

**HIGH COURT OF TRIPURA
AGARTALA**

CRP No.89 of 2025

1. 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-78 years.

2. 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-83 years.

..... Judgment Debtor-Petitioner(s).

V E R S U S

Sri 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. J. Samad, Advocate.

For Respondent(s) : None.

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

CAV reserved on : **05.01.2026.**

Judgment delivered on : **20.01.2026.**

Whether fit for reporting : **YES.**

JUDGMENT & ORDER

Heard Mr. Somik Deb, learned senior counsel assisted by Mr. J. Samad, counsel appearing for the petitioners.

2. This revision is filed under Section 115 of the Code of Civil Procedure, 1908 (CPC, for short) challenging order dt.19.11.2025 of the Civil Judge, Senior Division, Court No.1, West Tripura, Agartala in case No.Civil Misc.(J) 118 of 2021 arising out of Ex(T) No.10 of 2020.

The background facts:

3. The petitioners are the judgment debtors in T.S. No.43 of 2002 out of which the said Execution Application arises.

4. The respondent had filed the said suit against the petitioners and Deputy Collector, Sadar Revenue Circle, Office of the SDO, Sadar, Agartala, West Tripura for declaration of his right, title and interest in the suit schedule property, and for recovery of possession thereof from the petitioners. He also sought a declaration that the recording of the possession of the first petitioner as adverse possessor by the Deputy Collector was wrong, illegal and was liable to be set aside.

5. After contest, the suit was decreed and the title of the respondent over the suit schedule land was accepted and he was held entitled to get possession of the suit schedule land from the petitioners by evicting them and the entry made in the Khatian (Exhibit-3) at Column-23 showing the first petitioner as adverse possessor was declared illegal and void.

6. The petitioners had challenged the said judgment and decree in Title Appeal No.50 of 2005 before the Additional District Judge, Court No.2, West Tripura, Agartala, but the same was also dismissed on 22.05.2009.

7. They then preferred a Second Appeal being RSA No.25 of 2009 before this Court which was also dismissed on 14.10.2015.

Ex(T) No.10 of 2020:

8. The respondent then filed Execution Petition being Ex(T) No.10 of 2020 before the Civil Judge, Senior Division, Court No.1, West Tripura, Agartala for recovery of possession of the suit schedule property.

Civil Misc.(J) 118 of 2021:

9. The petitioners filed an application Civil Misc.(J) 118 of 2021 under Section 47 of CPC objecting to the execution process initiated by the respondent.

10. On 09.08.2024, the Executing Court dismissed the application under Section 47 filed by the petitioners.

CRP No.90 of 2024:

11. This was challenged by the petitioners in CRP No.90 of 2024.

12. On 27.09.2024, the said CRP was allowed, and the matter was remitted back to the Executing Court for fresh consideration of the issues raised by the petitioners in their objection under Section 47 of CPC, to consider the report of the Tehsildar and Amin and the orders dt.09.08.2024 and 12.08.2024 passed by the Executing Court were set aside.

The order dt.7.12.2024 of the Executing Court after remand:

13. Thereafter, the Executing Court passed a fresh order on 07.12.2024.

14. In this order, the Executing Court held against the respondent and observed that the respondent had wrongly described the decretal land in the Execution Petition and that he had not discharged the legal obligation of correctly describing the decretal land, and on the basis of these discrepancies in the description of the decretal land, if the execution is permitted, it would result in serious miscarriage of justice.

15. As regards the report of the Tehsildar and Amin, which was also directed to be considered by this Court in its order dt.27.09.2024, the Executing Court observed that the Tehsildar and Amin had failed to give any

explanation regarding one aspect, i.e. though the date of inspection by them was on 27.02.2023, the report mentions the date 28.01.2023 when they were examined as Court Witnesses, and so their report cannot be accepted.

CRP No.19 of 2025 and the second remand order:

16. This was challenged by the respondent in CRP No.19 of 2025 before this Court.

17. On 29.08.2025, the said Revision was allowed. This Court held that there was no mention in the order of the Executing Court about the order dt.06.03.2021 in C.M.(J) No.39 of 2021 in the very same Execution Petition permitting the respondent to amend the schedule in the Execution Application, and that it also did not take note of the fact that no objection was filed to the said application for amendment of the schedule to the Execution Application by the petitioners.

