

**IN THE HIGH COURT OF TRIPURA
AGARTALA**

CRP No.80 of 2012

1. Sri Golam Mustaffa,
son of late Muskanda Ali

2. Smt. Kawchar Akhtar,
wife of Sri Golam Mustaffa,

-both are residents of Sonamura,
Ward No.10 of Sonamura Nagar
Panchayet, P.O. & P.S. Sonamura,
District – Tripura West at present
Sepahijala, Tripura

3. Smt. Janab Bibi,
wife of Md. Manjur Ali, resident of
village – Aralia, P.O. & P.S.
Sonamura, District – West Tripura
at present Sepahijala, Tripura

..... **Petitioners**

- V e r s u s -

1. Shri Siddique Miah,
son of Makram Ali

2. Shri Abdul Haque,
son of Makram Ali

3. Sri Abdul Maleque,
son of Makram Ali,

-all are residents of village-
Kulubari, P.O. & P.S. Sonamura,
District – West Tripura at present
Sepahijala, Tripura

4. Smt. Amena Bibi,
Wife of Abdul Kaleque
resident of village Aralia, P.O. &
P.S. Sonamura, District – West
Tripura at present Sepahijala,
Tripura

..... **Respondents**

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

For the petitioners : Mr. D.R. Choudhury, Advocate

For the respondents : Mr. S.C Das, Advocate.

Date of hearing and delivery : **09.04.2015**
of Judgment and order

Whether fit for reporting :

YES	NO
	√

JUDGMENT & ORDER (ORAL)

Heard Mr. D.R. Choudhury, learned counsel appearing for the petitioners as well as Mr. S.C. Das, learned counsel appearing for the respondents.

[2] This is a petition filed under Section 115 of the C.P.C. questioning the legality of the order dated 15.05.2012 delivered in case No. Misc. 38 of 2011, arising from case No.Ex.(T) 05 of 2009, by the Executing Court (the Civil Judge, Jr. Division, Sonamura, West Tripura).

[3] When the petitioners filed the petition for executing the decree dated 31.08.2009 passed in Title Suit No.10 of 2008, the respondents raised serious objection regarding the executibility of the decree under Section 47 of the C.P.C. being Misc. Case No.38 of 2011. By the impugned order, the said objection has been maintained by declaring that the decree dated 31.08.2009 delivered in the Title Suit No.10 of 2008 cannot be executed. There is no dispute that the decree passed in Title suit No.10 of 2008 has not been challenged in the superior court either by the plaintiffs or by

the defendants. As such, the decree has reached its finality, which provides as under:

The result, title of the plaintiffs No.1 is declared over the suit land described under schedule 1. Also the title of the plaintiffs are declared over the suit land described under schedule 2 and 3 of the plaint. The possession of the plaintiff No.1 is confirmed over the suit land described under schedule 1 of the plaint. Also possession of the plaintiffs is confirmed over the suit land described under schedule 2 of the plaint. The plaintiffs No.1 and 3 are entitled to recover the khas possession over the suit land described under schedule 3 of the plaint by evicting the defendants there from and by removal of all obstructions created by the defendants therein. Also the defendants are permanently restrained from interfering the possession of the plaintiffs No.1 and 3 over the suit land described in schedule 1 and 2.

[4] It is apparent from the said decree that there is no dispute relating to the possession over the suit land. But the land described in the schedules 2 and 3 of the suit are jointly owned by the plaintiffs and the defendants. It has been admitted that the joint property has not been partitioned as yet. But the co-sharers have their possession either directly or through the co-possessors over the land described in the schedules 2 and 3 of the plaint. Be that as it may, it has been directed by the decree that the possession of the plaintiff No.1 is confirmed over the suit land in the schedule 2 of the plaint and that decree has not been challenged by the defendants. The plaintiffs No.1 and 2 have been declared to be entitled to recover the khas possession of the suit land described in the schedule 3 of the plaint by evicting the defendants therefrom and by removal of obstructions as might be created by the defendants.

[5] Without examining the aspects of legality of such decree, this Court is constrained to hold that the decree has reached its finality. As such, by execution of the decree, the plaintiffs No.1 and 3 are entitled to recover the possession of the land described in the schedule 3 land, appended to the plaint and for that purpose, the said execution case was set in by the present petitioners. One important development that has taken place might have impact over the right, title and interest including the possession attached to those lands. After the decree was passed, the respondent No.4 herein, who was the plaintiff No.2 in the suit, transferred the land might be equal to her share by the registered deed of sale No.I-00718 dated 13.06.2011 to the respondents No.1,2 & 3. On the basis of such development, it has been held by the executing court while disposing the objection filed by the respondents No.1,2, & 3 under Section 47 of the C.P.C. as under:

"Hence, the JD-petitioners have become joint owners of the decreetal land along with DH-OPs and thus, the decree dated 31.08.2009 is no more executable."

