

**HIGH COURT OF TRIPURA
AGARTALA**

CRP No.91 of 2024

1. Smt. Jatna Sinha, D/o Lt. Haripada Sinha, W/o Sri Jay Kumar Sinha, resident of Choudhurypara, P.O.-Goldharpur, P.S.- Kailashahar, District- Unakoti Tripura.
2. Smt. Mina Sinha, W/o Lt. Tridip Sinha @ Ranjan Sinha.
3. Sri Pankaj Sinha, S/o Lt. Tridip Sinha @ Ranjan Sinha.
4. Sri Polit Sinha, Lt. Tridip Sinha @ Ranjan Sinha.
5. Smt. Priyanka Sinha, D/o Lt. Tridip Sinha @ Ranjan Sinha,
All are resident of Kirtantali, P.S.- Kailashahar, District- Unakoti Tripura.
6. Smt. Rina Sinha, D/o Lt. Haripad Sinha, W/o Apu Sinha, of Mohanpur, P.S.- Kamalpur, District-Dhalai.

..... Petitioner(s).

Versus

Sri Kajal Mani Sinha, S/o Late Kamala Kanta Singha, resident of Kirtantali, P.S. Kailashahar, District – Unakoti Tripura.

..... Respondent(s).

For Petitioner (s) : Mr. D. Bhattacharya, Sr. Advocate,
Mr. Samar Das, Advocate,
Mr. S. Saha, Advocate,
Ms. Sibangi Purkayastha, Advocate.

For Respondent(s) : None.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

26/09//2024

Heard Mr. D. Bhattacharya, learned senior counsel assisted by Mr. Samar Das, learned counsel for the petitioners.

[2] Petitioners are the judgment debtors in T.S. No. 01(CC)/2016 which was a counter claim by the decree holder in TS No.26/2015. The title suit [TS No.26/2015] was dismissed vide judgment dated 02.12.2016 and the counter claim [T.S. No. 01(CC)/2016] was allowed. Both Title Appeal No.1/2017 and Title Appeal No.2/2017 preferred by the plaintiffs and the

defendants i.e. is the counter claimants stood dismissed vide judgment dated 17.04.2018 by the Court of learned Additional District Judge, Unakoti Judicial District, Kailashahar (Annexure-2). The second appeal RSA No.17/2018 along with RSA No.18/2018 were also dismissed vide judgment dated 11.02.2022 (Annexure-3). As such, the judgment & decree of the trial Court stood affirmed up to the second appellate Court. The decree dated 05.12.2016 is extracted hereunder:

“It is order and decreed that, “In the result, TS-26 of 2015 is dismissed with cost.

On the other hand cross suit i.e. counter-claim No. TS-01(CC) of 2016 is decreed with cost.

Right, title and interest of counter-claimant/defendant No.1 over the suit land measuring 0.03 acres under R.S. Plot Nos.69 & 70 of Mouja-Gouranagar covered under registered sale deed No.1-779 dt. 16.03.1982 is hereby declared and made as absolute. He is entitled to recover the khash possession of suit land by evicting the plaintiff/defendant in due execution, if the possession is not handed over voluntarily by two months from the date of delivery of this judgment, Counter-claimant/ defendant No.1 is also entitled to receive land compensation (Award) from competent authority in L.A. Case No.03/Kai/2012 against the acquisition of land for public purpose covering under registered sale deed No.1-779, dt.16.03-1982.

Decree be prepared accordingly”

Announced.

Sd/-02-12-2016
(S. Bhattacharjee)
Civil Judge (Sr. Division)
Unakoti Judicial District, Kailashahar

and that the sum of Rs.7,006.50/- (*Rupees Seven thousand Six & fifty paise*) only be paid by Plaintiffs to the Defendants on account of the costs of this suit.