18. This Court also held that the date 28.01.2023 mentioned in the report of the Tehsildar and Amin is a typographical mistake for 28.02.2023 because the date of inspection by them was 27.02.2023. It was also observed that when the Amin and Tehsildar had been examined in the Executing Court as CWs-1 and 2, no question was put to either of them in cross-examination by the petitioners to explain the discrepancy in the date of the report and the date of the inspection, and therefore, they are deemed to have waived the same and the Executing Court, therefore, cannot ignore the said report filed by the Tehsildar and Amin.

19. This Court then remitted the matter again to the Executing Court to rehear the parties in the light of the order passed on 29.08.2025 in CRP No.19 of 2025.

The impugned order dt.19.11.2025 of the Executing Court:

20. Subsequent thereto, the Executing Court passed the impugned order dt.19.11.2025.

21. It dealt in the said order with the objection under Section 47 of the CPC filed by the petitioners (which had been registered as Civil Misc.(J) No.118 of 2021) wherein objection relating to executability of the decree in favour of the respondent on the ground of non-identifiability of the decretal land was raised.

22. The Executing Court framed the following three points for consideration:-

"(I) Whether the present objection under Section 47 CPC, based on alleged misdescription and non-identifiability of the decretal land, is maintainable and open to the judgment-debtors in execution?

(II) Whether, in view of (a) the decree schedule, (b) the amendment order dated 06.03.2021 in CM(J) 39 of 2021 and (c) the report and depositions of the Tehsildar and Amin, the decretal land is incapable of identification so as to render the decree in-executable?

(III) Whether the survey report dated 28.01/28.02.2023 is liable to be discarded on the grounds urged, namely non-availability of a physical copy of the decree with the surveyors, mention of Hal plot 937 on the south instead of the JDs' land, and alleged procedural defects in measurement?

23. On Point No.(I), the Executing Court held that the decree sought to be executed had attained finality; objection of the petitioners was confined to the description and identification of the decretal land in execution and apprehension that some portion of their land to the south may be delivered; and it was a question relating to the execution of the decree between the parties and, therefore, fell within the ambit of Section 47 of CPC. It thus held that the objection application was maintainable to the limited extent of examining whether the decretal land is properly identifiable and whether the execution is being carried out strictly in accordance with the decree.

24. It then considered Point No.(II) as to whether the decretal land was capable of identification or incapable of identification and if it is the latter, whether it would render the decree in-executable.

The Executing Court then held that in the Execution Petition initially a wrong Hal plot and area were mentioned, but it was amended on 06.03.2021 in Civil Misc.(J) No.39 of 2021, by which the schedule to the Execution Petition was corrected so as to properly reflect the corresponding R.S. Plot No.936, to which there was no objection by the petitioners; and once the Execution Petition schedule was amended, it must be read in consonance with the decree schedule, i.e. C.S. Plot No.16603/54152 (0.029 acre) corresponds to R.S. Plot No.936.

It then dealt with the petitioners' contention that the Revenue Map of R.S. Plot No.936 and 937 is erroneous and that if execution proceeds as per map, their land in R.S. Plot No.935, purchased in 1982 and recorded separately, will be affected. It rejected the said plea stating that the petitioners

did not produce any authoritative order setting aside or correcting the revisional survey records relied upon by the Tehsildar and Amin.

It also noted that names of holders of land which form the boundaries of the suit land may change because of transfers/succession etc. while survey plot numbers and area provide a more stable identifier; minor discrepancies or change in names of neighbours do not render the property unidentifiable when survey numbers and area are certain; and it is the duty of the Executing Court in such a case to reconcile these descriptions, and not to declare the decree inexecutable.

It held that it was essentially an issue of working out the decree in the light of the survey records, not of any inherent non-identifiability in the decree itself and in the absence of any competing technical evidence or any authoritative correction of the revisional survey, the Tehsildar/Amin report, which specifically identifies the decretal land with reference to the Sabek map and shows part of it under occupation of the petitioners, has to be accepted and it cannot be said that the land was incapable of identification.

It, therefore, rejected the plea raised by the petitioners of "non-identifiability" and "wrong description" of the property mentioned in the Execution Petition.

