

**HIGH COURT OF TRIPURA
AGARTALA**

CRP No.93 of 2021

Sri Sunil Kumar Chaudhury

..... *Petitioner(s)*

V E R S U S

Sri Bhabaranjan Bhowmik & others

.....*Respondent(s)*

For Petitioner(s) : Mr. P.K. Dhar, Sr. Advocate,
Mr. Kirti Kr. Saha, Advocate.

For Respondent(s) : Mr. G.S. Bhattacharjee, Advocate,
Mrs. S. Deb (Gupta), Advocate.

HON'BLE THE CHIEF JUSTICE (ACTING)

Date of hearing and judgment : **14th February, 2023.**

JUDGMENT & ORDER (ORAL)

Heard Mr. P.K. Dhar, learned senior counsel assisted by Mr. Kirti Kr. Saha, learned counsel appearing for the petitioner. Also heard Mr. G.S. Bhattacharjee, learned counsel appearing for the respondent No.1 as well as Mrs. S. Deb (Gupta), learned counsel appearing for the respondent No.2.

2. Challenge in the present revision petition has been made against an order dated 20.09.2021 passed by the learned Civil Judge (Senior Division), Court No.1, West Tripura, Agartala, in Case No. Ex (T) 06 of 2019 arising out of Case No. Title Suit (P) 45 of 2015 whereby the learned

Executing Court disposed of the execution petition without affording any opportunity to the petitioner herein to file written objection against the execution of final decree of partition.

3. Brief facts leading to this case are that the respondent No.1-plaintiff had instituted a Title Suit (P) No.45 of 2015 before the learned Civil Judge (Senior Division), Court No.1, West Tripura, Agartala on 19.05.2015 for preliminary decree of partition of the suit land in equal $1/3^{\text{rd}}$ share among the plaintiff and defendants. Subsequently, an order with regard to the preliminary decree of partition was passed on 27.03.2018 by learned Civil Judge and the plaintiff was entitled to get $1/4^{\text{th}}$ share over the suit land. After passing of the said preliminary decree, prayer was made by the plaintiff as Decree Holder for final decree and subsequently final decree of partition was passed on 21.01.2019 on the basis of reports submitted by the Survey Commissioner and the said report formed part of the decree.

4. Thereafter, respondent No.1 made an application for execution of final decree and his application was registered as Ex (T) No.06 of 2019. Pursuant to his application, the appointed Survey Commissioner along with Bailiff and police personnel visited the land, demarcated the same and surveyed the decretal land. Thereafter, he submitted a report and on the

basis of reports sent by the Survey Commissioner and the Bailiff, the Court below vide order dated 20.09.2021 disposed of the execution petition. During hearing of Ex (T) No.06 of 2019, objection was raised on behalf of the petitioner herein stating that pillars were not posted by the Bailiff in his part of land and the hut standing on the way/passage was not removed by the Bailiff and time was sought before the Court below to file such objection in writing. But the learned Executing Court did not allow time in favour of the petitioner to file written objection against the report of the Survey Commissioner and the Bailiff and passed order dated 20.09.2021. Being aggrieved and dissatisfied with the said order passed the learned Executing Court below, the petitioner has preferred the instant revision petition. Hence, this case.

5. Petitioner has prayed for the following reliefs:

"(i) admit this Revision Petition;

(ii) call for record of EX(T) 06 of 2019 from the Learned Executing Court below along with record of Title Suit (Partition) No.45 of 2015 from the Court of the Learned Civil Judge (Senior Division), Court No.1, West Tripura, Agartala and any other records which may be found relevant;

(iii) issue notices upon the Respondents;

(iv) and after hearing the parties, be pleased to set aside/quash/reverse/ modify the impugned order dated 20.09.2021 passed by the Learned Civil Judge (Senior Division), Court No.1, West Tripura, Agartala in EX(T) 06 of 2019 arising out of Title Suit (Partition) No.45 of 2015 and be pleased to pass further order directing the Learned

Executing Court below to allow humble Petitioner opportunity of being heard on the report of the Survey Commissioner and Bailiff and be pleased to pass further order directing the Learned Executing Court below to direct the Survey Commissioner and Bailiff to execute the final decree of partition properly identifying the portion of land of the humble Petitioner and be pleased to pass further order/direction as may be deemed fit and proper for the ends of justice;

(v) pending the Revision Petition be pleased to pass further order staying operation of the impugned order dated 20.09.2021 passed by the Learned Executing Court below in EX(T) 06 of 2019."

6. Mr. P.K. Dhar, learned senior counsel appearing for the petitioner, contends that the petitioner has not yet been handed over possession of land insofar as his share is concerned. He also contends that he has nothing to state regarding the final decree of partition passed by the learned Executing Court below; but contends that the execution of decree was not properly done and further contends that the Decree Holder got the possession of land whereas the petitioner has not been given possession over his portion of land till date. Accordingly, he prays for setting aside the impugned order dated 20.09.2021 passed by the Learned Executing Court below in Ex (T) 06 of 2019 with a direction to the learned Executing Court below to direct the Survey Commissioner and Bailiff to execute the final decree of partition properly identifying the portion of land of the petitioner.

7. On the other hand, Mr. G.S. Bhattacharjee, learned counsel appearing for respondent No.1 as well as Mrs. S. Deb (Gupta), learned counsel appearing for the respondent No.2, vehemently objected the contentions raised by the learned senior counsel for the petitioner *inter alia* contending that the averments made by the learned senior counsel appearing on behalf of the petitioner are totally incorrect. Mr. Bhattacharjee, learned counsel further contends that during execution of final decree of partition, the Survey Commissioner measured the land with proper identification as per the decree and handed over the possession of land to all the co-sharers and the son of the petitioner herein also being satisfied had taken over the possession of the property after putting his signature in the report submitted by the Survey Commissioner to the Court below and the same is on record. Hence, he prays for dismissal of the instant revision petition since it is evident from the record that no error was committed on part of the Survey Commissioner or the Bailiff while executing the final decree of partition and the learned Executing Court has correctly passed the impugned order. Mrs. S. Deb (Gupta), learned counsel for respondent No.2, also supported the contentions raised by Mr. Bhattacharjee.

8. While advancing arguments, both the learned counsel appearing for the respondents placed a document before the Court wherefrom it is

apparent that the son of the petitioner herein was present during execution of the decree and he had taken possession over the land by putting his signature on the report submitted by the Survey Commissioner. In this regard, Mr. Dhar, learned senior counsel appearing on behalf of the petitioner reported no instructions.

9. Having heard the learned counsel for both the parties, this Court feels that appropriate justice would be done if the revision petition is disposed of with a direction to the learned Executing Court below to ensure that the possession of the petitioner as per the report of the Survey Commissioner is handed over to him under proper procedure, if not already done.

10. With the aforesaid observations and directions, the present revision petition stands disposed of. Pending application(s), if any, also stands disposed of.

Send down the LCRs forthwith.

CHIEF JUSTICE (ACTING)

Pijush