

**HIGH COURT OF TRIPURA
AGARTALA**

CRP No.08 of 2025

Sri Biman Roy, aged 32 years, son of late Gopen Roy, resident of Village: Satchand, PS and PO- Manubazar, District- South Tripura, Tripura

.....Petitioner(s);

Versus

1) Smt. Binapani Roy, daughter of late Gopal Ch Roy, and wife of Sri Amarjyoti Roy, Resident of Santinagar, PO and PS- Teliamura, District- Khowai.

2) Smt. Sabita Roy (Saha), daughter of Late Gopal Ch Roy, and wife of Sri Amar Saha, resident of West Pilak, PS - Baikhora, District - South Tripura

3) Smt. Kabita Roy (Saha), daughter of Late Gopal Ch Roy, and wife of Sri Sukhen Saha resident of Satchand, PO and PS- Manubazar, District- South Tripura

4) Sri Goutam Sarkar, son of late Ranjit Sarkar and late Menaka Roy (Sarkar), resident of Kalachara, PS and PO- Manubazar, District- South Tripura

5) Legal heirs of late Gopen Roy, son of late Gopal Ch Roy:

5(a) Smt. Manju Saha (Roy), wife of Late Gopen Roy,

5(b) Smt. Laxmi Roy (Saha), daughter of Late Gopen Roy

5(c) Smt. Pabmabati Roy (Saha), daughter of Late Gopen Roy

6) Sri Gunen Roy, son of late Gopal Chandra Roy

All (5 group and 6) are residents of Satchand, PS and PO- Manubazar, District- South Tripura

.....Respondent(s).

For Petitioner(s) : Mr. Dilip Kumar Das Chawdhury, Advocate.

For Respondent(s) : Mr. Sudipta Sekhar Debnath, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

16/05/2025

Heard Mr. Dilip Kumar Das Chawdhury, learned counsel for the petitioner and Mr. Sudipta Sekhar Debnath, learned counsel for the respondents No.1 to 3. Other respondents have chosen not to enter appearance despite valid service of notice.

2. By the impugned order dated 30.11.2024 passed in TS(P)-04 of 2015 by learned Civil Judge (Jr. Division), Sabroom, South Tripura, the objection filed by the defendant No.3/judgment debtor to the Survey

Commissioner's report after passing of the preliminary decree for preparation of the final decree has been rejected and the report has been accepted. The learned Court has, thereafter, ordered the report of the Survey Commissioner to form part of the final decree. Being aggrieved, defendant No.3/judgment debtor has preferred this revision petition under Section 115 of the Code of Civil Procedure, 1908 ['CPC', *for short*].

3. Learned counsel for the petitioner submits that the judgment and decree dated 06.12.2018 attained finality after dismissal of the first appeal by the learned District Judge, South Tripura, Belonia vide order dated 24.08.2021 and the dismissal of the second appeal being RSA 20 of 2021 as withdrawn. CRP No.78/2021 preferred by the petitioner was also rejected by order dated 19.11.2021 in view of the order passed in RSA 20 of 2021. Therefore, petitioner does not have any other remedy than to challenge the impugned order dated 30.11.2024 whereby his objection to the Survey Commissioner's report dated 17.05.2023 was rejected and the same was directed to form part of the final decree. Learned counsel for the petitioner has referred to the Survey Commissioner's report at Page 67 of the revision petition which does not fulfil the ingredients of a Survey Commissioner's report. Moreover, though the descendants of deceased respondent No.1-Gopen Roy were substituted after passing of the preliminary decree, but the Survey Commissioner's report has completely overlooked the distribution of shares amongst the legal heirs of Late Gopen Dey instead he has also been indicated as one of the shareholders. Moreover, the learned Trial Court examined the Survey Commissioner orally. The learned Trial Court has taken note at Para 12 of the impugned order that

upon examination of the Survey Commissioner Sri Gopinath Das, it transpires that he does not remember whether he served notice to all the parties of the case. He has not given any document regarding the notice served before conducting survey. He does not mention in his report the fixed points for identifying the suit land and also the measurement for completing survey. He does not mention the measurement in his file book. He does not mention in the map the exact portion of the parties in the suit. He has also not mentioned that parties of the case have not signed on his prepared report. If the Survey Commissioner has failed to follow the basic requirements before and during conduct of such local investigation, his report does not have any sanctity on the basis of which the final decree can be prepared. The petitioner is only seeking appointment of a fresh Survey Commissioner who, upon local investigation in the presence of the parties, would submit a report containing the demarcation of shares of the parties as per the judgment and decree which would form the basis of preparation of the final decree.

4. Learned counsel for the respondents No.1 to 3 Mr. Sudipta Sekhar Debnath is not in a position to dispute that the Survey Commissioner has submitted a report without indicating even the fixed points for identifying the suit land or indicating the exact portion of the parties in the map and in fact not apportioning the share of the legal heirs of deceased Gopen Roy who was already substituted by that time. He however submits that the learned Trial Court, after accepting the Survey Commissioner's report, has directed that it shall form part of the final decree and plaintiff has been directed to submit necessary requisites for preparation of the final decree. In such a case, the

present revision petition under Section 115 of the CPC should not be entertained.

5. However, upon consideration of rival submission of the parties, it appears that by the impugned order the learned Trial Court has rejected the objection of the defendant No.3/petitioner despite several infirmities in the report submitted by the Survey Commissioner and accepted it. It has only ordered that the Survey Commissioner's report shall form part of the final decree. However, the preparation of the final decree is yet to be made. The impugned order in substance has the effect of rejecting the objection of the defendant No.3/petitioner to the Survey Commissioner's report and accept it. The impugned order, if made in favour of the present petitioner, would have led to rejection of the Survey Commissioner's report and appointment of a fresh Survey Commissioner to submit a report in terms of the judgment and decree. The order impugned suffers from material irregularity and illegality in exercise of its jurisdiction. It can be corrected in the supervisory jurisdiction of this court. The Survey Commissioner's report has failed to apportion the share of a deceased party namely Gopen Roy amongst his legal heirs though they were on record. The learned Trial Court had orally examined the Survey Commissioner who even failed to remember as to whether he had served notice to all the parties of the case or mentioned the fixed points for identifying the suit land or the exact portion of the parties in the map. He also did not mention that the parties of the case had not signed on his report. If such clear infirmities in the Survey Commissioner's report are ignored, it would lead to miscarriage

of justice and a serious error in the exercise of jurisdiction by the learned Trial Court.

6. Accordingly, the impugned order, so far as it has accepted the report of the Survey Commissioner, is set aside. The learned Trial Court would appoint a fresh Survey Commissioner to carry out local inspection for the purposes of demarcation of the shares of the parties as per the judgment and decree passed in TS(P)-04 of 2015. The instant revision petition stands disposed of accordingly.

(APARESH KUMAR SINGH), CJ

Pijush/

MUNNA SAHA Digitally signed by MUNNA SAHA
Date: 2025.05.21 15:08:52 +05'30'

