

**HIGH COURT OF TRIPURA
AGARTALA**

CRP No.45 of 2024

CRP No.50 of 2024

Sri Gopal Roy

..... Petitioner (s).

Versus

Sri Arjun Roy and others

..... Respondent(s).

For Petitioner (s) : Mr. D.K. Biswas, Sr. Advocate,
Mr. G.K. Nama, Advocate,
Mr. D. S. Kunwar, Advocate.

For Respondent(s) : None.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

11/07//2024

Heard Mr. D.K. Biswas, learned senior counsel assisted by Mr. G.K. Nama, learned counsel for the petitioner in both the petitions.

[2] CRP No.45/2024 has been preferred by one of the judgment debtor in T.S. No.02/2013, decree dated 13th December, 2013 against the order dated 06.03.2024 passed by the learned Court of Civil Judge (Sr. Divn.), (Court No.1), Gomati District, Udaipur in EX(T) No.06/2015 whereby his application under Order-XXI, Rule-29 of the CPC for stay of the instant execution case has been rejected.

[3] CRP No.50/2024 has been preferred by the same judgment debtor against the order dated 20.01.2024 passed in Civil Misc. 30/2023 in c/w EX(T) No.06/2015 by the learned Court of Civil Judge (Sr. Div.), Gomati District, Udaipur whereby his application under Section 47 of the CPC, 1908 has been rejected.

[4] Both the cases are being heard together as common issues arise out from both the impugned orders passed by the same Court on the application of the same judgment debtor in the matter of execution of the decree rendered in the Title Suit No.02/2013.

[5] In the application under Order-XXI, Rule-29 the judgment debtor/ petitioner pleaded that the decree sought to be executed is contingent upon proof of possession of the decretal land, as is also evident from the decree of the second appellate Court. The judgment debtor/petitioner had also instituted a separate civil suit bearing T.S No.43 of 2023 for a decree of declaration for possession over the decretal land and that the said proceeding would determine as to who is in the possession of the decretal land. On the aforesaid pleadings, he sought stay of the execution of the case till disposal of the T.S. No.43/2023. On the other hand, the decree holder side submitted that the application filed under Order-XXI, Rule-29 of the CPC is not maintainable and liable to be rejected at the threshold. They further alleged that the instant petition was only to deprive the decree holders from enjoying the fruits of the decree passed in TS No.02/2013. Stay of execution at this stage at the behest of one of the judgment debtor would not be justified. The learned executing Court upon consideration of rival submission of the parties

took into note the observation of the second appellate Court in RSA No.27/2015 preferred by the defendants including the present petitioner against the judgment dated 18.05.2015 delivered in T.A. No.31 of 2013 by the District Judge, Gomati, Udaipur. The second appeal was admitted for hearing on the following substantial question of law:

“Whether the judgment and decree passed by the appellate Court affirming the judgment and decree passed by the trial Court, suffers from perversity in view of non consideration of the additional evidence, adduced at the time of hearing of appeal.”

[6] The second appellate Court disposed of the appeal in the following manner:

“15. Having regard to all these, this court is of the view that the declaration of the title as made by the courts below in terms of the order dated 11.08.2014 delivered in DM Case No.32/2012 has become contingent upon the outcome of the proceeding as pending for decision. As it has been observed by the competent authority, the defendants No.2, 3 and 4 and the Satsanga Ashram is in the possession of the suit land and they have been asked to file proper application for the allotment. The determination of possession is also contingent as there is no evidence by which the observation made in the order dated 11.08.2014 can be rebutted. In the order dated 11.08.2014 it has been clearly held that the physical possession of the suit land was with the defendants No.2, 3 and 4 or their predecessor namely, Manoranjan Roy since 1963. Unless the superior forum interfered with the said observation, it has to be deemed that the defendants were in continuous possession over the suit land since 1963. Thus, the entire gamut of possession would be contingent upon the decision of the superior forum. If the superior courts for any reason declined to interfere with the order dated 11.08.2014, then the judgment and decree as delivered by the first appellate court shall be null and void for all purposes.

16. Having observed thus, this appeal is disposed of in terms of the observation made hereinabove.

Draw the decree accordingly.

It is made clear that the decree will never come into effect unless the proceeding before the superior forum challenging the order dated 11.08.2014 reaches its finality.

After preparation of the decree, send down the records.”

[7] The learned second appellate Court in the operative portion of the judgment made clear observation that the determination of possession has become contingent as there is no evidence by which the observation made in the order dated 11.08.2014 by the District Magistrate in DM case No.32/2012 can be rebutted. It was held that in the order dated 11.08.2014, the physical possession of the suit land was with the defendants No.2, 3 and 4 or their predecessor namely, Manoranjan Roy since 1963. Unless the superior forum interfered with the said observation, it has to be deemed that the defendants were in continuous possession over the suit land since 1963. Thus, the entire gamut of possession would be contingent upon the decision of the superior forum. If the superior Courts for any reason declined to interfere with the order dated 11.08.2014, then the judgment and decree as delivered by the first appellate Court shall be null and void for all purposes. It was also made clear that the decree will never come into effect unless the proceeding before the superior forum challenging the order dated 11.08.2014 reaches its finality. Later developments show that the order dated 11.08.2014 passed in DM case No.32/2012 was quashed by the learned single bench of this Court and the allotment of the land in question was restored to the decree holder with immediate effect. It also restored back the record of rights already created in favour of the decree holder side as allottee in its original form.

