

**HIGH COURT OF TRIPURA
AGARTALA**

CRP No.68 of 2024

Sri Jitendra Chandra Barman, S/o Lt. Jagabandhu Barman, Resident of Taxapara, P.O. Taksapara, P.S. Melaghar, Sub-Division- Sonamura, District- Sepahijala, Tripura, Pin-799103

.....Petitioner(s);

Versus

Shri Dipal Chandra Das, S/o Lt. Surendra Chandra Das, Resident of Taxapara, P.O. Taksapara, P.S. Melaghar, Sub-Division- Sonamura, District- Sepahijala, Tripura, Pin-799103

.....Respondent(s)

For Petitioner(s) : Mr. S. Chakraborty, Advocate.

For Respondent(s) : None.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

02/08/2024

Heard Mr. S. Chakraborty, learned counsel for the petitioner.

2. Petitioner is the defendant in Title Suit 24 of 2011. The suit was decreed in favour of the plaintiff and the first appeal and the regular second appeal preferred against that have also been dismissed by the learned superior Courts. During execution, the defendant has preferred a petition under Section 47 of the Civil Procedure Code requesting the Executing Court to decide the fact of curbing out of the decretal land by making a physical survey. The learned Executing Court, after noticing the provisions of Section 47, the facts of the case and decisions rendered by the Apex Court, observed that the judgment-debtor has approached the District Magistrate & Collector, Sepahijala in respect of the instant issue in a Revenue Case No.34 of 2018 under Section 95 of the TLR & LR Act, 1960 which is pending. In those circumstances, the Executing Court cannot get into new issues raised by one of the parties to the judgment

and decree after it has been affirmed by the learned Appellate and the Second Appellate Court. Therefore, the prayer was rejected.

3. Learned counsel for the petitioner submits that there is a chance of miscarriage of justice since 0.04 acre of land has been wrongly curved out by creation of new plot No.4019 which would lead the decree inexecutable on ground. Therefore, the learned Executing Court was required to undertake survey investigation and decide the plea raised under Section 47 of the CPC.

4. I have considered the submission of learned counsel for the petitioner and taken note of the relevant facts placed from record. I have also perused the impugned order.

The plea raised by the present petitioner was also raised before the learned Second Appellate Court in RSA No.27 of 2017 wherein the learned Court, while dismissing the second appeal, observed that the issue of irregular curving out of the land was not decided by either of the Courts. The defendant-appellant shall have a liberty to approach the appropriate authority and if it is found correct, the appropriate authority may take the decision without having otherwise due regard to the judgment passed by the Court below. The judgment-debtor has already approached the District Magistrate & Collector, Sepahijala, Bishramganj in Revenue Case No.34 of 2018 and that matter is pending. The Executing Court cannot go beyond the decree. Petitioner was himself a party in the suit and has to suffer the consequences of the decree. The Executing Court is therefore right that merely because of pendency of the Revenue Case No.34 of 2018 before the learned District Magistrate & Collector, Sepahijala, the execution petition could not be dismissed or kept in

abeyance. This Court feels that the Executing Court is required to proceed for execution of the decree and depending upon the report of the bailiff; in case such an issue arises, it may deal with it in accordance with law.

5. With the above observations, the instant petition is disposed of. Pending application(s), if any, shall also stand disposed of.

(APARESH KUMAR SINGH), CJ



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