

**IN THE HIGH COURT OF TRIPURA**  
**AGARTALA**

**CRP NO.101 OF 2013**

Shri Khokan Candra Dey,  
son of Late Hrishikesh Dey,  
resident of Dharmanagar Railway Colony,  
P.S. Dharmanagar, North Tripura  
now residing at Rajbari, Mandap Para,  
P.O. Rajbari, P.S. Dharmanagar.

..... Petitioner

– Vs –

1. Smt. Bibha Rani De,  
wife of late Kshitish Mohan De @ Kshitindra Mohan De

2. Shri Kshirode Mohan De,  
son of late Kshitish Mohan De @ Kshitindra Mohan De

3. Shri Biman Bihari De,  
son of late Kshitish Mohan De @ Kshitindra Mohan De

4. Shri Monoranjan De,  
son of late Kshitish Mohan De @ Kshitindra Mohan De

- All are of village : Dakshin Hurua, P.S. Dharmanagar,  
District- North Tripura.

5. Smt. Jaya Rani Ghosh @ Chaya Rani Ghosh,  
wife of late Nani Gopal Ghosh and  
daughter of late Kshitish Mohan De @ Kshitindra Mohan De  
resident of Village- Rajnagar, P.S. Dharmanagar, North Tripura.

6. Smt. Rubi De,  
daughter of late Monmohan De,  
wife of Gautam Das  
resident of Village- Kalamcharra, P.S. Dharmanagar,  
District- North Tripura.

- Respondent Nos. 1, 2, 4 & 5 are represented by their lawful  
attorney, Shri Biman Behari De (respondent No.3).

..... Respondents.

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

For the Petitioner : Mr. S. Deb, Sr. Advocate  
Mr. B. Debnath, Advocate

For the Respondents : Mr. K.N. Bhattacharji, Sr. Advocate  
Mr. S. Acharji, Advocate

Date of hearing & order : 22.04.2015

Whether fit for reporting :

|     |    |
|-----|----|
| Yes | No |
|     | √  |

**JUDGMENT & ORDER (ORAL)**

Heard Mr. S. Deb, learned senior counsel, assisted by Mr. B. Debnath, learned counsel appearing for the petitioner as well as Mr. K.N. Bhattacharji, learned senior counsel, assisted by Mr. S. Acharji, learned counsel appearing for the respondents.

2. This is a petition under Article 227 of the Constitution of India, challenging the legality of the order dated 23.09.2013 passed by the executing court, the Civil Judge, Jr. Division, Dharmanagar, North Tripura, in Case No. Misc.66/2012, arising from Execution (T) No.02/2012.

3. Mr. Deb, learned senior counsel appearing for the petitioner, the judgment-debtor, while introducing the fact, has asserted that the petitioner out of apprehension that the decreetal premises/land is not the place where the decree-holders are carrying on their business, approached the executing court.

4. The judgment-debtor filed the objection under Section 47 read with Section 151 of the CPC for urging that the decreetal land be identified scientifically by appointing the Survey Commissioner so that his land, not attracted by the decreetal land, is not in anyway got affected in the execution proceedings. By the impugned order such prayer has been rejected.

5. About the decreetal land, there is no ambiguity or dispute. As the petitioner was apprehensive, he approached the executing court. But the executing court did not find any premise to engage a Survey Commissioner for the above purpose.

6. On perusal of the decree, it appears that the following is description of the decreetal land :

**"The land under Mouja-Dharmanagar town and Tehsil-Dharmanagar within North Tripura District under Khatian No.3195 appertaining to re-survey plot No.8050/12091 bounded on the –**

**North by - P.W.D. road,  
South by - Kitchen hut of Bakul De  
(tenant under plaintiffs)  
East by - Shop hut of Subhas  
Chakraborty (tenant under  
plaintiffs)  
West by - C.I.T.U. Office on the land of  
plaintiffs.**

**Within this boundary one ship room measuring 5 cubit x 13 cubits including 3 cubits varandah at North side made of G.I. sheet (Tin) roofing and bamboo made fencing with wooden pillars and wooden structure and wooden door at North side."**

7. Mr. Deb, learned senior counsel appearing for the petitioner, has candidly submitted that if the suit premises is

ascertained by appointing a Survey Commissioner, none of the parties is going to be prejudiced in any manner.

8. However, Mr. K.N. Bhattacharji, learned senior counsel appearing for the respondents, the decree-holders, has resisted such prayer, contending that this is a process to elongating the process of execution. There is no requirement for engaging Survey Commissioner, inasmuch as, the description provided by the Schedule in the decree, there cannot be any amount of ambiguity or confusion about the location or certainty of the decreetal land.

9. Having regard to the nature of controversy as raised by the learned counsel for the petitioner, this Court is of the view that nobody will be prejudiced if at the time of eviction of the judgment-debtor from the suit property as described in the schedule of the decree, the assistance of the survey knowing person is taken so that the judgment-debtor's possession from the other premises is not affected.

10. Accordingly, the impugned order is interfered to that to the limited extent only. The executing court is directed that at the time of execution by way of evicting the judgment-debtor from the suit premises as described in the decree, assistance of a survey knowing person shall be taken by the bailiff so that the judgment-debtor is not evicted from the premises or the property which is not included in the schedule of the suit premises in the

decree. For this purpose, the expenses engaging the Survey Commissioner shall be borne by the petitioner herein. The petitioner shall not get any adjournment for depositing the expenses for ensuring a Survey Commissioner. In default of payment of the expenses, this order will have no force whatsoever.

11. With this observation this petition stands allowed to the extent as indicated above. As consequence thereof, the order staying the proceeding stands vacated. However, the executing court shall complete the execution with all earnestness without further delay.

Send down the LCRs forthwith.

**JUDGE**

ROY