

THE HIGH COURT OF TRIPURA AGARTALA

CRP NO.58 OF 2015

Sri Dilip Kumar Saha,
S/O. Late Manmohan Saha,
Of Shibnagar, PS East Agartala,
District: West Tripura.

...**Petitioner**

- Vs -

1. Sri Gurudas Paul,
S/O. Late Umesh Chandra Paul,
Resident of 76, Central Road,
Central Guest House, Agartala,
P.O Agartala, PS West Agartala,
District: West Tripura.

.....**Petitioner Respondent**

2. Sri Sridam Paul,
S/O. Late Srinibas Paul,
C/O. Gauranga Traders,
Motor Stand Road, Agartala,
PS East Agartala, District: West Tripura.

3. Smt Uma Paul,
D/O Late Srinibas Paul.

4. Smti Rama Paul,
D/O. Late Srinibas Paul,
Both are C/O Kashinath Ghosh
(Back of Ramkrishna Ashram),
Gangail Road, PO Agartala,
PS West Agartala,
District- West Tripura.

5. Smti. Puspa Rani Paul,
W/O Late Srinibas Paul
C/O Gauranga Traders,
Of Motor Stand Road,
P/O. Agartala,
PS East Agartala,
District- West Tripura.

**On the death of Gouranga Chandra Paul,
his legal heirs:-**

6a). Smti. Haridasi Paul,
W/O. Late Gouranga Chandra Paul.

6b). Sri. Dilip Paul,
S/O Late Gouranga Chandra Paul.

6c). Sri. Uttam Kumar Paul,
S/O. Late Gouranga Chandra Paul,
Resident of Village & PO Kamalghat
Bazar, PS Sidhai, District- West
Tripura.

6d). Smti Gouri Rani Paul,
W/O Sri Sridam Paul,
D/O Late Gouranga Chandra Paul,
Resident of Motor Stand Road,
PO. Agartala, PS East Agartala
District- West Tripura.

7. Sri Narayan Paul,
S/O Late Haridas Paul.

8. Sri Anjan Paul,
S/O Late Ranjit Paul.

9. Sri Jayanta Paul,
S/O Late Rajit Paul.

10. Sri Bapi Paul,
S/O Late Ranjit Paul.

All are resident of Santipara
(Ghosh Patti), PO Agartala,
PS East Agartala, District-West Tripura.

11. Smti. Kalpana Paul,
W/O Late Chandan Paul,
Mohanpur Bazar, PO Mohanpur,
PS Sidhai, West Tripura.

(Heirs of Late Ramananda Paul)

12. Sri Goutam Paul,
S/O Late Ramananda Paul,
Motor Stand Road(Opp. To BATA),
PO Agartala, PS East Agartala
West Tripura.

13. Smti. Ratna Paul,
W/O Sri Subhash Paul,
Of Abhoynagar Bazar,
PO Abhoynagar, PS East Agartala,
District- West Tripura.

14. Smti Debjani Paul,
D/O Late Ramananda Paul,
C/O Sri Gautam Paul,
Motor Stand Road, Opp. To BATA,
PO Agartala, PS East Agartala,
District- West Tripura.

15. Smti Priti Paul,
W/O Sri Partha Pratim Paul,
Of Mantribari Road, PO Agartala,
PS West Agartala, District- West Tripura.

(Heirs of Late Krishnadasi Paul)

16a). Smt Arati Paul,
W/O Lt. Swapan Paul.

16b). Sri Bandhan Krishna Paul,
S/O Lt. Swapan paul,
Both residents of Sibnagar Near
Lotus Club, PS East Agartala,
PO Agartala College,
District- Tripura West.

16c). Smt. Jharna Paul,
W/O Sri Goutam Paul,
D/O Lt. Swapan Paul,
Of Subhash Park, Khowai
PO & PS Khowai
District- Khowai, Tripura.

17. Sri Chandan Paul,
S/O. Late Binoy Krishna Paul.

18. Sri Anjan Paul,
S/O Late Binoy Krishna Paul,
All are residence of Sibnagar,
near Lotus Club, Agartala,
PS East Agartala, PO Agartala
College, District- West Tripura.

