

**THE HIGH COURT OF TRIPURA
AGARTALA**

CRP No.29 of 2014

Sri Sarbeswar Majumder,
son of late Surendra Kumar Majumder,
resident of Village-Rajnagar,
PO & PS – Teliamura, Sub-Division-Teliamura,
District – Khowai, Pin-799 205

.....**Petitioner**

– Vs –

1. Sri Madhusudan Roy,
son of late Chunilal Roy,
2. Smti. Snehalata Roy,
wife of late Chunilal Roy,
3. Smti. Lipika Roy,
daughter of late Chunilal Roy,

(all three living at Vill. Rajnagar, PO & PS – Teliamura,
Sub-Division-Teliamura, District – Khowai, Pin-799 205
4. Smti. Gita Roy,
daughter of late Chunilal Roy,
wife of Sri Mishan Kanti Roy,
resident of Village – Maharajganj Bazar,
PO & PS – Khowai, Sub-Division- Khowai,
District – Khowai, Pin-799 207
5. Smti. Kanika Roy,
daughter of late Chunilal Roy,
wife of Sri Ranjit Deb,
resident of Ambassa,
PO & PS – Ambassa, Sub-Division-Ambassa,
District – Dhalai, Pin-799 289
6. Sri Bhuban Bhowmik,
son of late Jagabandhu Bhowmik,
resident of Rajnagar,
PO & PS – Teliamura, Sub-Division-Teliamura,
District – Khowai, Pin-799 205

.....**Respondents**

**B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA**

For the petitioner : Mr. A. Pal, Advocate

For the respondents : Mr. S. Lodh, Advocate

Date of hearing and delivery : **22.06.2015**
of Judgment and order

Whether fit for reporting : **NO**

Judgment and Order (Oral)

Heard Mr. A. Pal, learned counsel appearing for the petitioner as well as Mr. S. Lodh, learned counsel appearing for the respondents.

02. A very short question is involved in this petition filed under Section 115 of the CPC, 1908 directed against the order dated 04.01.2014 passed by the Civil Judge, Junior Division, Khowai, West Tripura in Civil Misc. No.17 of 2012.

03. Mr. Pal, learned counsel for the petitioner has submitted that when the petitioner set in motion the execution proceeding for execution of the decree passed in Title Suit No.12 of 1974, the respondents herein, who are strangers to the suit have raised serious objection contending that they are in possession of the decreetal land and accordingly they filed one application under Order 21, Rule 97 read with Rule 101 of the CPC for inquiry and determining such claim. It is also undisputed that the respondents have instituted suit being T.S. 05 of 2012 for identical reliefs.

04. The decree-holder petitioner has raised the question of maintainability of such petition from the strangers. On holding that such proceeding is maintainable, the objection so raised by the decree holder-petitioner has been rejected by the impugned order. But the words deployed by the Civil Judge, Junior Division, Khowai, West Tripura has created a confusion which ultimately led the petitioner to approach this court. While closing the order, it has been observed as under:

"Relying on the above decision I hold that the application filed by petitioners under Order 21, Rule 97 of the CPC is maintainable in law and accordingly the same stands allowed."

05. Mr. Pal, learned counsel for the petitioner has contended that if the respondents' petition under Order 21, Rule 97 of the CPC is allowed where the scope lies for further inquiry to determine the claim in terms of the order 21, rule 101 of the CPC and also where the scope is for the decree holder to show that the strangers do not have any right over the decreetal land.

06. Mr. Lodh, learned counsel appearing for the respondents has fairly submitted that the intent and purport of the impugned order has to be read harmoniously. It implied that the application filed under Order 21, Rule 97 of the CPC by the respondents is maintainable and thus necessary inquiry shall follow.

07. On the basis of the consensus reached at the Bar, this Court is not inclined to deliberate further on the challenge. Accordingly, the words denoting that the application filed under Order 21, Rule 97 of the CPC stands allowed is interfered with and expunged from the order. It is substituted by the words that the proceeding drawn under Order 21, Rule 97 of the CPC is maintainable. The executing court now shall continue with the inquiry into the claim under Order 21, Rule 97 of the CPC in terms of Order 21, Rule 101 of the CPC.

08. Mr. Pal, learned counsel for the petitioner has raised another objection that in view of the application filed under Order 21, Rule 97 of the CPC by the respondents whether a suit filed

subsequently by them can be maintained or not. The petitioner shall remain at liberty to raise such objection in the suit being TS No.05 of 2012.

Having observed thus, this petition stands partly allowed to the extent as indicated above. There shall be no order as to costs.

The stay order passed earlier stands vacated.

JUDGE

MB