The Date of the Judgment
On 02-12-2016

Plaintiffs		Rs.	P.	Defendants		Rs.	P.
1. Stamp	for	20	00	1. Stamp	for	01	00
2. Stamp	for	02	00	2. Stamp	for	05	50
3. Stamp	for	1	50	3. Cost	of		
4. Cost of exhibits	and	-		including			
copies made	affidavits.			copies made			
under the				under the			
Banker's				Banker's			
				Books”			

Books” Evidence Act, 1891			Evidence Act, 1891	7,000	00
5. Pleaders Fee of Rs.2,00,000/-	7,000		5. Pleaders Fee of Rs.2,00,000/-		
6. Subsistence and travelling allowances of witnesses (Including those of party, if allowed by Judge)			6. Subsistence and travelling allowances of witnesses (including those of party, if allowed by Judge)		
7. Process fees	02	00	7. Process fees		
8. Commissioner’ s Fee			8. Commission er’s Fee		
9. Demi/ Paper			9. Demi/ Paper		
10. Cost of Transmission of records			10. Cost of transmission of records		
11. Other costs allowed under the Code & Civil Rules & Orders.			11. Other costs allowed under the code & Civil Rules & Orders.		
12. Adjournment costs not paid in cash (to be added or deducted as the case may be)			12. Adjournmen t costs not paid in cash (to be added or deducted as the case may be) DECLARA TION.		
Total	7,025	50	Total	7,006	50

1st Schedule (Related Land)

Mouja & Tehshil – Gournagar, Khatian No.293 (Old), presently – 89, C.S. Plot Nos.-307 & 308, R.S. Plot Nos. 68, 69 & 70, Land Measuring – 0.05 acres. Bounded by North-Kailashahar- Kumarghat Road, East & South – Plaintiff & others and West – Kailashahar – Kamalpur Road.

2nd Schedule (Suit Deed)

Purported Registered Deed bearing No.-1-779, dated 16/03/1982 of Kailashahar Sub-Registry Office, Purported Executed by the plaintiff in favour of Kamalakanta Sinha predecessor of the defendant Nos.1 & 2 and purportedly written by defendant No.3.

Sd/-
(S. Bhattacharjee)
Civil Judge (Sr. Div.)
Unakoti Judicial District: Kailashahar

Plaintiffs	Rs.	P.	Defendants	Rs.	P
1. Stamp for Plaint	20	00	1. Stamp for Power.	00	00
2. Stamp for Power	08	00	2. Stamp for petition and	02	00
3. Stamp for			affidavits.		

petition and affidavits.	1	50	3. Cost of exhibits including copies made under the Banker's Books" Evidence Act, 1891		
4. Cost of exhibits including copies made under the Banker's Books" Evidence Act, 1891			5. Pleaders Fee of Rs.2,00,000/-	8,000	
5. Pleaders Fee of Rs.2,00,000/-	8,000	00	6. Subsistence and travelling allowances of witness (including those of party, if allowed by Judge)		
6. Subsistence and travelling allowances of witnesses (Including those of party, if allowed by Judge)			7. Process fees		
7. Process fees	02	00	8. Commissioner's Fee		
8. Commissioner's Fee			9. Demi/ Paper		
9. Demi/ Paper			10. Cost of transmission of records		
10. Cost of Transmission of records			11. Other costs allowed under the code & Civil Rules & Orders.		
11. Other costs allowed under the Code & Civil Rules & Orders.			12. Adjournment costs not paid in cash (to be added or deducted as the case may be) DECLARATIO N.		
12. Adjournment costs not paid in cash (to be added or deducted as the case may be)					
Total	8,031	50	Total	8,002	50

SCHEDULE OF THE LAND

Mouja and TK – Gouranagar,
Khatian No.89, C.S. Plot No.307, 308 (Old)
Present C.S. Plot Nos.69, 70 Land Measuring – 0.03 Acres.

