

HIGH COURT OF TRIPURA

_A_G_A_R_T_A_L_A_

CRP No.90 of 2024

1. Shri Binoy Krishna Podder, Son of late Satish Chandra Podder, resident of village-Math Chowmuhani, College Road, P.O. Agartala, P.S. East Agartala, Sub- Division-Agartala, District West Tripura, Pin-799007, aged about 82 years.

2. Smt. Chhabi Podder, wife of Sri Binoy Krishna Podder, resident of village - Math Chowmuhani, College Road, P.O. Agartala, P.S. East Agartala, Sub-Division- Agartala, District West Tripura, Pin-799007 aged about 77 years.

.....*Judgment-Debtors- Petitioner(s)*

V E R S U S

Shri Krishna Podder, son of Late Satish Chandra Podder resident of Banshpara Colony, P.O+ P.S & Sub-Division- Belonia, District-South Tripura, presently residing at Math Chowmuhani, College Road, P.O. Agartala, P.S. East Agartala, Sub-Division-Agartala, District West Tripura Pin-799007.

..... *Decree Holder-Respondent(s)*

For Petitioner(s) : Mr. Somik Deb, Sr. Advocate,
Mr. P. Chakraborty, Advocate,
Ms. Rashmi Debnath, Advocate.

For Respondent(s) : Mr. D.R. Choudhury, Sr. Advocate,
Mr. Ashutosh De, Advocate,
Mr. Alik Das, Advocate,
Mr. S. Sarkar, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

=O=R=D=E=R=

27/09/2024

Heard Mr. Somik Deb, learned senior counsel appearing for the petitioners and also heard Mr. D.R. Choudhury, learned senior counsel appearing for the respondent.

2. Petitioners are the judgment-debtors in T.S No.43 of 2002 which was decided by the learned Civil Judge (Sr. Division), West Tripura, Agartala vide judgment and decree dated 6th October, 2005. The operative part of the judgment and decree are as under:

“7. In the result, the suit is decreed on contest without cost and the title of the plaintiff over the suit land is hereby declared and the plaintiff is entitled to get recovery of possession of the suit land from the defendant No.1 and 2 by evicting them there from and the entry made in the Khatian Exbt.3 at column-23 showing the defendant No.1 adverse possessor is hereby declared illegal and void.

Schedule of the suit land

Within the District-West Tripura, Tehsil-East Agartala, P.S.-Agartala(East), Sadar, Sub Division, within Khatain No.33151 in Agartala Town Sheet No.20, having C.S. Plot No.16603/54152 , measuring .029 acres. The land is bounded by :-

North- Late Sakhin Bala Podder and others

South- Benoy Podder and others

East- Benoy Podder and others

West- Govt. Road and Drain.”

3. The judgment was upheld up to the second Appellate Court. Ex.(T) No.10 of 2020 was instituted by the decree holder-respondent herein. Objection to the execution was filed by the judgment-debtor under Section 47 of CPC. Thereafter, during pendency of the miscellaneous application, survey commissioner appointed by the Executing Court, submitted a report after inspection of the decreetal land on 29th November, 2021 to which an objection was raised by the judgment-debtor. At that stage, the Teshilder and Amin from the Office of SDM, Sadar was appointed for demarcation of the decreetal land. A report was submitted on 28th January, 2023 by the Teshilder and Amin which reads as under:

“Government of Tripura
Office of the Teshilder
Sadar East T.K.
Sadar, West Tripura

No.F.3(2)/TDR/SDR-E/MISC/2016/52/

Dated 28.01.2023

To
The Civil Judge (Sr. Div.)
West Tripura, Agartala.

Sub: Report regarding identification of decreetal land of Sabek Plot No.16603/54152 measuring 0.029 acres of khatian No 33151 under Mouja-Agartala sheet No.20.

