

**HIGH COURT OF TRIPURA
AGARTALA**

CRP No.22 of 2025

1. Smt. Niva Datta, W/o Late Nripendra Kumar Datta, resident of Beltila, P.O. & P.S. Belonia, District South Tripura, Pin-799155.
2. Smt. Chandana Datta (Das), D/o Late Nripendra Kumar Datta, W/o – Shri Dilip Kr. Das, resident of North Kalabaria, P.O. Maichara, District- South Tripura.
3. Shri Kartik Datta, S/o Late Nripendra Kumar Datta, resident of Beltila, P.O. & P.S. Belonia, District South Tripura, Pin-799155.
4. Smt. Bandana Datta (Das), D/o Late Nripendra Kumar Datta, W/o Late Maik Das, resident of village – Jayanti Bazar, P.O. Gourangabazar, P.S. Puran Rajbari, District –South Tripura, Pin-799157.
5. Shri Sanjib Kumar Datta, S/o Late Nripendra Kumar Datta, resident of Beltila, P.O. & P.S. Belonia, District –South Tripura, Pin-799155.
6. Shri Tuton Datta, S/o Late Nripendra Kumar Datta, resident of Beltila, P.O. & P.S. – Belonia, District-South Tripura, Pin-799155.

..... Petitioner(s).

V E R S U S

1. Smt. Laxmi Patari (Datta), W/o Late Monoj Kanti Datta.
2. Smt. Poulami Datta, D/o Late Monoj Kanti Datta.
3. Sri Pallab Datta (Minor), S/o Late Monoj Kanti Datta.
All are residents of Saltilla, P.O & P.S. – Belonia, District- South Tripura.
4. Smt. Abha Datta (Majumder), W/o Sri Rakhal Majumder, resident of Village – Mirja, P.S. R.K. Pur, District – Gomati Tripura.
5. Smt. Mamata Datta (Roy), W/o Sri Nepal Roy of Rajnagar, P.S. Santirbazar, District – South Tripura.
6. Smt. Niva Datta (Majumder), W/o Sri Biraj alias Bijoy Majumder, Village –Fulkumari, P.S. – R.K. Pur, District- Gomati Tripura.

..... Respondent(s).

For Petitioner(s)	: Mr. Saktimoy Chakraborty, Sr. Advocate, Mrs. Pinki Chakraborty, Advocate.
For Respondent(s)	: None.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

23/04/2025

Heard Mr. Saktimoy Chakraborty, learned senior counsel,
assisted by Mrs. Pinki Chakraborty, learned counsel for the petitioners.

2. Title Suit No.09/1998 which was instituted for a declaration of right, title and interest of the plaintiffs/respondents over the suit land was decreed in his favour vide judgment dated 09.06.2005 passed by the learned Civil Judge (Jr. Division), Belonia, South Tripura (Annexure-3) in the following manner:

“7. In fine I order as follows:-

- i) That I hereby declared the right, title and interest of the plaintiffs over the suit land. Also they are entitled for recovery of possession of the suit land removing all the obstruction created by the defendant.
- ii) The plaintiffs are entitled to get a decree for correction of R/S Khatian No.468 by omitting the name of defendant and by inserting the names of plaintiff as they are legal heirs of Late Sudhanshu Bimal Datta.
- iii) The Director of Land Records and Settlement is hereby directed to incorporate the name of the plaintiffs in the Khatian as per correction.
- iv) Cost of the suit are to be born by the parties to the suit.
- v) Sheristadar of this Court is hereby directed to prepare decree accordingly.
- vi) This case is disposed of accordingly on contest with my above observation.
- vii) Make Necessary entries in the T.R.”