25. On Point No.(III), it held that the survey report dt.28.01.2023 cannot be discarded because the date on it was an obvious typographical mistake as held by this Court in the order passed by it on 29.08.2025 in CRP No.19 of 2025.

It also considered the cross-examination of CWs-1 and 2, i.e. the Tehsildar and Amin and held that they did not totally ignore the decree and

CW-1's ability to recite the decretal boundaries suggests that the decree had been perused in connection with the assignment, though a physical copy was not carried to the Court or annexed with the report. Non-enclosure of the decree copy or the surveyor's failure to carry a physical copy of the decree to the field is at best an irregularity, and not an illegality vitiating the identification, as they have otherwise proceeded on the basis of the Sabek dag and map and their report is consistent with the decree schedule read with the amended execution schedule.

26. The Executing Court also noted that the petitioners' plea that the land is "not identifiable" is contradicted by their own admission in paragraph-5 of Section 47 CPC petition that they have no objection if the decree is executed in terms of the boundary as mentioned in the decree, and by the very existence of the survey report which pinpoints the land. It recorded that the apprehension of the petitioners was only that their own land to the south may be wrongly included, but that concern can and will be addressed at the stage of issuing specific directions for delivery of possession, by ensuring that the Bailiff and revenue staff confine themselves strictly to the land identified in the survey report as the decretal land, without encroaching into R.S. Plots or portions not included therein.

27. It then issued the following directions:-

"(I) Ex(T) 10 of 2020 shall proceed. The bailiff and revenue officials shall execute the decree by delivering possession of the decretal land strictly in accordance with the decree schedule in TS 43 of 2002, the amended schedule of the execution petition as per order dated 06.03.2021 in CM(J) 39 of 2021 and the

Tehsildar/Amin report dated 28.01/28.02.2023 and the hand-sketch map annexed thereto, treating the land delineated therein as comprising the decretal land.

(II) While effecting delivery of possession, the executing staff shall ensure that no land beyond the area and limits shown in the said hand-sketch map as the decretal land is delivered to the decree-holder. If any *bona fide* doubt arises at the spot concerning the precise line between the decretal land and any adjoining land recorded in the name of the JDs, the bailiff shall report back to this Court for appropriate clarification before proceeding further.

(III) In view of the directions of the Hon'ble Supreme Court in *Rahul S. Shah v. Jinendra Kumar Gandhi*¹ (supra) to ensure expeditious execution of decrees and of the Hon'ble High Court's direction in CRP No.19 of 2005 to decide the execution within three months, Ex(T) 10 of 2020 shall now be taken up on priority and steps for delivery of possession shall be completed as expeditiously as possible, keeping the aforesaid outer limit in view."

28. Challenging the same, this Revision is filed by the petitioners.

The instant Revision:

29. Counsel for the petitioners sought to rely on the admission of CW-1 that the southern boundary of the land he identified does not match the southern boundary stated in the decree which mentions "Benoy Poddar & others" and his further statement that as per current revenue records, the

¹ (2021) 6 SCC 418

southern adjacent Hal Plot No.937 is owned by one Tilak Singha (earlier Bangali Singha) and that he has accordingly described the existing position.

30. Counsel for the petitioners contended that this is sufficient to dismiss the Execution Petition by accepting the objection petition filed by the petitioners.

31. He also contended that the petitioners are owners of Hal Plot No.935 and that their ingress and egress to the said plot will be affected if the Execution Petition is allowed, because a pathway to the said plot is included/ subsumed on the southern side of Hal Plot No.936, i.e. the decretal land.

32. He also sought to contend that the impugned order of the Executing Court is an order in excess of its jurisdiction and warrants interference by this Court in exercise of its jurisdiction under Section 115 of CPC. He cited the following judgments:-

(i) ***Rameshwar Dass Gupta v. State of U.P. & another***²;

(ii) ***S. Bhaskaran v. Sebastian (Dead) by Legal Representatives & others***³;

(iii) ***S.P. Misra & others v. Mohd. Laiquddin Khan & another***⁴.

According to him, the Executing Court cannot travel beyond the decree.

