, S/o. Late Basanta Kr. Shil Vs. Swadesh Shil, S/o. Late Basanta Kr. Shil, P.O.- Matai, Matai tahasil, Matai mouja for field enquiry in connection with direction for physical survey in the above case, I went to the spot on 6.2.2021 at 10.00 A.M., in presence of plaintiff Shri Atul Ch. Shil, S/o. Late Basanta Kr. Shil and defendant Shri Swadesh Shil, S/o Late Basanta Kr. Shil and also neighbours around and found that the plaintiff Shri Atul Ch. Shil has been possession 16 sataks of land out of 20 sataks of bastu land appertaining to hal dag No.889 of khatian No.573. of the said khatain in dag No.852/3673, the eastern side of 65 sataks out of 1.20 acres classified as tilla is being possessed. On the said land 3 nos of chamal tree and a few garden trees are found.

It is found that in the western side of dag No.889 of khatian No.573 in the name of Shri Atul Ch. Shil 40 sataks of land are being classified as bastu are being possed by Swadesh Shil. On the said land, the thakurgar(room of worship) of Shri Swadesh Shil is located. At the same time, 55 sataks situated on the western part of dag No.852/3673 classified as tilla have been under possession of Swadesh Shil on which a haystack and one akchala hut and many garjan trees are spotted which will being possed by Swadesh Shil.

So it is submitted for your kind consideration."

सत्यमेव जयते

9. The Survey Commissioner has been appointed by the Court below and both the parties herein shall maintain the status quo as per the above-mentioned Survey Commissioner report pending disposal of the Suit before the Court below. Further, the present CRP which is preferred under Article 227 of the Constitution of India is converted under Section 115 of CPC.

10. With the above observation and direction, this present CRP is allowed and the impugned lower Court order is modified to the extent indicated herein-above. As a sequel stay if any stands vacated, pending application(s), if any also stand closed.

CHIEF JUSTICE (ACTING)

suhanjit