Ref. Case No:- EX (T) 10 of 2020, Dated-20.12.2022

Sir/Madam,

In respect to the subject cited above, we the officials directed by the Ld. Court have taken necessary step for identification of the decreetal land of Sabek Plot No. 16603/54152 measuring 0.029 acres of khatian No.33151 under Mouja- Agartala sheet No.20 on 27.02.2023 as usual. The 1 party Sri

Krishna Podder, S/o- Lt. Satish Ch. Podder & 2nd party Smt. Chhabi Podder, W/o- Sri Binoy Krishna Podder both of Math Chowmohani, College Road, Agartala are served notice as information for physical measurement & identification of the decreetal land. In this reference the office copy of the notice is enclosed herewith. In respect of the order, we have done physical measurement of the decreetal land on 27.02.2023 in presence of the 1st party where the 2nd party was absent. It is to mention here that due to obstruction of constructed building on the adjacent plot of land, the proper measurement through point to point system for identification of the decreetal land was hardly possible. In this circumstances, we the ordered officials have tried as possible for identification of the said land. In this reference a hand sketch map showing the details of the physical measurement is enclosed herewith as a ready reference.

This for favour of your kind information and doing the needful please.

Yours faithfully
Sd/ Kartik Pal
Tdr, Sadar, East TK
Sd/- Anjan Debbarma
Amin, Jogendranagar TK,
Sadar East Rev. Circle”

4. At this stage, it is pertinent to mention and has been rightly pointed out by learned senior counsel for the petitioners that the date of the report i.e. 28.01.2023 precedes the date of inspection i.e. 27.02.2023 which the learned Court has completely overlooked. Upon this report, judgment-debtors filed an objection. The Amin and Teshilder both were examined as C.W-1, C.W-2 i.e. court witnesses. The relevant part of the deposition of CW1 is extracted hereunder:

“Cross-examination by the Decree Holder

We prepared the report as per direction of the Court. Before measuring the decreetal land we gave notice to all the involved parties. At the time measurement we found 0.0267 acres of land instead of 0.0290 acres. We conducted measurement as per the sabek map. At present, after revisional survey some parts of the land has been shown as khash land and due to this we did not show this land in the report.

A portion of the decreetal land which we identified, is occupied by the JDs.

Cross-examination by the Judgement Debtors

I conducted the report as per the order dated 20.12.2022 passed in Ex(T) 10 of 2020. As per the aforesaid order I was directed to identify the decreetal land after perusing the decree. I do not have copy of the decree. Apart from the documents which I have brought today I did not get any other document from the Court. No copy of the decree is not there along with the documents which I have brought today. As per decree, the decreetal land is bounded by, South- Binoy Poddar and others, North- Lt. Sakin Bala Poddar and others, East Binoy Poddar and others, West-Govt Road and drain.

In the southern side of the land the decreetal land, as per my report dated 22.02.2023, the plot number 937 is situated. No other plot is

there apart from the hal plot number 937. From the khatian No. 527, printed on 01.10.2023, it appears that the hal plot no. 937 is possessed by one Tilak Singha, S/O Bangali Singha. It is a fact that in the year 2004 the hal no. 937 was recorded in the name of Bangali Singha.

It is a fact that as per my report there is no land of Binoy Krishna Poddar on the southern side of the identified land which I identified as decreetal land.

WV:-During my measurement of the land, some portion of land was under lock and key and was opened by a relative of Chabi Poddar.

It is not a fact that my statement that, "during my measurement of the land some portion of land was under lock and key and was opened by a relative of Chabi Poddar" is not true. I have not mentioned in the report the relative of Chabi Poddar opened the lock and key of some portion of land. In my report I have stated that the second party was absent. Along with the report I have not enclosed the copy of the sabek map though I have prepared the report relying upon it.

It is a fact that the southern boundary of the land which I Identified and the southern boundary of the deceetal land does not match.

It is not a fact that the land which we identified is not the decreetal land. It is not a fact we failed to identify the decreetal land.

During measurement of land, a fixed point is ascertained. In my report as well as the hand sketch map the fixed point is not mentioned.

WV:- But we started measurement taking the north eastern point as fixed point though it is not shown in the hand sketch map.