33. This principle is settled, but it does not apply in the instant case.

34. The apprehension of the petitioners that their land will be taken away under the guise of execution of the decree in favour of the respondent is basically premised on the non-identifiability of the decretal land, which

² (1996) 5 SCC 728;

³ (2019) 9 SCC 161;

⁴ (2019) 10 SCC 329.

objection has been dealt with in detail by the Executing Court as mentioned above.

35. The evidence of CW-1 and CW-2 have both been considered by the Executing Court and it has held that the Execution Petition had initially mentioned a wrong Hal Plot and area, but this was cured by an amendment allowed on 06.03.2021 in Civil Misc.(J) No.39 of 2021, and that the schedule to the Execution Petition was corrected so as to properly reflect the corresponding R.S. Plot No.936 and the petitioners had not objected to the said amendment. Once the amendment stands and has attained finality, the Execution Petition schedule must be read in consonance with the decree schedule, i.e. C.S. Plot No.16603/54152 (0.029 acre) corresponding to R.S. Plot No.936.

36. It had rejected the plea of the petitioners that the revenue map of R.S. Plot Nos.936 and 937 is erroneous and if execution proceeds as per the map, their land in R.S. Plot No.935 will be affected. It held that the petitioners had not produced any order setting aside or correcting the revisional survey records relied upon by the Tehsildar and the Amin and even in their objection petition, they had stated that they had no objection if the execution proceeds as per the boundary as mentioned in the decree, if their land on the south is excluded.

37. It then went on to hold that minor discrepancies or changes in names of neighbours do not render the property unidentifiable when survey numbers and area are certain and it was the duty of the Executing Court in such a case to reconcile these descriptions, and not to declare the decree inexecutable.

38. It recorded that the Tehsildar/Amin report specifically identifies the decretal land with reference to the Sabek map and shows part of it under the occupation of the petitioners and so they cannot contend that the land was incapable of identification. It also held that the identity of the decretal land does not depend on the continuing identity of the neighbour, but it depends upon the plot number, area and relative position as per the map. It accepted the report of the Amin/Tehsildar and further recorded that their report notes that on measurement they found 0.0267 acres instead of 0.029 acres and that part of the land is recorded as khas; and a marginal shortfall in area, explained by part of the land being recorded as Government land, does not render the decree inexecutable.

39. It relied on the judgment of the Supreme Court in **Rahul S. Shah (1 supra)** where the Supreme Court had emphasized that the Executing Courts must ensure effective, not illusory execution and are not to thwart decrees on technicalities.

40. It also relied on the judgments of the Supreme Court in **Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman & others**⁵ and **Topanmal Chhotamal v. M/S. Kundomal Gangaram & others**⁶ to hold that Executing Court cannot treat the decree as inexecutable merely because survey maps have changed or neighbour names in revenue records differ from those recorded in the decree; nor can it reopen the questions of title that stood concluded in T.S. No.43 of 2002. It held that objections under Section 47 of CPC, if accepted, would in effect nullify the decree or compel the Court to re-adjudicate the title questions, already decided, are impermissible in execution.

⁵ 1970 (1) SCC 670;

⁶ AIR 1960 SC 388;

It held that the petitioners have not demonstrated any jurisdictional defect or nullity in the decree, nor any absolute impossibility in its execution.

Consideration by this Court:

41. I completely agree with the reasoning given by the Executing Court.

42. In ***Rajinder Kumar v. Kuldeep Singh***⁷, the Supreme Court had held that any ambiguity in decree can be sorted out by the executing Court after referring to the judgment or even to pleadings in suit.

*“21. As held by this Court in **Topanmal Chhotamal v. Kundomal Gangaram** (6 supra) and consistently followed thereafter, even if there is any ambiguity, it is for the executing court to construe the decree if necessary after referring to the judgment. If sufficient guidance is not available even from the judgment, the court is even free to refer to the pleadings so as to construe the true import of the decree. No doubt, the court cannot go behind the decree or beyond the decree. But while executing a decree for specific performance, the court, in case of any ambiguity, has necessarily to construe the decree so as to give effect to the intention of the parties.”*

43. In ***Rahul S. Shah*** (1 supra), the Supreme Court declared that a decree holder cannot be deprived of the fruits of a decree by entertaining frivolous objections of the judgment debtor and with pragmatic approach and judicial interpretations, the court must not allow the judgment-debtor or any

⁷ (2014) 15 SCC 529 : (2015) 4 SCC (Civ) 243, at page 543 :

person instigated or raising frivolous claim to delay the execution of the decree. It declared:

“25. These provisions contemplate that for execution of decrees, executing court must not go beyond the decree.