[8] The judgment of the learned single judge was challenged by the same judgment debtor before the writ appellate Court. The Hon'ble division bench of this Court by its judgment dated 22.12.2022 dismissed the appeal of the judgment debtor and affirmed the judgment and order of the single bench

dated 24.03.2022. The learned division bench in the appeal preferred by the same petitioner after discussing the entire chronology of events in relation to passing of the decree in T.S. No.02/2013, the order passed by second appellate Court in RSA No.27/2015; the proceedings in relation to the allotment of land in favour of Manoranjan Roy at the behest of the present petitioner before the Sub-Divisional Magistrate and the judgment dated 24.03.2022 passed by the learned single bench on the challenge to the order dated 11.08.2014 passed in DM case No.32/2012 held that the revenue Court had committed a serious error of law in passing the impugned order dated 11.08.2014. The learned writ appellate Court went on to hold that the appeal is devoid of any merit. The judgment and order of the learned single judge dated 24.03.2022 was affirmed.

[9] These facts have been taken note of by the learned executing Court in the impugned order dated 06.03.2024 while rejecting the application for stay of the execution case under Order-XXI, Rule-29 of the CPC at the behest of the same petitioner. The learned executing Court has also found that in T.S. No.43/2023 only the judgment debtor No.3 and decree holders of the case are parties. The decree for which the instant execution case is proceeding is against three other judgment debtors and not against only the judgment debtor No.3/present petitioner. It also found that the judgment debtor No.1, 2 and 4 of the execution case were not made parties in the T.S. No.43/2023. The executing Court therefore held that it cannot be said that T.S. No.43/2023 is a suit proceeding between the same parties of the instant execution case. The subject matter of the instant case and the subject matter of T.S. No.43/2023

were also not the same. The learned executing Court was conscious that the execution case was instituted on 07.09.2015 and was still at the stage of process of execution of the decree, meaning thereby that the fruits of decree passed in T.S. 02/2013 could not be yet enjoyed by the decree holders. On the basis of the aforesaid facts and circumstances and the reasons recorded, the prayer for stay of the execution case by one of the judgment debtor/ present petitioner was rejected.

[10] In CRP No.50/2024 the order dated 20.01.2024 impugned, arises out of rejection of the application under Section 47 of the CPC by the same judgment debtor/present petitioner. The petitioner had once again raised the same plea of decree holders possession over the suit land as it was not decided by the Civil Court. It was further averred that the revenue authority had held that the judgment debtors i.e. the present petitioner are in physical possession of the decretal land since 1963 and unless the factum of possession as held by the revenue authority is interfered by the superior forum, the judgment and decree of the first appellate Court would be null and void for all purposes. The present petitioner, therefore, invoked Section 47 of CPC for the learned executing Court to decide questions arising between the parties to the suit in relation to the execution, discharge or satisfaction of the decree. This prayer was opposed by the decree holders by filing written objection. They objected to the maintainability of the petition under Section 47 and the absence of *locus standi* on behalf of the judgment debtor stating that he had no right, title, interest and possession over the decretal land. They further averred that the execution case is pending since 2015 and the limitation period for filing of

written objection against any execution of the decree under Section 47 of CPC is three years only. The instant application was filed much beyond the period of three years. Reference was made to the judgment and order of this Court in RSA No.27/2015 dated 04.04.2018. Reference was also made to the order dated 24.03.2022 passed by the learned single bench of this Court setting aside the order dated 11.08.2014 passed in DM case No.32/2012 restoring back the allotment of the land in question in favour of the decree holder side with immediate effect and also the restoration of the record of rights created in their favour as allottee in its original form.

[11] The learned executing Court also referred to the judgment passed by the writ appellate Court dated 22.12.2022 whereby the challenge to the decision of the learned single bench dated 24.03.2022 was affirmed. The learned executing Court referred to the provisions of Section 47 of the CPC and proceeded to hold that such a question must relate to the enforcement of the obligations created by the decree and those which were not raised at the trial proceedings and not decided by the Court; otherwise, it is not open for the parties to raise the same issue or question again at the stage of execution. In the instant case it was held that the petitioner/judgment debtor had only raised the question in respect of the possession of the decretal land. However, the judgment debtor/petitioner has forgotten that the issue of recovery of possession of the decretal land in favour of the decree holders has been decided by the learned Single Bench and affirmed by the learned appellate Court. Therefore, it was held that no such question has been raised by the judgment debtor which has been left undecided in the T.S. No.02/2013.

All the questions reflected in the application of the petitioner/judgment debtor in the instant case had already been decided in T.S. No.02/2013. As such, the application under Section 47 of the CPC was dismissed.