It is not a fact that I have stated falsely that we started measurement from the north eastern point though it is not shown in the hand sketch map.

In the report I have not mentioned which portion of the identified land was khash land.

It is not a fact that I have stated falsely that a portion of the decreetal land is under occupation of JD.

It is not a fact that we have prepared the report on being influenced by the DH."

[Underline supplied not part of original text]

5. The learned Executing Court thereafter proceeded to reject the objection made under Section 47 of CPC by the judgment-debtors and did not find any flaw with the report of the Tehsildar & Amin dated 28th January, 2023 vide impugned order dated 09.08.2024. The relevant part thereof is extracted hereunder:

"On 28/01/23, the Tehsildar and RI filed report. against which, again the JDs filed objection. Thereafter, the RI and Tehsildar were examined.

During their examination as CW 2 and CW3, both the Tehsildar and RI admitted that copy of decree was not provided them for identification of the decreetal land. They also admitted that in the report, they did not mention the fixed point from which the

demarcation was started. During his cross examination by the Judgment debtors Counsel, CW 3, the RI, admitted his incapacity to translate the order dated 20.12.22 in Bengali. It was also admitted that the fixed point was not mentioned in the report.

Ld Counsel for the JDs has pointed towards the defects in the reports filed by the RI and the Tehsildar, to contend that the Tehsildar and RI could not understand the directions given by this court. The Ld Counsel for the JDs further submitted that as per the Khatian No- 527, the plot No-937 which is in the southern boundary of the decreetal land, is possessed by one Sri Tilak Singh and not Binoy Podder, whose name is mentioned in the southern Division side of the decreetal land as per schedule, which, establishes that the decreetal land cannot not be identified by the boundary of land mentioned in the decree. So, he prayed for dismissing the execution proceedings as the decree is not executable.

In reply, Ld. Counsel for the Decree Holder submitted that the objection raised by the JDs are not maintainable as these are attempts of the JD to prevent the DH from enjoying the result of the decree which was delivered in favour of the DH.

Ld. Counsel for the DH further submitted that the Khatian No- 527 does not show real picture and merely on the basis of the entries in the Khtian No-527, the decree cannot be held to be in executable. He pointed towards the paragraph 4 of the petition wherein the Judgment debtors have admitted that the JD No-1 purchased 2 gandas of land which was situated in the East and Southern side of the RS Plot No-936, but was not recorded properly in the Revenue Map, to establish that the entries in the Khatain No- 527 do not reveal the real picture and cannot be relied upon.

Ld. Counsel for the DH also pointed towards an admission by the JDs in their objection that after plot No- 936, there is a pathway and in the front side of the path way there is an iron gate and both the pathway and the gate are possessed by the JD No-1, to buttress his claims that the JDs are possessing the decreetal land and are liable to be evicted therefrom.

Considered the submission of both sides.

So far as the defects in the report of the Tehsildar and the RI are concerned, I am of the opinion that merely because copy of decree was not provided to the RI and the Tehsildar, the report cannot be rejected. In the writ issued to the Tehsildar and the RI, the schedule of the decreetal land is mentioned and there in nothing on record to suggest that the schedule of the decreetal land was not mentioned in the decree. I find absolutely no reason to question the identification of the decreetal land done on the basis of the writ.

As regards questions raised regarding identification of the decreetal land, on scrutiny of the petition filed by the JD under section 47 C.P.C, I find that the JDs have admitted that they are in possession of the 2 gandas of land which was situated in the East and Southern side of the RS Plot No-936 which was not shown properly in the revenue records.

This explains the reason behind the differences in the report of the Tehisidar and the RI wherein the southern side of the plot No-936 is shown to be in possession of the JDs and the entries in the Khatian No-527 wherein the name of one Tilak Singh appears on the Southern side of the decreetal land.

As per the decree, on the southern side of the decreetal land, the land of Binoy Podder, one of the Jds and other, is located. Even the report of the Tehsildar and the RI also confirms this. Thus, the report of the Tehsildar coupled with the admission of the JDs that they are possession land on the southern side of the decreetal land, which was not shown in the revenue records properly, further establishes that there is no defect in the boundary of the decreetal land as mentioned in the decree and that the decreetal land is identifiable.