19a). Sri Sankar Paul,
S/O Late Abani Paul.

19b). Sri Subrata Paul,
S/O Late Abani Paul,
Both are residents of Teliamura-
Ampi Road, near BSNL Office,
PS Teliamurah, District- Khowai,
Tripura.

20. Smti Hela Paul,
W/O Sri Nrayan Paul,
Of Ulabari, Barthakur Mill
Bye-lane-3, Gauhati, Assam.

21. Smti Rina Paul,
W/O late Sujoy Paul,
C/O late Bijoy Krishna Paul,
Of Udharband, Silchar,

District- Cachar, Assam.

....Pro-forma defendant Respondents.

**BEFORE
THE HON'BLE MR. JUSTICE S.C. DAS**

For the petitioner : Mr. A. K. Bhowmik, Sr. Advocate,
Ms. A. Banik, Adv.

For the respondents : Mr. S. M. Chakraborty, Sr. Adv.
Mr. P. Chakraborty, Adv.,
Mr. D. Choudhury, Adv.,
Mr. D. Deb, adv.,
Mr. D. Chakraborty, Sr. Adv.,
Mr. H. Laskar, Adv.,
Mr. B. Saha, Adv.,
Mr. K. Nath, Adv.

Date of hearing & delivery
of Judgment & order : **04.12.2015.**

Whether Fit for Reporting : YES.

JUDGMENT & ORDER (ORAL)

By filing this petition under Article 227 of the Constitution of India, the petitioner has challenged the order dated 28.03.2015 passed by learned Civil Judge, Senior Division, Court No.1, Agartala, in Misc. Case No. 95 of 2012 arising out of execution proceeding No. Ex(T)7 of 2009.

2. Heard learned senior counsel, Mr. A. K. Bhowmik for the petitioner, learned senior counsel, Mr. S. M. Chakraborty assisted by learned counsel, Ms. P. Chakraborty for the respondent No.1, learned counsel, Mr. B. Saha for respondent No.2, learned counsel, Mr. D. R. Choudhury for respondent No. 5, 6A to 19B. The matter is taken up for final disposal at the order stage itself with the consent of learned counsel of both sides.

3. Facts which are necessary for disposal of this petition in short is that the petitioner Dilip Kumar Saha, as plaintiff, instituted T.S. No. 30 of 1984 in the court of Civil Judge, Senior Division, Court No. 1, Agartala against Srinibash Pal (since deceased), the predecessor of respondent No. 2 to 5 herein, as defendant No.1, Sridam Pal, the respondent No.2 herein, as defendant No.2 and another Gouranga Pal, the predecessor of respondent Nos. 6A to 6D herein, as defendant No.3. The suit was contested by the defendants and it was decreed in favour of the plaintiff by judgment and decree dated 29.09.1999.

Aggrieved, the defendants preferred Title Appeal No.25 of 1999 in the court of District Judge, Agartala, and the Additional District Judge, Court No.3, Agartala, dismissed the appeal and upheld the decree passed by the Trial Court.

4. The defendants having felt aggrieved filed second appeal, RSA 03 of 2001 before the Agartala Bench of the then Gauhati High Court and the second appeal was dismissed by judgment dated 22.11.2008 and thereby the judgment and decree passed by the trial court was affirmed. The defendants did not challenge the judgment passed in the second appeal before any superior forum and, hence, the judgment and decree passed by the trial court has become final.

5. The plaintiff, i.e., the petitioner herein thereafter put the decree in execution and it was registered as Case No. Ex(T)7 of 2009. The defendant-judgment debtors filed objection under section 47 of CPC and that was disposed of. Thereafter, during the pendency of the proceedings Srinibash Pal died and out of his legal

heir's, defendant No.2, i.e. the respondent No. 2 herein, was already on record and respondent No.3 to 5 were brought on record. Respondent No.5, the wife of deceased Srinibash Pal filed a petition and that notice was not properly served on respondent No.3 and 4 and that petition was dismissed. Challenging that order she preferred CRP 67 of 2011 before the then Gauhati High Court and by order dated 05.03.2015 that petition was also dismissed.