However, there is steady rise of proceedings akin to a retrial at the time of execution causing failure of realisation of fruits of decree and relief which the party seeks from the courts despite there being a decree in their favour. Experience has shown that various objections are filed before the executing court and the decree-holder is deprived of the fruits of the litigation and the judgment-debtor, in abuse of process of law, is allowed to benefit from the subject-matter which he is otherwise not entitled to.

26. The general practice prevailing in the subordinate courts is that invariably in all execution applications, the courts first issue show-cause notice asking the judgment-debtor as to why the decree should not be executed as is given under Order 21 Rule 22 for certain class of cases. However, this is often misconstrued as the beginning of a new trial. For example, the judgment-debtor sometimes misuses the provisions of Order 21 Rule 2 and Order 21 Rule 11 to set up an oral plea, which invariably leaves no option with the court but to record oral evidence which may be frivolous. This drags the execution proceedings indefinitely.

27. *This is antithesis to the scheme of the Civil Procedure Code, which stipulates that in civil suit, all questions and issues that may arise, must be decided in one and the same trial....* ...

... ..

40. *In Ghan Shyam Das Gupta v. Anant Kumar Sinha⁸, this Court had observed that the provisions of the Code as regards execution are of superior judicial quality than what is generally available under the other statutes and the Judge, being entrusted exclusively with administration of justice, is expected to do better. With pragmatic approach and judicial interpretations, the court must not allow the judgment-debtor or any person instigated or raising frivolous claim to delay the execution of the decree.”*

44. The Executing Court in my opinion has correctly dealt with the objection filed by the judgment debtors by applying the above principles and has given adequate reasons in support of its decision.

45. Even otherwise, in exercise of limited jurisdiction vested in this Court under Section 115 CPC, this cannot reverse errors of fact and law even if they exist in the orders of subordinate courts.

46. In *M/s. Misrilal Parasmal v. H.P. Sadasiviah & another⁹*, the Supreme Court held that the High Court has no power to reverse the order impugned of a lower Court merely on the ground that it was vitiated by an

⁸ (1991) 4 SCC 379

⁹ AIR 1965 SC 553;

error of law or upon the ground that a question of fact, however vital it may be, was erroneously decided by the Court below.

47. In *The Managing Director (MIG) Hindustan Aeronautics Ltd. & another, Balanagar v. Ajit Prasad Tarway*¹⁰, the Supreme Court held that while exercising jurisdiction under Section 115 CPC, the High Court has no jurisdiction to interfere with the order of a Court below when it had the jurisdiction to make the order- whether the order is right or wrong or whether in accordance with law or not in accordance with law, unless the Court below had exercised jurisdiction either illegally or with material irregularity.

48. Similar view was also expressed in *M/S. D.L.F. Housing and Construction Company (P.) Ltd., New Delhi v. Sarup Singh & others*¹¹ where the Supreme Court held that while exercising jurisdiction under Section 115, it is not competent to the High Court to correct errors of fact, however gross or even errors of law, unless the said errors have relation to the jurisdiction of the Court to try the dispute itself. It held that the words "illegally" and "with material irregularity" used in Section 115 CPC do not cover either errors of fact or of law and they do not refer to the decision arrived at, but merely to the manner in which it is reached. It declared that errors contemplated by the said clause under Section 115 CPC relate either to breach of some provision of law or to material defects of procedure affecting the ultimate decision, and not to errors either of fact or of law, after the prescribed formalities have been complied with.

49. In the facts and circumstances of the case and having regard to the elaborate reasoning given by the Executing Court in the instant case, I am

¹⁰ (1972) 3 SCC 195;

¹¹ 1969(3) SCC 807;

of the firm view that the instant case does not fall within the parameters of interference under Section 115 of CPC. I agree with the view of the trial Court that the decree is not incapable of execution because the land which is subject matter of the decree is identifiable.

50. Therefore, I do not find any merit in this Revision. It is, accordingly, dismissed. No costs.

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

(M.S. RAMACHANDRA RAO, CJ)



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