3. The defendants preferred the Title Appeal No.12/2005, being aggrieved by the impugned judgment rendered by the learned trial Court. The Title Appeal No.12/2005 was disposed of by judgment dated 11.08.2006 (Annexure-4) in the following manner:

“13. In view of my above findings over all these issues, I consider that respondents are not entitled to get recovery of possession of the land, but only their limited right and interest over the suit property is declared and as consequential relief, they are entitled to get compensation to the extent of 60% of the present market value of the entire suit land under Khatian No.468. On receipt of 60% of the market value of the entire suit property, respondents-plaintiffs shall execute the sale deed in favour of the appellant or, appellant to deliver 60% of suit property to plaintiff-respondents.

So, the order of the Court below declaring the title and recovery of khas possession, correction of the revenue records is set aside.

Appeal is partly allowed. As per the decision of this Appellate Court, the limited right and interest of the respondents is declared and as consequential relief 60% price of the present market value of the suit property as compensation is given to the respondents or appellant is to hand over vacant possession of 60% of suit property to the respondents.

Decree is to be modified accordingly.

Send back the L.C. record with a copy of this judgment.

This Title Appeal is thus disposed of.

Announced.”

4. The plaintiffs being aggrieved by judgment passed in Title Appeal No.12/2005, preferred Regular Second Appeal No.46 of 2006 before this Court. The said appeal was disposed of vide judgment dated 30.09.2015 (Annexure-5) *inter alia* holding as under:

“18. Article 65 of the Schedule to the Limitation Act provides limitation of twelve years for possession of immovable property based on title. The period of limitation starts running from the date when the possession of the defendant becomes adverse to the plaintiff. As far as the present case is concerned, the possession of Nripendra Kr. Datta became adverse to the possession of Sudhangshu Bimal Datta on the date when he filed the suit claiming that he was the adopted son of Nishi Kanta Datta and that he was the true owner of the suit land. Limitation started running from that date and this period of limitation is not interrupted by the mere fact that he had filed a suit. Nripendra Kr. Datta had filed a suit to establish his title. He may have failed to prove his title but it is an admitted fact that the possession remained with him. Therefore, his possession was adverse to the true owner, i.e. Sudhangshu Bimal Datta. The proper course for Sudhangshu Bimal Datta was to have filed either a counter claim in the suit filed by Nripendra Kr. Datta or to have filed a separate suit and this suit could be filed within 12(twelve) years of the title becoming adverse.

19. In view of the above discussion, I hold that the learned Court below was fully justified in holding that the adverse possession of Nripendra Kr. Datta had fructified into full title. In fact, the learned lower appellate Court was not justified in holding that the plaintiffs were entitled to 60% of the market value of the land but since that portion of the decree has not

been challenged by the respondents, this Court cannot set aside the same.

20. Therefore, I find no merit in the appeal which is accordingly dismissed. No order as to costs.”

5. Thereafter, Ex(T) No.15/2016 was preferred by decree holders/respondents. Petitioners/judgment debtors have approached this Court in the present revision petition under Article 227 of the Constitution of India against the order dated 27.02.2025 (Annexure-8) passed by learned Civil Judge (Jr. Div.), Belonia, South Tripura i.e. the Executing Court in Ex(T) No.15/2016 whereby the petition dated 13.02.2025 (Annexure-7) preferred by them have been rejected. The judgment debtors had stated in their application that they are residing for a long time in the suit land and have also constructed their dwelling huts in the suit land more than 25 years ago. If the building is demolished, they become homeless. They are residing within the 30% area of the total land, and 70% land is still in vacant position. Therefore, they prayed to the learned Court to hand over 60% vacant land to the decree holders from the suit land without destroying the homestead building of the judgment debtors. Learned executing Court rejected the plea on the ground that it cannot go behind the decree and re-examine the merits of the original case. Being aggrieved, the petitioners are before this Court.