6. The Respondent No.1 Gurudas Pal, was not a party in the title suit. He filed a petition before the execution court under order 21 Rule 98, 99, 100 and 101 of CPC on various grounds challenging the decree put in execution. That petition was registered as Misc Case No. 95 of 2012 arising out of Execution Case No. Ex (T)07 of 2009.

7. Besides the original plaintiff-decree holder and the defendant-judgment debtors, he has arrayed so many other persons, in total numbering 21, as the opposite parties in that petition and they all were noticed by the Execution Court. Thereafter, he filed another petition under Order 21 Rule 26, read with section 151 of CPC, praying for stay of further proceedings of the execution case till disposal of Misc Case No. 95 of 2012. That petition was registered as Misc Case No. 94 of 2012 and it was dismissed for non-prosecution by the learned Execution Court by order dated 03.06.2013.

8. Thereafter, the said Gurudas Pal again filed a fresh application on 09.03.2015 praying for stay of further proceedings of the execution case till disposal of Misc Case No. 95 of 2012. It may be mentioned here that he did not pray for restoration of Misc Case

No. 94 of 2012 which was dismissed by order dated 03.06.2013. The Execution Court passed the impugned order dated 28.03.2015 on that application dated 09.03.2015 in connection with Misc Case No.95 of 2012 arising out of Execution Case No. Ex (T)07 of 2009. By the said order the Execution Court stayed further proceedings of execution case pending disposal of Misc Case No. 95 of 2012. Aggrieved, the decree holder who was arrayed as Opposite Party No.1 in Misc. Case No. 95 of 2012 has filed the present petition challenging that order.

9. It is an admitted position that the plaintiff-decree holder, i.e. the petitioner herein, filed the suit against one Srinibash Pal, his son Sri Sridam Pal and another Sri Gouranga Pal. Srinibash Pal was the Principal Defendant. Sri Gurudas Pal, the petitioner of Misc. Case No. 95 of 2012 is the full blood brother of defendant No.1, i.e. Sri Srinibash Pal. In his petition filed under Order 21 Rule 98, 99, 100 and 101 of CPC Sri Gurudas Pal further arrayed some other persons claiming to be interested in the suit property who were never arrayed as defendant in the original suit.

10. It is candidly submitted by learned senior counsel, Mr. Bhowmik that the petition under Order 21 Rule 26 of CPC seeking stay of execution proceedings itself was not maintainable since the petitioner Sri Gurudas Pal was not a judgment-debtor in the suit and he being a stranger cannot maintain a petition under Order 21 Rule 26 of CPC.

11. Learned senior counsel, Mr. Chakraborty on the contrary has submitted that the petition seeking stay of execution proceeding has been filed under Order 21 Rule 26 read with section

151 of CPC and the trial court has inherent power to pass an effective order, to avoid multiplicity of proceeding. If the decree is executed pending disposal of Misc. Case No. 95 of 2012, multiplicity of proceedings shall crop up and to avoid multiplicity of proceedings and for fair ends of justice, a prohibitory order is necessary and the court rightly passed the order.

12. For ready reference and fair appreciation, let us quote here the provisions of Order 21 Rule 26, which reads as follows:

“26. When court may stay execution.-(1) The court to which a decree has been sent for execution shall, upon sufficient cause being shown, stay the execution of such decree for a reasonable time, to enable the judgment debtor to apply to the court by which the decree was passed, or to any court having appellate jurisdiction in respect of the decree or the execution thereof, for an Order to stay execution, or for any other order relating to the decree or execution which might have been made by such court of first instance or Appellate Court if execution had been issued thereby, or if application for execution had been made thereto.

(2) Where the property or person of the judgment debtor has been seized under an execution, the court which issued the execution may order the restitution of such property or the discharge of such person pending the result of the application.

