

**HIGH COURT OF TRIPURA
AGARTALA**

CRP No.05 of 2025

Shri Sunil Kumar Bhowmik, Age-62 years, S/o- Lt. Towani Bhowmik,
Resident of West Paikhola, P.O- Paikhola, P.S- Belonia, District- South
Tripura.

.....Petitioner(s);

Versus

- 1) Shri Alok Bhowmik, S/o- Late Phanindra Bhowmik,
- 2) Shri Asit Bhowmik, S/o- Late Phanindra Bhowmik,
- 3) Shri Ajit Bhowmik, S/o- Late Phanindra Bhowmik.

All of them are the residents of Village & P.O- Paikhola, P.S- Belonia, District-
South Tripura.

4) Smt. Sabita Bhowmik, D/o- Lt. Phanindra Bhowmik, W/o- Shri Haridas
Sarkar, of Bhatkhola, P.O- Abhoygunje, P.S- Puran Rajbari, District- South
Tripura.

5) Smt. Kajal Bhowmik, D/o- Lt. Phanindra Bhowmik, W/o- Asish Majumder,
resident of Village- Purba Taichama, P.O- Paikhola, P.S- Belonia, District-
South Tripura.

6) Smt. Dipti Bhowmik, D/o- Lt. Phaindra Bhowmik, W/o- Shri Swapan
Bhowmik, Village- Gardhang, P.O- Kanchan nagar, District- South Tripura.

7) Smt. Jayanti Bhowmik, D/o- LT. Phanindra Bhowmik, W/o- Lt. Sanjit Kar,
resident of village- Gajaria, P.O- Debipur, P.S- Belonia, District- South
Tripura.

8) Smt. Namita Bhowmik (Biswas), D/o- Lt. Phanindra Bhowmik, W/o- Shri
Jiban Biswas, Resident of Village and P.O- Lalganesh, P.S- Ambari, District-
Kamrup, Assam.

.....Respondent(s).

For Petitioner(s) : Mr. Saktimoy Chakraborti, Sr. Advocate,
Mrs. Pinki Chakraborty, Advocate,
Mr. Rakhal Raj Datta, Advocate.

For Respondent(s) : Mr. Ratan Datta, Advocate,
Ms. Saswati Nag, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

03/04/2025

Heard Mr. Saktimoy Chakraborti, learned senior counsel assisted
by Mrs. Pinki Chakraborty, learned counsel for the petitioner and Mr. Ratan
Datta, learned counsel assisted by Ms. Saswati Nag, learned counsel for the
respondents.

2. Mr. Saktimoy Chakraborti, learned senior counsel for the petitioner, submits that the execution case being Ex(T) 06 of 2017 was filed by the plaintiff for execution of the decree dated 02.12.2009 passed in T.S. 03 of 2008. It is submitted that an objection under Section 47 of the Code of Civil Procedure was filed on 06.01.2025 by the judgment debtor/petitioner herein. However, by the impugned order dated 08.01.2025, the learned Executing Court had issued directions upon the judgment debtor/petitioner to remove all obstructions from the suit land and file an affidavit to that effect. The learned Court has also gone further to issue directions upon the Senior Manager, Electrical Sub-Division, Belonia to disconnect the electricity lines to the premises of the petitioner. The learned Court has, in the meanwhile, observed that as per the survey report, the judgment debtor has not only caused obstruction to the bailiff, but also created permanent structures over the decretal land and in that way caused resistance to the execution of the decree. He further submits that without disposing of the application under Section 47 of the CPC, the learned Executing Court has gone on to issue directions to remove all permanent constructions from the land in question which is wholly without jurisdiction. The direction upon the Electricity Department is also beyond the scope of the execution case. Therefore, petitioner has filed this petition under Article 227 of the Constitution of India.

3. Learned senior counsel for the petitioner has referred to para 7 of the instant revision petition whereby it has been stated that the petitioner had filed a petition under Section 47 of the Code that on the suit land besides him, his members of the family are also in possession, but they were not made party

in the suit. But the said objection petition was not disposed of by the learned Trial Court who proceeded with the execution proceedings. Learned senior counsel for the petitioner also submits that the said objection petition could not be found out and therefore is not enclosed.