[12] Mr. D.K. Biswas, learned senior counsel for the petitioner has in support of the challenge to both the orders in the respective civil revision petitions preferred under Article 227 of the Constitution of India made the common objection that the executing Court cannot go beyond the terms of the decree passed in the original title suit. The factum of possession remain undetermined by the learned title Court. Even the second appellate Court had in its judgment held that as per the order dated 11.08.2014 passed in DM case No.32/2012, the physical possession of the suit land was with the defendants No.2, 3 and 4 or their predecessor. Unless the superior forum interfered with the said observation, it has to be deemed that the defendants were in continuous possession over the suit land since 1963. It is submitted that the order passed by the learned SDM in DM case No.32/2012 dated 11.08.2014 ought to have been assailed before the appellate forum of the Secretary, Revenue under Section 93 of the TLR & LR Act, 1960. Such recourse has not been taken. The executing Court could not go beyond the terms of the decree. As such, the decree became un-executable. He submits that on the very issue of possession of the suit land, the judgment debtor has instituted T.S. No.43/2023. Therefore, proceedings in the execution case should be kept in abeyance. On both counts, therefore, the impugned orders passed by the learned Civil Judge (Sr. Div), Court No.1, Gomati District, Udaipur in EX(T) No.06/2015 are fit to be set aside.

[13] I have considered the submission of the learned senior counsel for the petitioner at length and also gone through the pleadings in both the revision petitions. I have also taken note of the detail chronology of the proceedings starting from the judgment and decree rendered by the learned trial Court in T.S. No.02/2013. The narration of events and facts in the forgoing paragraphs have also referred to the order passed by the learned second appellate Court as regards the gamut of possession in view of the order dated 11.08.2014 passed in DM case No.32/2012 by the learned SDM. The learned second appellate Court had in the concluding part of the judgment dated 04.04.2018 clearly held that unless the superior forum interfered with the said observation, it was to be deemed that the defendants were in continuous possession over the suit land since 1963. The entire gamut of possession would be contingent upon the decision of the superior forum. It was also made clear that if the superior Courts for any reason declined to interfere with the order dated 11.08.2014, then the judgment and decree as delivered by the first appellate Court should be null and void for all purposes. The second appellate Court further clarified that the decree will never come into effect unless the proceeding before the superior forum challenging the order dated 11.08.2014 reaches its finality. The correctness and legality of the order dated 11.08.2014 as dealt with in the forgoing paragraphs of this order leaves no room of doubt that the superior forum i.e. the learned single bench of this Court in WP(C) No.370/2016 has set aside the order dated 11.08.2014 passed in the DM case No.32/2012 and restored back the allotment of the land in question to the decree holder with immediate effect and also the record of rights created in his favour as allottee in its original form. This decision of the

learned single bench stood affirmed by a detail judgment of the learned writ appellate Court dated 22.12.2022 which has also been referred to hereinbefore. The observation of the learned second appellate Court regarding interference by the superior forum on the question of possession of the defendants in view of the order dated 11.08.2014 in DM Case No. 32/2012 therefore stood satisfied. In the proceeding under writ jurisdiction the order of learned SDM in DM case No.32/2012 on the question of possession of the decree holder and restoration of the record of rights in his favour has been finally determined. It would not be open for the judgment debtor/ petitioner to contend that the superior forum referred to in the operative portion of the judgment dated 04.04.2018 passed by the second appellate Court could only be the appellate authority under the TLR and LR Act, 1960. As such, the reasons and the findings recorded by the learned executing Court in its impugned order dated 06.03.2024 for rejecting the application for stay of the execution proceedings under Order-XXI, Rule-29 of the CPC are proper and within the bounds of its jurisdiction and do not suffer from any perversity. It does not deserve any interference under Article 227 of the Constitution of India.

[14] In view of the aforesaid discussion and reasons, the court is also of the considered opinion that the application of the judgment debtor/ petitioner under Section 47 of the CPC asking the learned executing Court to determine issues in relation to possession of the parties has also been rightly rejected. The issue of possession between the parties as per observation of the second appellate Court in RSA No.27/2015 stands affirmed in favour of the

decree holders by virtue of the judgment rendered by the learned single bench dated 24.03.2022 as affirmed by the learned division bench in WA No.73/2022 dated 22.12.2022.

At this state, it is proper to rely upon the direction and guidelines issued by the Apex Court in the case of ***Rahul S. Shah versus Jinendra Kumar Gandhi and others*** passed in ***Civil Appeals Nos.1659-60 of 2021*** reported in ***(2021) 6 SCC 418*** on the question of execution of the decrees. The Apex Court has at paragraph- 14 of the judgment held that the executing Court must dispose of the execution proceedings within six months from the date of filing, failing which it may be extended only by recording reasons in writing for such delay. The present execution case has been pending for 9(nine) years by now. The learned executing Court is, therefore, under an obligation to ensure that the fruits of the decree accrue in favour of the decree holder in accordance with law.

[15] As such, this Court is of the considered view that the impugned orders do not suffer from any want of jurisdiction or are perverse in the eye of law, which requires interference by this Court under Article 227 of the Constitution of India. Accordingly, both the instant petitions are dismissed. Pending application(s), if any, also stands disposed of.

(APARESH KUMAR SINGH), CJ