For the reasons mentioned here-in-above, I am of the opinion that there is no merit in the objections raised by the Judgment debtors to the execution of the decree and these objections are attempts by the Jds to prevent the Dh from enjoying the fruits of the decree which was passed in their favour after a lengthy trial.

So the instant petition filed by the Jds under section 47 CPC stands rejected.

The misc case is thus disposed of on contest.

Make necessary entries in the relevant register.”

6. The objection to the report of the Tehsildar & Amin was rejected by another impugned order dated 12th August, 2024 holding as under:

“Considered the submission of both sides.

So far as the defects in the report of the Tehsildar and the RI are concerned, I am of the opinion that merely because copy of decree was not provided to the RI and the Tehsildar, the report cannot be rejected. In the writ issued to the Tehsildar and the RI, the schedule of the decreetal land is mentioned and there is nothing on record to suggest that the schedule of the decreetal land was not mentioned in the decree.

Moreover, in their petition filed u/s 47 C.P.C, the Jds have admitted that they are in possession of the 2 gandas of land which was situated in the East and Southern side of the RS Plot No-936 which was not shown properly in the revenue records. This explains the reason behind the differences in the report of the Tehsildar and the RI wherein the southern side of the plot No-936 is shown to be in possession of the JDs and the entries in the Khatian No-527 wherein the name of one Tilak Singh appears on the Southern side of the decreetal land.

Therefore, considering the above, I find absolutely no reason to question the identification of the decreetal land done on the basis of the writ. So, the report filed by the Tehsildar and the RI is hereby accepted.”

7. I have considered the submissions of learned counsels for the parties. On part of the petitioners, it has been pointed out that the description contained in the schedule of the decree varies with the schedule of decreetal land described in the execution petition. Decree holders have introduced wrong Hal Plot No. 963 which is not indicated in the Decree. The learned Trial Court has not dealt with this issue. He relies upon the provisions of Order XXI Rule 17 of CPC. Learned counsel for the petitioners has referred to the written objection submitted by the decree holder to the objection filed by the judgment-debtors under Section 47 of CPC specifically paragraph 4 which according to him shows different area of land i.e. 0.0269 acres

identified by the Tehsildar and Amin as compared to the decree where the suit land has been shown as .029 acres. Petitioners have also referred to the Khatian of an adjacent rayat namely, Tilak Singh which is Annexure-6 (part of Section 47 objection) which shows that on the northern of the plot No.937 of Tilak Singh lies the plot of the petitioner No.2 who is the wife of petitioner No.1. Based upon the objections taken in the Section 47 petition and also objection to the Tehsildar & Amin's report, learned senior counsel for the petitioners submits that the discrepancies in the description of decreetal land as above and the identification of the decreetal land along with two gandas of land of petitioner situated in the east and southern side of R.S Plot No.936 have not been duly explained in the Tehsildar & Amin's report which if acted upon would lead to a serious error in the execution of the decree to the prejudice of the judgment-debtors and cause miscarriage of justice. Therefore, the impugned orders deserve to be interfered with.

8. Learned counsel for the respondent has strongly opposed the prayer and sought to defend the impugned orders rejecting the objection under Section 47 of CPC and also the objection to the Tehsildar & Amin's report. He submits that the learned Executing Court has duly taken note of the main objection raised by the petitioners as to the identification of the land of the judgment-debtors on the southern boundary of the decreetal land which has been admitted by the judgment-debtors also. The differences in the report of Teshilder and Amin wherein the southern side of the plot No.936 is shown to be in possession of the judgment-debtors and the entries in the Khatian No.539 in the name of one Tilak Singh on the southern side of the decreetal land, therefore, stands properly explained. As per the decree,

on the southern side of the decreetal land, the land of Benoy Krishna Podder, one of the judgment-debtors is located which is confirmed by the report of the Teshilder and Amin. Therefore, the report of the Teshilder taken into consideration with the admission of the judgment-debtors that they are in possession of the land on the southern side of the decreetal land though not shown in the revenue records properly does not cause any defect in the boundary of the decreetal land as mentioned in decree which could be inexecutable.