4. On the other hand, learned counsel for the respondents Mr. Ratan Datta has referred to Annexure-R/1 which is a written objection filed by the present petitioner on 17.04.2018 purportedly under Section 47 of the Code. Learned counsel for the respondents has however not been able to show from the series of order sheets annexed that the said objection petition under Section 47 was disposed of by the learned Executing Court at any time. It is also stated that the petitioner has been filing objections under Section 47 of CPC one after the other and thereby trying to linger the execution proceedings which arise out of a decree of the year 2009. The approach of the petitioner/judgment debtor in procrastinating the execution is in teeth of the settled law as laid down by the Apex Court in the case of **Rahul S. Shah v. Jinendra Kumar Gandhi and others** reported in **(2021) 6 SCC 418**.

5. It is further stated that the present petitioner through his wife and two sons filed a suit for declaration of right, title and interest as well as permanent injunction alleging that the decretal land has been purchased by the plaintiffs from the judgment debtor and accordingly decree has become non-est. T.S. 12 of 2019 was dismissed after filing of written statement on 26.06.2024. That suit was only for the purpose of delaying the execution proceedings. Thereafter, the execution proceedings have been revived and the warrant of delivery of possession was issued. The bailiff fixed a date for execution of the

decree and the decree holders were asked to keep ready menials, hydraulic excavator, bulldozers and also the TSECL was asked to disconnect the electric line from the unauthorized constructions over the suit land/decreetal land. On the fixed day the decree holders arranged those apparatus, but suddenly the bailiff left the place without execution, thus causing a loss of nearly Rs.55,000/- to the decree holders. The present petitioner, taking advantage of the inaction of the bailiff, filed another fresh application under Section 47 of the Code challenging the plea of jurisdiction of the Civil Court under the TLR & LR Act, 1960. He has taken a fresh and new plea of existence of a will by which Lt. Phanindra Kumar Bhowmik, the predecessor of the present respondents, had allegedly bequeathed the decreetal land to the present petitioner in the year 2022 by an unregistered will. He submits that taking new plea in the execution proceeding is absolutely barred by law. The copy of the objection dated 06.01.2025 under Section 47 of CPC is annexed as Annexure- 5.

6. Learned counsel for the respondents further submits that there is apparent incongruity between the earlier objection petition and the later pleas. The judgment debtor should not be allowed to misuse the process of law by filing multiple objections under Section 47 of the Code. However, learned counsel for the respondents is not in a position to dispute the legal proposition that if an objection under Section 47 of the CPC has been filed by the judgment debtor, the same ought to be dealt with and disposed of in accordance with law by the Executing Court.

7. From the annexed documents and the order sheets, it is evident that the first objection petition [Annexure-R/1] dated 17.04.2018 filed by the

present petitioner was not dealt with and disposed of by the learned Court.

Section 47 of the CPC reads as under:

“47. Questions to be determined by the Court executing decree. - (1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.

(2) [***]

(3) Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the Court.

[*Explanation I.* For the purposes of this section, a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed are parties to the suit.

Explanation II.-(a) For the purposes of this section, a purchaser of property at a sale in execution of a decree shall be deemed to be a party to the suit in which the decree is passed; and

(b) all questions relating to the delivery of possession of such property to such purchaser or his representative shall be deemed to be questions relating to the execution, discharge or satisfaction of the decree within the meaning of this section.]”

It appears that after filing of the first objection petition, petitioner has filed other objection petitions, one of which is dated 01.06.2019 [Annexure-R/8] and the present one dated 06.01.2025. The judgment debtor on such pretexts cannot be allowed to procrastinate the execution proceedings. However, it is also the duty of the learned Executing Court to deal with and dispose of the objection petition filed first in point of time by the judgment debtor. Learned senior counsel for the petitioner fairly submits that the learned Executing Court may be asked to dispose of the first objection petition. The judgment debtor won't be pressing the subsequent objection petitions. Section 47 of the CPC bars filing of successive objection petitions as has been held by the Hon'ble Supreme Court in the case of ***Dipali Biswas and others v. Nirmalendu Mukherjee and others*** reported in ***AIR 2021 SC 4756***. Paragraph 37 of the report is extracted hereunder:

“37. The appellants cannot be allowed to raise the issue relating to the breach of Order XXI, Rule 64 for the following reasons:-

(i) A judgment-debtor cannot be allowed to raise objections as to the method of execution in instalments. After having failed to raise the issue in four earlier rounds of litigation, the appellants cannot be permitted to raise it now;

(ii) As we have pointed out elsewhere, the original judgment debtor himself filed a petition under Section 47, way back on 02.09.1975. What is on hand is a second petition under Section 47 and, hence, it is barred by *res judicata*. It must be pointed out at this

stage that before Act 104 of 1976 came into force, there was one view that the provisions of Section 11 of the Code had no application to execution proceedings. But under Act 104 of 1976 Explanation VII was inserted under Section 11 and it says that the provisions of this Section shall apply to a proceeding for the execution of a decree and reference in this Section to any suit, issue or former suit shall be construed as references to a proceeding for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree;

(iii) Even in the 5th round, the appellants have not pointed out the lay of the property, its dimensions on all sides and the possibility of dividing the same into two or more pieces, with a view to sell one or more of those pieces for the realisation of the decree debt;

(iv) The observations in paragraph 4 of the order of the High Court dated 20.12.1990 in C.O.No.2487 of 1987 that, "none of the parties shall have any claim whatsoever as against the applicant in respect of the purchased property which shall be deemed to be his absolute property on and from the expiry of 15th December, 1980", has attained finality;

(v) Section 65 of the Code says that, "where immovable property is sold in execution of a decree and such sale has become absolute, the property shall be deemed to have vested in the purchaser from the time when the property is sold and not from the time when the sale becomes absolute". The sale of a property becomes absolute under Order XXI, Rule 92(1) after an application made under Rule 89, Rule 90 or Rule 91 is disallowed and the court passes an order con-firming the same. After the sale of an immovable property becomes absolute in terms of Order XXI, Rule 92(1), the Court has to grant a certificate under Rule 94. The certificate has to bear the date and the day on which the sale became absolute. Thus a con-joint reading of Section 65, Order XXI, Rule 92 and Order XXI, Rule 94 would show that it passes through three important stages (other than certain intervening stages). They are, (i) conduct of sale; (ii) sale becoming absolute; and (iii) issue of sale certificate. After all these three stages are crossed, the 4th stage of delivery of possession comes under Rule 95 of Order XXI. It is at this stage that the appellants have raised the objection relating to Order XXI, Rule 64. It is not as if the appellants were not aware of the fact that the property in entirety was included in the proclamation of sale. Therefore, the claim on the basis of Order XXI, Rule 64 was rightly rejected by the High Court." (emphasis supplied)

8. In such circumstances, the approach of the learned Executing Court to issue the impugned directions upon the judgment debtor to remove all permanent constructions as well as obstructions i.e. residential houses, shops, rooms, etc. situated over the decreetal land at his own cost and keep the decreetal land vacant for the purpose of demarcation, and further to appear before the learned Court and make a statement on affidavit of compliance of the order and also to direct the Senior Manager, Electrical Sub-Division, Belonia to disconnect all electric connections in those houses, shops, rooms and other constructions situated over and above the decreetal land measuring 50 decimals comprised in CS (old) Plot No.303/P, corresponding to CS (New) Plot No.973 in Khatian No.38 of Mouja- Paikhola, T.K.- Chittamara, and to make report before the learned Court was not proper. The learned Court ought to have dealt

with and decided the objection petition which was filed first in point of time on 17.04.2018 before proceeding to execute the decree. Since the execution petition is pending since 2017, no further indulgence would be granted to the judgment debtor on any count. The learned Executing Court would proceed to decide the first objection petition dated 17.04.2018 still pending on its docket in accordance with law. It is informed that the next date in the execution case falls tomorrow (04.04.2025). The decree holder and the judgment debtor should remain represented tomorrow before the learned Executing Court. The learned Executing Court would fix a firm date on hearing of Section 47 petition and dispose it of within a period of 3(three) weeks.

9. The impugned order is set aside. The instant revision petition is disposed of. Pending application(s), if any, shall also stand disposed of.

(APARESH KUMAR SINGH), CJ

Pijush/

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