(3) Power to require security from, or Impose conditions upon, judgment debtor:— Before making an order to stay execution or for the restitution of property or the discharge of the judgment debtor, the court shall require such security from, or impose such conditions upon, the judgment debtor as it thinks fit.”

13. It is an admitted position that Gurudas Pal, the petitioner of Misc. Case No. 95 of 2012 was not a party in the original suit and consequently was not a judgment-debtor. He is absolutely a stranger. He has brought on record some other strangers also arraying them as pro-respondents in the said misc. Case and so far it appears in his petition filed under Order 21 Rule 98, 99, 100 and 101 he has virtually challenged the judgment and decree and claimed title over the property of himself and other strangers arrayed in the petition.

14. Be that as it may, let us first decide whether a petition under Order 21 Rule 26 by a stranger was maintainable. A bare reading of the provision makes it abundantly clear that the same has only enabled the judgment debtor to apply before the court for stay of execution of the decree. Under the provisions of Order 21 Rule 26 a stranger has no right to approach the Court for stay of execution of a decree.

15. It is a settled law that a Court shall apply its inherent power to secure justice when there is no other specific provision in the Code. Definitely in an appropriate case the execution court may pass appropriate order staying execution proceedings for fair ends of justice and in that case the person seeking stay has to establish a clear case to stop the execution of a decree.

16. It has to be borne in mind that a person should be allowed to enjoy the fruit of a hard earned decree. Once a decree has become final, the interested opposing parties will try to frustrate the decree by adopting numerous means and ways. While dealing with such issues the executing court must apply its judicious

mind and consider the merit of the claim raised by a stranger. The Court should not take an easy way to pass an order staying execution applying inherent jurisdiction. Inherent jurisdiction is a discretion to be applied by the Court and discretion shall be a judicious discretion and not on whims. In exceptional situation, where there is no specific provision the court shall apply inherent jurisdiction to secure justice and not to obviate it.

17. When a decree becomes final, but not satisfied after the decree was passed, it is put in execution. The judgment debtors have got the scope to submit objection under Section 47 and in this case objection by the judgment-debtors was filed and that has already been disposed of. Now the execution case should proceed. The petition for execution was filed in the year 2009. The suit was instituted in the year 1984. The judgment in the second appeal by the High Court was passed on 22.11.2008. Gurudas Pal, brother of the original defendant No. 1 Srinabash Pal has filed the petition under Order 21 Rule 98 etc. in the year 2012, i.e. after about 28 years. This is quite astonishing that they were waiting for so long to claim their right over the suit land and got the opportunity to file the petition only after the decree was put in execution and further when objection under Section 47 also was disposed of. Under the given circumstances, therefore, a court of equity may not exercise its discretion in favour of such a petitioner. I am, therefore, of considered opinion that the petition filed by Gurudas Pal seeking stay of execution proceeding itself was not maintainable.

Further, I find that an earlier similar petition was filed by Gurudas Pal seeking stay of further proceeding of the execution

case which was dismissed for non-prosecution but the petitioner neither filed any petition for restoration of that petition nor challenged that order dated 03.06.2013 whereas has filed a fresh petition after three years again seeking stay of execution proceedings which shows the conduct of the petitioner Gurudas Pal that only with a view to frustrate the execution of the decree he has filed the petition seeking stay on 09.03.2015.

18. Learned senior counsel, Mr. Chakraborty and learned counsel Mr. DR Choudhury argued that the plaintiff purposely did not array all the interested parties in the suit. It is submitted that the suit property originally belonged to Umesh Ch. Pal, father of defendant No. 1 Srinabash Pal and Sri Gurudas Pal, the petitioner of Misc. Case No. 95 of 2012. It is further submitted that Gurudas Pal and other legal representatives left behind by Umesh Ch. Pal claiming to have right, title and interest in the suit property of T.S. 30 of 1984, have filed the petition under Order 21 Rule 98, 99, 100 and 101, since they cannot file a separate suit in view of the provisions contained in Order 21 Rule 101 CPC. The claim of the petitioner Gurudas Pal and Others of Misc. Case No. 95 of 2012 for their right, title and interest in the suit property of T.S. 30 of 1984 should be decided in the execution case itself and so before disposal of Misc. Case 95 of 2012 if the decree is put in execution the petitioner, Sri Gurudas Pal and Others, pro-respondent of Misc. Case No. 95 of 2012, shall suffer irreparable loss and multiplicity of proceedings shall crop up. It is further contended by the learned counsel that the decree holder will be in a position to give evidence

in support of the decree and if the objection fails the decree may be executed and before that the decree should not be put in execution.