6. Mr. Saktimoy Chakraborty, learned senior counsel for the petitioners submits that the learned executing Court has summarily rejected a petition by the judgment debtors raising genuine grounds which do not come into the way of execution of the decree by transfer of 60% of the vacant suit land. If the decree could be executed by delivery of 60% of the vacant land of the judgment debtors, there is no reason why the learned executing Court

would insist upon including the dwelling house also, which demonstrably is beyond the 60% of the vacant land of the scheduled suit land. In that way, the interest of the decree holders and that of the petitioner/judgment-debtors both be protected. Therefore, a prayer for interference has been made.

7. I have considered the submission of the learned senior counsel for the petitioners and taking note of the relevant materials placed from record, including the operative part of the judgment rendered by the learned trial Court, the first appellate Court, and the second appellate Court. The decree holder is pursuing execution of the modified decree as rendered by the learned appellate Court dated 11.08.2006, drawn in terms of the judgment and order passed by the first appellate Court in Title Appeal No.12/2005 dated 11.08.2006. The modified decree is also extracted hereunder:

“In view of my above findings over all these issues, I consider that respondents are not entitled to get recovery of possession of the land. But only their limited right and interest over the suit property is declared and as consequential relief, they are entitled to get compensation to the extent of 60% of the present market value of entire suit land under Khatian No.468. On receipt of 60% of the market value of the entire suit property, respondents—plaintiffs shall execute the sale deed in favour of the appellant or, appellant to deliver 60% of suit property to plaintiff- respondents.

So, the order of the Court below declaring the title and recovery of khas possession, correction of the revenue records is set aside.

Appeal is partly allowed. As per the decision of this Appellate Court, the limited right and interest of the respondents is declared and as consequential relief 60% price of the present market value of the suit property as compensation is given to the respondents or appellant is to the hand over vacant possession of 60% of suit property to the respondents.

Decree is to be modified accordingly.

The Title Appeal is thus disposed of.

Announced.”

8. As it appears that the petition dated 13.02.2025 preferred by the judgment debtors (Annexure-7) lacks any description of 60% of the vacant land which he claims to be vacant out of the total suit land. There is no description of the Khatian number, Plot number or the area which could comprise 60% of vacant land that he claims to be available for delivery to the decree holders, leaving aside the remaining portion of the suit land containing his dwelling house also.

9. It appears from the modified decree passed by the appellate Court that while partly allowing the appeal the limited right and interest of the respondents have been declared and as a consequential relief 60% price of the present market value of the suit property as compensation is to be given to the respondents or appellant is to hand over vacant possession of 60% of suit property to the respondents.

10. The absence of any description of the vacant land comprising of 60% out of the suit land decreed in favour of the plaintiffs/respondents herein, the learned trial Court had rightly refused to accept the plea raised by the judgment debtors at such a belated stage of the execution proceedings which is pending since 2016. In such circumstances, this Court is not inclined to interfere in the impugned order. However, since the executing Court has a task of ensuring the execution of the modified decree passed by the appellate Court which mandates consequential relief of 60% of the present market value of the suit property as compensation to the respondents/decreed holders or delivery of vacant possession of 60% of suit property to the respondents, one more opportunity may be granted to the judgment debtors to clearly

demonstrate before the executing Court that the decree is executable by delivery of possession of 60% of their vacant land without touching the dwelling house. Since the execution proceeding is pending since 2016, the petitioners are allowed one opportunity to move such an application within 10 days from today. The learned executing Court would consider the prayer after due opportunity to the decree holders in accordance with law within a period of two weeks thereafter, so that the execution proceedings are not delayed or held up further at the instance of the judgment debtors.

11. However, it is made clear that this Court has made no observation on the merits of the case of the parties. It is upon to the executing Court to ensure that the decree is executed in a time bound manner keeping into regard the judgment rendered by the Apex Court in the Case of **Rahul S. Shah Versus Jinendra Kumar Gandhi and others** reported in **(2021) 6 SCC 418**.

12. Accordingly, the instant petition is disposed of with the aforesaid observations. Pending application(s), if any, shall stand disposed of.

(APARESH KUMAR SINGH), CJ