DESCRIPTION OF THE SALE DEED

Sale deed No.1-779, dt. 16-03-1982

Sd/-
(S. Bhattacharjee)
Civil Judge (Sr. Div.)
Unakoti Judicial District: Kailashahar

[3] Civil Misc. (Execution) No.02/2017 was thereafter preferred by the decree holder. Petitioners/judgment debtors are aggrieved by the order dated 06.05.2024 and 16.05.2024. Decree holder had, in the meantime, during execution case filed an amendment application under Section 152 of the CPC for correction of the decree. Objection to that was also filed by the decree

holder. An application under Section 47 of the CPC read with Section 151 of CPC was also filed by the decree holder with a prayer that 0.02 acres of remaining decretal land from plot No.69, under Khatian No.89 of Mouja and Tehshil-Gouranagar be executed as 0.01 acres of land in RS Plot No.70 was acquired in the year 2021 during pendency of the second appeal and 0.01 acres of land from the RS Plot No.69 was acquired by the Government for which the decree holder has already got compensation. The learned executing Court after consideration of the submissions of the learned counsel for the parties on this application *inter alia* held as under:

“After hearing both sides, under the overall prevailing circumstances, No land in RS plot number 70 is executable as no land remained in RS plot number 70 due to acquisition of land by the Government.

Therefore, .02 acre of land under RS plot number 69 under Khatian number 89 is to be executed.

Situated thus, there is no bar in filing a petition under section 47 CPC in the status of the decree holder and moreover in the case of AV Mohamed Ali Sahib versus Naina Mohammed Maracair (1981)12 MAD CK 0052, it was held that“ a question relating to execution, discharge, satisfaction of a decree may be raised by the decree holder or by the JD in the execution department and the pendency of an application for execution by the decree holder is not a condition precedent for the exercise of the Court's power under section 47 CPC.”

Under the present situation, the petition filed by the decree holder under section 47 CPC stands allowed but the application by the decree holder under section 152 CPC stands rejected.”

[4] Thereafter, necessary directions were issued upon the SDM, Kailashahar for appointment of one independent survey knowing commissioner for the purpose of execution works. The decree holder was directed to file Writs to be issued on the bailiff and the survey commissioner concerned towards execution of 0.02 acres of land in RS plot number 69 under Khatian number 89. The matter appeared on 09.05.2024 for filing

Writs by the decree holder. Thereafter the same was again adjourned on 09.05.2024 and 14.05.2024. On 16.05.2024 the office was directed to check and verify the Writs filed by the decree holder and issue the same to the bailiff and the appointed survey commissioner if the Writs filed by the decree holder are found to be correct and proper. The bailiff was directed to remove any person who refuses to vacate form the 0.02 acres of land under RS plot No.69 appertaining to Khatian No.89 in accordance with the Writ and to do all necessary lawful acts in accordance with Order 21 Rule 35 of CPC for putting the decree holder in possession. Other directions were also passed for ensuring execution of the decree upon the Superintendent of Police, Unakoti District, Kailashahar.

[5] In this background, Mr. D. Bhattacharya, learned senior counsel for the petitioner submits that the judgment debtor have the apprehension that in the execution of 0.02 acres of land under RS plot No.69, the 0.01 acres of land under RS plot No.70 of the judgment debtor could also be touched. Learned senior counsel for the petitioner has taken this Court to the decree dated 05.12.2016, the judgment passed in appeal by the first appellate Court dated 17.04.2018 and also the judgment of the second appellate Court dated 11.02.2022. He has also drawn the attention of this Court to the amendment application filed by the decree holder, the objection thereto and also the application under Section 47 of the CPC by the decree holder. He submits that the executing Court could not correct the decree. Therefore, application for correction of the decree under Section 151 and 152 of CPC were misconceived. However, learned senior counsel for the petitioner is not in a position to dispute that in the execution case the learned executing Court

taking note of the admitted fact that some portion i.e. 0.01 acres of land of plot No.69 out of 0.03 acres of land under plot No.69 has been acquired, directed execution of the remaining 0.02 acres of land only under RS plot No.69, Khatian No.89 which is evident from the extracted operative portion of the order. The learned executing Court has also taken note that 0.01 acres of land under plot number 70 was also already acquired.

[6] If that be so, this Court does not find any infirmity in the impugned order dated 06.05.2024 as the executing Court has directed execution of only remaining 0.02 acres out of 0.03 acres of land in RS plot No.69 under Khatian No.89 of Mouja-Gouranagar. In those circumstances, the apprehension of the petitioner is to be misplaced.

[7] Accordingly, the instant petition is disposed of without any interference in the impugned orders. Pending application(s), if any, shall also stand disposed of.

(APARESH KUMAR SINGH), CJ