19. Learned senior counsel Mr. Bhowmik, on the other hand, has argued that the plaintiff brought the suit for specific performance of contract based on documentary evidence and the trial court as well as two appellate forums decided the suit in favour of the plaintiff. To get a decree the plaintiff fought from 1984 to 2008 and on 22.11.2008 the decree reached finality for execution. When the execution case was at a matured stage, Gurudas Pal who was a full blood brother of the defendant Sri Srinibash Pal, filed the petition claiming right, title & interest over the suit land. Objection has not been raised on the question of possession. According to Mr. Bhowmik, the provision of Rule 97 to 101 has to be carefully looked into since the provision only meant for protecting the possession of a judgment debtor or any other person from the execution of a decree which is otherwise not executable.

Let us quote here the provisions of Rule 97, 98,99,100 and 101 of Order 21 of CPC which reads as follows:-

“97 . Resistance or obstruction to possession of immovable property— (1) Where the holder of a decree for the possession of immovable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the Court complaining of such resistance or obstruction.

[(2) Where any application is made under sub-rule (1), the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.]

[98. Orders after adjudication— (1) Upon the determination of the questions referred to in rule 101, the Court shall, in accordance with such determination and subject to the provisions of sub-rule (2),—

(a) make an order allowing the application and directing that the applicant be put into the possession of the property or dismissing the application; or

(b) pass such other order as, in the circumstances of the case, it may deem fit.

(2) Where, upon such determination, the Court is satisfied that the resistance or obstruction was occasioned without any just cause by the judgment-debtor or by some other person at his instigation or on his behalf, or by any transferee, where such transfer was made during the pendency of the suit or execution proceeding, it shall direct that the applicant be put into possession of the property, and where the applicant is still resisted or obstructed in obtaining possession, the Court may also, at the instance of the applicant, order the judgment-debtor, or any person acting at his instigation or on his behalf, to be detained in the civil prison for a term which may extend to thirty days.]

[99 . Dispossession by decree-holder or purchaser— (1) Where any person other than the judgment-debtor is dispossessed of immovable property by the holder of a decree for possession of such property or, where such property has been sold in execution of a decree, by the purchaser thereof, he may make an application to the Court complaining of such dispossession.

(2) Where any such application is made, the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.]

[100 . Order to be passed upon application complaining of dispossession — Upon the determination of the questions referred to in rule 101, the

Court shall, in accordance with such determination,—

(a) make an order allowing the application and directing that the applicant be put into the possession of the property or dismissing the application; or

(b) pass such other order as, in the circumstances of the case, it may deem fit.]

[101. Question to be determined— All questions (including questions relating to right, title or interest in the property) arising between the parties to a proceeding on an application under rule 97 or rule 99 or their representatives, and relevant to the adjudication of the application, shall be determined by the Court dealing with the application and not by a separate suit and for this purpose, the Court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction to decide such questions.]”

20. The above provisions make it clear that if an application is filed under Rule 97 an order has to be passed in terms of Rule 98 subject to the determination of questions as contained in Rule 101. Again if an application is filed under Section 99 an order has to be passed in terms of Rule 100 subject to the questions referred in Rule 101. Rule 101 clearly stipulates that all questions including questions relating to right, title or interest in the property has to be decided in the execution proceeding on an application filed under Rule 97 or 99 of Order 21. No doubt the provisions contained in Rule 97 and Rule 99 deals about possession and dispossession consequent to the execution of a decree but while deciding that issue of possession or dispossession, in view of the provision of Rule

101 the execution court shall also see the right, title or interest in the property.

