

**THE HIGH COURT OF TRIPURA
AGARTALA**

CRL. REV. P. NO.99 OF 2009

Sri Subal Pal,
Son of Sri Subodh Chandra Pal,
Resident of Golaghati,
P.S. Takarjala,
District-West Tripura.

..... *Petitioner*

- *Vs* -

1. Smti. Shibani Shil,
W/O Sri Sujit Shil @ Kajal Shil,
Resident of Golaghati, P.S. Takarjala,
District-West Tripura.

2. The State of Tripura,
Through by the Public Prosecutor,
Gauhati High Court,
Agartala Bench, Agartala.

..... *Respondents*

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

For the petitioner	:	Mr. P.K. Pal, Advocate
For respondent No.1	:	Mr. P.K. Dhar, Advocate
For respondent No.2	:	None
Date of hearing	:	05.05.2015.
Date of delivery of Judgment & order	:	29.05.2015.

Whether Fit for Reporting :	Yes	No
		✓

JUDGMENT & ORDER

This revisional application under Section 397 read with
Section 401 of CrPC is directed against judgment and order dated
07.09.2009 passed by learned Sessions Judge, West Tripura,

Agartala in Criminal Revision No.3(1) of 2009, whereunder the learned Sessions Judge partly allowed the revisional application and thereby partly modified order dated 09.02.2009 passed by learned Sub-Divisional Magistrate, Bishalgarh in Case No.NGR-83(EX)04.

2. Heard learned counsel, Mr. P.K. Pal for the petitioner and learned counsel, Mr. P.K. Dhar for the respondent No.1. There was no representation for respondent No.2, the State of Tripura.

3. The brief fact is that pursuant to a petition filed by the respondent No.1 dated 12.02.2004(1st party in the criminal proceedings, hereinafter mentioned as 1st party) regarding dispute over a plot of land measuring 1.77 acres recorded in Khatian No.1121 plot Nos.420, 424, 425, 427, 432, 687 and 430 of Mouja Golaghati under Sub-Division Bishalgarh, an enquiry was made by an Assistant Sub-Inspector of Police of Takarjala P.S. and a police report No.15/2004 under Section 145 of CrPC was submitted before learned SDM, Bishalgarh and being satisfied that there exists apprehension of breach of peace, a proceedings under Section 145 of CrPC was initiated by learned SDM and in due course after enquiry learned SDM by an order dated 09.02.2009 finally disposed the proceedings observing that there was no dispute in respect of 1.23 acres of land belonged to the 1st party and that the remaining 0.54 acres of land were in possession of the 2nd party, *i.e.* the petitioner herein(hereinafter mentioned as 2nd party). The operative portion of the order passed by the learned SDM reads as follows:

".....From the above discussions and in consideration of all documentary evidence, it appears that of the 1.77 acres of land recorded in the name of Lt. Anil Ch. Shil and his wife, there is no dispute over the possession over 1.23 acres by the 1st party and the 2nd party has not contested her claim. The court thus thinks it fit to reserve its opinion or judgement related to the land amounting to 1.23 acres. However, Sr. Surveyor Abdul Rejjak, O/O of the undersigned shall confirm, through an enquiry, that none of this land is in possession of the 2nd party.

With respect to the remaining .54 acres of land the possession over which is contested by the 2nd party with the 1st party, it appears to this court that the 2nd party has been in possession over this land for a considerable period of time. The 1st party has claimed that the transfer of allottee land to the 2nd party was in contravention to the allotment rules that required that a prior sale permission was taken from the Collector but u/s 145 of the Cr.P.C., this court shall not delve into the legality of the possession. Based on the submissions of the witnesses and the field enquiry report, it does appear that the 2nd party was possessing parts of the disputed land that amount to .54 acres and it would not be an equitable decision to dispossess him from such possession at this time even if he set up the said establishments after 12.02.03. This court does hereby declare that 2nd party Subal Paul is entitled to retain such possession until ousted by due course of law, and do strictly forbid any disturbance to his possession in the meantime."

4. The 1st party felt aggrieved with the order and preferred Criminal Revision No.3(1) of 2009 before the learned Sessions

Judge, West Tripura, Agartala and learned Sessions Judge by judgment dated 07.09.2009 disposed the revisional application with the following order:

"4. The jurisdiction of the Executive Magistrate to declare actual physical possession over a plot of land in favour of any party flows from any dispute which is likely to cause breach of the peace concerning that land. Thus, since the learned S.D.M. has arrived at a specific finding that there was no dispute over the possession of 1.23 acres of land by the First Party, learned S.D.M. is not justified in holding further enquiry in respect of land measuring 1.23 acres of which the First Party is in actual physical possession.

5. Learned counsel appearing for the parties fairly submitted that at present there is no dispute and learned counsel Mr. P.K. Dhar appearing for the First Party revision-petitioner submits that the actual physical possession of the First Party over land measuring 1.23 acres may be declared.

6. Thus, considering the judgment and relevant records of the trial Court, the revision petition is partly allowed to the extent that the actual physical possession of Smt. Shibani Shil, First Party, over the land measuring 1.23 acres is hereby confirmed.

7. The revision petition stands disposed of accordingly."

5. By filing the present revisional application the 2nd party-petitioner challenged the order passed by learned Sessions Judge.

6. While exercising jurisdiction under Section 397 read with Section 401 of CrPC the revisional Court is to see the

correctness, legality and propriety of the order passed by the inferior Court and the regularity of the proceedings before such inferior Court. The revisional Court is not required to re-appreciate the evidence and material unless perversity is shown apparently on the face of the record.

7. On perusal of the impugned judgment passed by learned SDM I find that learned SDM clearly held that out of 1.77 acres of disputed land there was no dispute over 1.23 acres of land and the rest 0.54 acres of land was in possession of the 2nd party *i.e.* the petitioner herein. The learned Sessions Judge after hearing both side has held that since the learned Magistrate has found that there was no dispute over 1.23 acres of land he simply declared that the 1st party is in possession over that area of land as there was no dispute concerning that area of land. Therefore, I find no infirmity in the order passed by the learned Sessions Judge.

8. The revisional application, therefore, stands dismissed.

9. Send back the L.C. record along with a copy of this order.

JUDGE