

HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_
CRP No.33 of 2025

Smt. Anjali Debnath, wife of late Suresh Chandra Debnath, resident of Village-
Housing Board, Chanban, Udaipur, P.O. & P.S. R.K. Pur, District- Gomati Tripura.
..... *D.H. Petitioner(s)*

V E R S U S

Sri Ratan Debnath, son of late Satyam Sundar Debnath, resident of Village
Kishoreganj, P.O. & P.S. Kishoreganj, Udaipur, District- Gomati Tripura.

..... *J.D. Respondent(s)*

For Petitioner(s) : Mr. Bibek Banerjee, Advocate,
Ms. Ruma Majumder, Advocate.

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

HON'BLE THE CHIEF JUSTICE MR. M.S. RAMACHANDRA RAO

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20/09/2025

- 1) This Revision is preferred against the order dt.07.02.2025 of the Civil Judge (Sr. Division), Court No.1, Gomati District, Udaipur in Case No. Civil Misc. 25 of 2023.
- 2) Petitioner herein is the decree holder. The respondent is defendant no.1 in the suit.
- 3) She had filed Title Suit No.16 of 2011 before the Civil Judge(Senior Division), Gomati District, Udaipur for a declaration that she is having title to Plaint B scheduled property under a regd. sale deed executed in her favor by defendant no.2 and also an order of perpetual injunction restraining both defendants from interfering with her possession and enjoyment of the property.
- 4) The respondent contested the suit stating that he is in possession since 27.9.2006.

- 5) The suit was decreed on 17.10.2015. It found that the petitioner was the owner and possessor of the plaint B schedule land and is entitled to both the relief of declaration of title and also perpetual injunction.
- 6) The respondents filed Title Appeal No.21 of 2015 before the District Judge, Gomati District, Udaipur to set aside the judgment of the Trial Court. The appeal was allowed on 28.2.2019 and the matter was remitted back to the Trial Court to consider the question “whether the plaintiff was/is in possession of the suit land and if so, by what act of possession?”
- 7) Challenging the same, the petitioner filed RSA No.15 of 2019 in this Court which was allowed on 17.01.2022.
- 8) The learned Single Judge in RSA No.15 of 2019 by judgment dt.17.1.2022 allowed the appeal and set aside the judgment of the lower appellate court and confirmed the judgment of the trial court.
- 9) He held that the Trial Court in its judgment had held that the petitioner had proved her possession, that title to the property was secured by the petitioner under a registered sale deed executed in her favour by the defendant No.2, that possession follows title, that no evidence was let in by respondent (defendant no.1) that she was dispossessed from the suit land at any point of time, and the lower Appellate Court was not correct in holding that the petitioner may not be in possession of the suit land and remanding the matter to the Trial Court for determining the petitioner’s possession over the suit land. He held that such a view of the lower Appellate Court was perverse and caused grave miscarriage of justice. The High Court thus restored the judgment of the Trial Court.
- 10) No challenge was made to the judgment in the RSA by the respondent and it thus attained finality.

- 11) Thereafter, the petitioner filed on 21.3.2022, Execution (T) No.5 of 2022 before the Civil Judge (Senior Division), Gomati Tripura, Court No.1, Udaipur, alleging that the petitioner was dispossessed on 13.03.2022 after the judgment in the RSA was pronounced on 17.01.2022 and seeking certain directions in the execution petition to evict the judgment-debtor/respondent herein from the Plaintiff B Scheduled Property and also to provide police aid.
- 12) Notice was issued to the respondent-JDR, who filed an objection petition invoking Section 47 of the CPC stating that all along he was in possession of the Suit B scheduled land and the petitioner was never in possession thereof.
- 13) It is pleaded that the decree holder/petitioner had stated in the plaint that she is in possession of the suit land since purchase and that she prayed for declaration of title and perpetual injunction, but there was no pleading in the plaint as to when the petitioner entered into possession over the suit land dispossessing the respondent, and there was no prayer for recovery of possession by the respondent in her plaint. It is, therefore, contended in the objection petition that the question of recovery of possession as sought in the execution proceedings cannot be granted and it should be dismissed.
- 14) It is also contended that the proforma-defendant No.2 had executed a sale deed in respect of his share in Schedule-A land which includes the suit land in favour of the petitioner on 02.06.2010 under two registered sale deeds No.1-962 of 2010 and No.1-963 of 2010 in furtherance of the oral agreement dt.27.09.2006 between the proforma-defendant No.2 and the judgment-debtor but these documents could not be produced when the suit was pending.

- 15) On 07.02.2025, the Executing Court treated the objection petition as a petition under Section 47 of CPC and directed that evidence be adduced by the respondent in support of his claim.
- 16) Challenging this action of the executing Court, this revision is filed.
- 17) Admittedly the petitioner had pleaded in the suit that she is in possession of the Suit B scheduled property. She had sought declaration of title and a perpetual injunction restraining the respondent from entering the same and from disturbing her peaceful possession over the land. The said suit was decreed by the Trial Court on 17.10.2015 and the same decree was confirmed in RSA No.15 of 2019 on 17.01.2022 and all findings of the Trial Court were affirmed including the finding that the petitioner was in possession of the Suit B scheduled property.
- 18) It is not permissible for the respondent to file an objection petition under section 47 of the CPC and contend that he was all along in possession of the Suit B scheduled property in paragraph 3.3 of the objection petition. He cannot ask the Executing Court to now decide as to whether such a plea is correct or not in the execution petition. He also cannot seek to prove that he acquired title to the property in 2010 from defendant no.2.
- 19) The judgment in RSA No.15 of 2019 binds the respondent-JDR and also the Executing Court. He cannot re-agitate the said issues which have attained finality. Moreover, the Executing Court also cannot go behind the decree of the Trial Court as well as in the RSA.
- 20) The Executing Court has no business to start an enquiry as to whether the respondent-JDR was all through in possession of the suit scheduled property or not and if it were to do so, it will be doing what is not permissible in law.

- 21) The scope of enquiry has to be confined by the Executing Court to what is provided in Or.21 Rule 32 CPC. i.e., the Executing Court can only decide whether the respondent has had an opportunity to obey the decree of injunction and has willfully failed to obey.
- 22) In **Samee Khan v. Bindu Khan**¹ the Supreme Court held :
- “11..... .No doubt the wording as framed in Order 21 Rule 32(1) would indicate that in enforcement of the decree for injunction a judgment-debtor can either be put in civil prison or his property can be attached or both the said courses can be resorted to. But sub-rule (5) of Rule 32 shows that the court need not resort to either of the above two courses and instead the court can direct the judgment-debtor to perform the act required in the decree or the court can get the said act done through some other person appointed by the court at the cost of the judgment-debtor. Thus, in execution of a decree the court can resort to a threefold operation against disobedience of the judgment-debtor in order to compel him to perform the act.”*
- 23) No enquiry by the Executing Court as to possession of the property before the date of the decree or into title to the property is permissible.
- 24) Therefore, to this extent the revision is allowed, the impugned order of the Executing Court is set aside and it is directed to confine itself to enquiry only to the limited extent mentioned above.
- 25) The instant Civil Revision Petition is disposed of. Pending application(s), if any, also stands disposed of.

(M.S. RAMACHANDRA RAO, CJ)

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¹ (1998) 7 SCC 59, at page 63