21. The plaintiff instituted the suit seeking specific relief against necessary party and proper party. No question was raised that somebody else were left out who ought to be arrayed as defendants. The present interested parties also did not appear before the court during the long pendency of the suit and appeals to array them as party being interested in the suit property, though the defendants and the petitioner Gurudas Pal as well as other respondents of the misc. case were all relatives. The plaintiff proved his case. Decree of specific performance of contract was passed by a competent court and upheld in the second appeal. Now after 28 years, the petitioner Gurudas Pal found the scope to file the petition for determination of his right, title interest in the suit property when the decree was in the final stage of the execution. No doubt such question raised about the right, title & interest should be decided by the executing court but that does not necessarily mean that pending decision of the question raised, the hard earned decree of the plaintiff should not be executed. Rule 103 of Order 21 clearly stipulates that any order passed under Rule 98 or Rule 100 of CPC shall amount to a decree, shall have the same force as that of the decree and if the objection succeeds, such order or decree will be put in execution.

22. It is a dangerous trend that to frustrate decree at the execution stage various strangers came forward to raise objection. Such objection should be dealt with strictly and judiciously. The court should not allow to frustrate a decree on the whims and

caprice of the interested person against whom the decision of the court has gone. A legitimate stranger no doubt can raise an objection against a decree but the court should carefully see the legitimacy of the person raising the objection. The petition filed by Gurudas Pal, which has been registered Misc. Case No. 95 of 2012, should be decided on its own merit and I refrain myself from making any comment on the merit of the petition since it is not asked for.

23. Learned senior counsel, Mr. Chakroborty has referred the case of ***Niyamat Ali Molla v. Sonargon*** reported in **AIR 2008 SC 225 (para 27)** and learned counsel, Mr. D. R. Chowdhury referred the case of ***Brahmdeo Chaudhary v. Rishikesh Prasad Jaiswal*** reported in **(1997) 3 SCC 694** and ***Ghasi Ram v. Chait Ram Saini*** reported in **(1998) 6 SCC 200** and submitted that the objection may be filed even by a stranger before the execution court and that should be decided by the execution court and it is further submitted that pending decision the decree should not be executed. There is no quarrel on the issue that a petition under Order 21 Rule 97 and 99 is maintainable and all questions including right, title & interest in respect of the suit property/decreetal property should be decided by the executing court.

24. Learned Senior counsel, Mr. Bhowmik referring to the case of ***T. Arivandandam v. T.V. Satyapal*** reported in **AIR 1977 SC 2421** has submitted that the petition filed by Gurudas Pal should have been dismissed at the threshold since it was filed with an ulterior motive to frustrate the decree. In that reported case, the Apex Court has held that court should not allow false and vexatious claim to continue. The court observed that the long arm of the law

must throttle such litigative caricatures if the confidence and credibility of the community in the judicature is to survive. It is the duty of the trial court i.e. the executing court to look into the issue as to whether the objection raised by Gurudas Pal was maintainable and has merit or not.

25. I am of the opinion that a stranger also can raise such objection and the objection must relate to the possession of the decreetal property as contemplated in Rule 97 and 99 of Order 21 and in that event the executing court shall also decide the right, title & interest in the property if it is involved in the objection.

26. As already discussed hereinbefore, a petition to stay execution proceedings by a stranger under Order 21 Rule 26 is not maintainable. The execution court may however exercise discretion under Section 151 of CPC in the event the court is satisfied that to prevent abuse of the process of court exercise of inherent power is necessary and only in exceptional case the court in the absence of a specific provision can exercise its inherent jurisdiction under Section 151 of CPC to stay an execution proceeding.

In the case at end the impugned order dated 28.03.2015 does not reflect any reason for exercise of inherent jurisdiction by the executing court. The order, therefore, cannot stand and hence it is set aside and quashed.

27. The revision application is accordingly allowed with cost of Rs. 10,000/-(Ten Thousand) to be paid by the respondent No. 1 Gurudas Pal to the petitioner as special compensatory cost.

28. Send a copy of this order to the court below.

JUDGE

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