9. Learned counsel for the respondent, however, has not been able to dispute the discrepancy in the report of the Tehsildar & Amin dated 28.01.2023 as to the date of inspection i.e. 27.02.2023 which has not been explained in the impugned order though the Teshilder and the Amin both were examined as Court witnesses. Learned counsel for the respondent decree holder also not been able to show as to the difference in the description of the decreetal land vis-à-vis the schedule of the decreetal land furnished in the execution petition. There appears to be a discrepancy in the area of the land as described in the schedule which is 0.029 acres vis-à-vis the reply filed by the decree holder to the objection under Section 47 of CPC.

10. On consideration of rival submissions of the parties after taking into account the materials referred to hereinabove as placed from the record by learned counsel for the petitioners and after going through the impugned orders, this Court is of the considered view that the learned Executing Court has dismissed the objection under Section 47 of CPC without dealing with these crucial issues raised in the objection petition. The learned Executing

Court has also failed to notice and record its satisfaction as to how the report submitted by the Teshilder and Amin on 28th January, 2023 could predate the inspection carried out by them on 27th February, 2023 despite their examination as court witnesses by the Executing Court. It therefore appears to this Court that the orders have been passed without proper application of mind and without dealing with these specific issues raised by the judgment debtors in objection under Section 47 of CPC and also to the report of the Tehsildar & Amin. The impugned orders passed by the Executing Court suffer from serious errors on these counts and non application of mind to the vital issues involved in the execution of the decree in a proper and just manner. Therefore, execution of the decree, if undertaken consequent thereto, in such manner may lead to miscarriage of justice.

11. The scope of the Executing Court in exercise of power under Section 47 of CPC has been explained in the case of ***Rahul S. Shah vs Jinendra Kumar Gandhi, (2021) 6 SCC 418***. Para 24 of the judgment is extracted hereunder:

“24. In respect of execution of a decree, Section 47 CPC contemplates adjudication of limited nature of issues relating to execution i.e. discharge or satisfaction of the decree and is aligned with the consequential provisions of Order 21 CPC. Section 47 is intended to prevent multiplicity of suits. It simply lays down the procedure and the form whereby the court reaches a decision. For the applicability of the section, two essential requisites have to be kept in mind. *Firstly*, the question must be the one arising between the parties and *secondly*, the dispute relates to the execution, discharge or satisfaction of the decree. Thus, the objective of Section 47 is to prevent unwanted litigation and dispose of all objections as expeditiously as possible.”

12. In those circumstances, this Court is left with no other option but to set aside the impugned orders dated 09.08.2024 and 12.08.2024. The matter is remitted to the learned Executing Court to pass fresh order on the objection under Section 47 of CPC raised by the judgment-debtors and also

the objection to the Tehsildar & Amin's report dated 28th January, 2023, in accordance with law and after hearing the parties. The execution case is pending since 2020. Therefore, parties shall cooperate in the proceedings before the Executing Court and not take unnecessary adjournments. It is informed that the next date is on 30th September, 2024. As such, the learned Executing Court would endeavour to take a fresh decision on the application under Section 47 of CPC and also on the objection to the report of Tehsildar & Amin dated 28th January, 2023 as expeditiously as possible preferably within a period of 8 (eight) weeks from the date of receipt of copy of this order.

13. The instant revision petition is accordingly allowed and disposed of. Let it be made clear that this Court has not expressed any opinion on the merits of the objections taken by the petitioners or the stand of the decree holder/respondent hereinabove.

Pending application(s), if any, also stands disposed of.

(APARESH KUMAR SINGH) CJ

DIPESH DEB

Digitally signed by DIPESH DEB
Date: 2024.10.03 17:50:28
+05'30'