

**HIGH COURT OF TRIPURA
AGARTALA
CRP No.49 of 2023**

Md. Maynul Haque

.....Petitioner(s);

Versus

Mst. Joyrun Bibi

.....Respondent(s)

For Petitioner(s) : Mr. G.K. Nama, Advocate.

For Respondent(s) : None.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

27/09/2023

Heard Mr. G.K. Nama, learned counsel for the petitioner.

2. Petitioner was a defendant in Title Suit (Partition) No.03 of 2016 which has been decreed vide judgment dated 09.12.2016 *inter alia* holding as under:

“[17] In the result, it is hereby held that the plaintiffs have succeeded to establish the cause of action for the suit and the suit is allowed and decreed preliminary on contest with cost with declaration of the share of plaintiffs and defendants as under :

(a) Plaintiffs No.1 and principal defendant being the 2 sons of Late Kanu Kha, they are each entitled to get 2/8th share portion out of the suit property.

(b) Deceased Khayrunnessa being the daughter of Late Kanu Kha was entitled to get 1/8th share portion and so her legal heirs viz plaintiff No.2 and pro-defendants No.2 & 3 are jointly entitled to get 1/8th share portion out of the suit property.

(c) Pro-defendant No.4 and pro-defendant No.6 being the legal heir daughters of deceased Kanu Kha are each entitled to get 1/8th share portion out of the suit property each.

(d) Hawrunnessa being the legal heir daughter of deceased Kanu Kha was entitled to get 1/8th share portion during her life time and so her only legal heir husband i.e., pro-defendant No.5 is entitled to get her 1/8th share portion.

(e) One common passage or path shall be made within the suit premises out of the share of both parties, if necessary, at the convenience of both parties so that each shareholder can use and enjoy same towards their egress and ingress into their respective share of property.

[18] Prepare preliminary decree accordingly and place it before me for signing within 14 days.

[19] Both the parties are at liberty to make amicable partition of the suit land in respect of their respective shares as aforementioned within 30 days from this date failing which both parties are directed to take necessary step for appointment of survey commissioner to partition the suit land in the light of preliminary decree.”

Title Suit No.10 of 2019 has been preferred by Mst. Mayarun Nessa [Defendant No.6 in Title Suit (Partition) No.03 of 2016] seeking declaration, cancellation of decree obtained fraudulently and confirmation of possession. This suit has been dismissed for default. Meanwhile, the defendant No.4-one of the beneficiaries of the judgment and decree, has instituted an Execution (T) No.08/2022, in which the learned Executing Court has taken steps for execution of the decree. An application being Civil Misc. (Condonation) 74 of 2023 in Civil Misc.(Restoration) 73 of 2023 under Section 5 of the Limitation Act read with Article 122 of the said Act seeking condonation of delay of 469 days was preferred by the Mst. Mayarun Nessa for restoration of Title Suit No.10 of 2019, which was dismissed for default. The suit has not yet been restored. Meanwhile, Mst. Joyrun Bibi [Defendant No.4 in Title Suit (Partition) No.03 of 2016] has approached the Executing Court through a “Put-up petition” under Section 151 of CPC alleging that the decree which has been put to execution, has been obtained by practicing fraud on the court and hence, a Title Suit No.10 of 2019 has been filed challenging the said decree on the grounds of fraud. Petitioner has further stated that she wants to save her house (pucca construction) which has been built with hard earned money of her whole life. It is also alleged that from death certification, the learned Court would find that the mother of plaintiff No.2 of the partition suit allegedly died twice. On these grounds, the petitioner has sought deferment of the execution proceedings. It is submitted that the conduct of the Executing Court has not been proper and as such, petitioner has made an appeal/representation against misbehaviour committed by the learned Civil Judge, Senior Division, North Tripura District, Dharmanagar to learned

District Judge, North Tripura and also to learned Registrar General of this Court.

3. Mr. G.K. Nama, learned counsel for the petitioner, submits that the request of Mst. Joyrun Bibi [Defendant No.4 in Title Suit (Partition) No.03 of 2016] to allow the put-up petition through a new counsel has not been even taken note of by the Executing Court. The impugned order dated 05.08.2023 [Annexure-12] simply records that at the time of execution of the decree, the judgment-debtor has obstructed the process as per the Bailiff's report. There was a pucca house of four rooms with permanent electric connection on the decreetal land. The learned Executing Court, considering the anticipated disturbance of the judgment-debtor and his associates, allowed an application for disconnection of electric line. A request letter has been sent to SP, North Tripura to provide information before the court regarding one day salary and Head Account for the police personnel deputed for execution of the decree. Learned counsel for the petitioner submits that the learned Executing Court has therefore not paid any heed to defer the matter of execution in view of the fact that Title Suit No.10 of 2019 has been filed by another defendant Mst. Mayarun Nessa. As such, petitioner, having been denied relief, has approached this Court under Article 227 of the Constitution of India. It is submitted that the Executing Court may be directed to defer the execution pending adjudication of the Title Suit No.10 of 2019.

4. I have considered the pleadings placed from the record and also the submission of learned counsel for the petitioner. As the things stand, the

petitioner is not even the plaintiff in Title Suit No.10 of 2019 which seeks cancellation of the final decree dated 15.12.2017 passed by the learned Civil Judge (Senior Division), Dharmanagar, North Tripura in Title Suit (Partition) No.03 of 2016. The Title Suit No.10 of 2019 has been dismissed for default and not even been restored. It appears that there is a delay of 469 days in seeking restoration of the suit which was dismissed for default; for condonation of which, the plaintiff Mst. Mayarun Nessa, in Title Suit No.10 of 2019, has filed Civil Misc. (Condonation) No.74 of 2023 in Civil Misc. (Restoration) 73 of 2023.

5. Apart from the above facts, it does not appear from the pleadings on record that the plaintiff in Title Suit No.10 of 2019 has made any application before the Executing Court in the manner in which the present petitioner is claiming. There is a mandate to execute the decree within a timeframe by every Executing Court in view of the decision rendered by the Apex Court in the case of ***Rahul S Shah v. Jinendra Kumar Gandhi & ors*** reported in ***(2021) 6 SCC 418***. In case the Executing Court fails to get the decree executed within the timeframe, it has to record its reasons in writing. From the perusal of the impugned order, it appears that the Executing Court has issue of delivery of possession which remained unexecuted as per the report of the Bailiff, since the judgment-debtor has obstructed the process. Acting on the Bailiff's report, the Executing Court has allowed the application for disconnection of the electric line of the house in question and also requested the SP, North Tripura to provide necessary information for deployment of police force. On the next date i.e. 11.08.2023,

the Executing Court has asked the decree-holder to deposit the money for deputing the police force to execute the decree passed in Title Suit (Partition) No.03 of 2016.

6. In the above background facts and circumstances and in view of the fact that the petitioner is not even the plaintiff in Title Suit No.10 of 2019, which in fact lies dismissed for default and has not been restored as yet; the approach of the learned Executing Court in proceeding with the execution decree cannot be found fault with. As such, this Court does not find any ground to interfere under Article 227 of the Constitution of India in exercise of the powers of superintendence of this Court.

7. The instant petition is accordingly dismissed. Pending application(s), if any, shall stand disposed of.

(APARESH KUMAR SINGH), CJ