[6] Mr. Choudhury, learned counsel appearing for the petitioners has submitted that the executing court cannot pass such decree. Even if the share of the plaintiff No.2, the proforma respondent No.4 herein, namely, Amena Bibi has been transferred by the registered deed to the respondents No.1, 2 and 3, even if such transfer is considered valid, then it would amount to transfer of her share only to the respondents No.1, 2 & 3. The respondents No.1,2 & 3, the judgment debtors cannot claim possession by virtue

of that transfer over the land described in the schedule 3 for which the execution case was set in. Mr. Choudhury, learned counsel has fairly submitted that the petitioners are not challenging or questioning the title of the respondents No.1, 2 and 3 over the land described in the schedule 3.

[7] From the other side, Mr. S.C. Das, learned counsel appearing for the respondents has submitted that whether a court while executing a decree can evict a lawful owner from his land. This is not a case, where the court has decided whether the dispossession was lawful or not. Here is a case, where already a decree has been passed for recovery of the possession of the land described in the schedule 3 appended to the plaint in favour of the plaintiffs No.1 and 3, the petitioners herein. On the face of such decree, when the respondents No.1,2 and 3 have been claiming possession through the respondent No.4 over that land, their status cannot be held superior to the status of the respondent No.4, who was also the plaintiff in the suit for recovery of the said land. Here surfaces a dichotomy that at the instance of the respondent No.4, the decree for recovery of the land described in the schedule 3 has been passed. Now she has turned around by selling her share to the respondents No.1,2 and 3. Whether in that situation, the decree still remains executable or not? Since the land described in the schedule 3 has not been partitioned, there was no absolute ownership of the respondent No.4 in a specified part of the land described in the schedule 3. The respondents No.1,2 and 3 who dispossessed the

plaintiffs, have been directed to vacate the suit land for purpose of recovery but they have not done so in compliance of the decree. The objection that was raised under Section 47 of the C.P.C. unravelled the question. Whether the executing court should proceed for recovering the land by the process of law or not or whether the decree still remained executable?

[8] By the impugned order dated 15.05.2012, the executing court has held that:

"A question whether the sale deed vide No.I-00718 dated 13.06.2011 is void or not is to be decided by way of a separate suit and this court has no authority to view that the said sale deed is void until and unless it is decided by the proper court.

Thus it appears that the co-sharers Amena Bibi sold out undivided shares to J.D. petitioners out of the decreetal land which cannot be ascertained by this Court being the executing court and without ascertaining the portion of the shares of the J.D. petitioners out of the decreetal land it is not possible to execute the decree dated 31.08.2009.

[Emphasis supplied]

[9] On the basis of such finding, the objection was allowed by impliedly holding that the decree is not executable. This court is not inclined to subscribe that view as expressed by the executing court inasmuch as the share does not indicate to any particular part of the land. The right of the plaintiffs No.1 and 3 has been categorically declared by the decree with a mandatory injunction to recover the land by the process of the court. In such circumstances, it cannot be held that the executibility of the decree is no more in force. It would be the proper course to recover the possession of the land described in the schedule 3 from the respondents No.1,2 & 3

and be handed over to the plaintiffs No.1 and 3 but such exercise in no manner shall extinguish or affect the title of the respondents No.1,2, & 3 over 'the share' of the respondent No.4 which they have purchased by the sale deed dated 13.06.2011. They will have all such right what the respondent No.4 would have on that land including the right to seek partition and on the partition, to recover the share of the land as would be demarcated initially in the name of the respondent No.4 having assessed the impact of transfer by the sale deed dated 13.06.2011, in view of the provision of Section 44 of the Transfer of property Act and that land must be treated as the un-partitioned land unless such partition takes place. If the plaintiff, the petitioners herein do not hand over the possession of that part of land which would be separated and demarcated as the share of the respondent No.4 to the respondents No.1,2 and 3 after the partition, the respondents No.1,2 and 3 shall have right to recover the land at the cost and risk of the plaintiff-petitioners.

With this direction, this impugned order is set aside. The executing court shall complete the execution proceeding as expeditiously as possible having regard to the observation made hereinabove.

Accordingly, this petition stands allowed to the extent as indicated above.

JUDGE

Sujay