

HIGH COURT OF TRIPURA
AGARTALA

CRP No. 90 of 2012

Sri Supriya Debbarma
 S/o. Late Samir Debbarma
 Resident of Village – Ramnagar Road No.1
 P.O. Ramnagar, P.S. West Agartala
 Sub-Division – Agartala, District – West Tripura.

.....Plaintiff-Petitioner

– Vs –

1. Sri Rebati Mohan Jamatia @ Rebati Charan Jamatia
 S/o. Late Nirendra Jamatia
 Resident of Village-Hirapur(Tingharia)
 P.O. North Maharani, P.S. RK Pur
 Sub-Division-Udaipur, District – South Tripura.

.....Defendant-Respondent

2. The State of Tripura
 Represented by the Secretary to the Department of Forest
 Government of Tripura
 Having his office at 'Aranya Bhawan', Gurkhabasti
 P.O. Kunjaban, P.S. East Agartala
 District – West Tripura.
3. The Divisional Forest Officer
 Udaipur Forest Division
 Government of Tripura
 Having his office at Udaipur
 P.S. R. K. Pur, P.O. Udaipur
 District – Gomati, Tripura.
4. The Range Officer
 Udaipur Forest Division
 Government of Tripura
 Having his office at Udaipur
 P.S. R. K. Pur, P.O. Udaipur
 District – Gomati, Tripura.

.....Official Respondents

Advocate for the petitioner : Mr. Somik Deb, Advocate.

Advocate for the respondents : Mr. S. Chakraborty, Additional GA.

CRP No. 91 of 2012

Sri Supriya Debbarma
 S/o. Late Samir Debbarma
 Resident of Village – Ramnagar Road No.1

P.O. Ramnagar, P.S. West Agartala
Sub-Division – Agartala, District – West Tripura.

.....Plaintiff-Petitioner

– Vs –

1. Sri Bishu Mohan Jamatia @ Bighu Jamatia
S/o. Late Sukramani Jamatia
Resident of Village-Hirapur
P.O. North Maharani, P.S. RK Pur
Sub-Division-Udaipur, District – South Tripura.

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.....Official Respondents

Advocate for the petitioner : Mr. Somik Deb, Advocate.
Advocate for the respondents : Mr. S. Chakraborty, Additional GA.

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

Date of hearing : **02.05.2013**

Date of delivery of Judgment & order : **31.07.2013**

Whether fit for reporting :

Yes	No

JUDGMENT & ORDER

By these petitions filed under Section 115 of the Code of Civil Procedure, 1908 (in short CPC), the impugned order dated 23.05.2012, Annexure P/6, passed in Execution Case No.15 of 2011 and Execution(T) No.18 of 2011 by the Civil Judge, Sr. Division, South Tripura, Udaipur has been called in question. Both the petitions being attended by an identical question of law set up in a resembling matrix of fact are taken up together for disposal by a common judgment and order.

02. By the decree dated 23.12.2010 passed in Title Suit No.47 of 2010 (relevant to the Civil Revision Petition No.91 of 2012) and the decree dated 23.12.2010 passed in Title Suit No.48 of 2012 (relevant to the Civil Revision Petition No.90 of 2012) it has been enjoined that the defendant shall have to execute a registered sale deed in the name of the plaintiff for the suit land described in the plaint within two months on receipt of the remainder of the amount as quantified in the decree, from the plaintiff. The plaintiff has also been directed to hand over the balance consideration money so quantified to the defendant in presence of the District Registrar, South Tripura, Udaipur. The defendant is purportedly restrained from entering into the suit land or disturbing the peaceful possession of the plaintiff over the suit land. The plaintiff has been declared entitled for a decree in case of failure of the defendant in executing the sale deed as directed within the stipulated period, to get the sale deed executed by the Court. It has been also provided in the said decree that the plaintiff shall approach the Court with stamp paper, registration fee or other relevant documents and in that occasion the sheristadar of that Court will execute the deed for sale of suit land on behalf of the defendant after

observing all the formalities. Since the defendant did not execute the sale deed as directed the revisional petitioner herein put the said decree in execution for getting the sale deed executed by the sheristadar in terms of the said decree as stated.

03. During pendency of the execution case under reference, the District Registrar, Gomati District, Udaipur has communicated to the Civil Judge, Sr. Division, Udaipur, South Tripura by a letter dated 10.02.2012, Annexure-P/4 to the revision petition, that the decreetal land is the Protected Forest (PF) land and not transferable as per the Government rules. For the purpose of appreciation, the relevant part of the said communication is extracted hereunder:

"With reference to the subject cited above, I am to inform you that 2(Two) nos court order Vide NO.114, dated, 30th January, 2012 and NO.113, dated, 30th January, 2012 has been received from your kind end for Registration of sale deed through court sheristadar in favour of decree holder namely Sri Supriya Debbarma vide Case NO.EXN(T)-15/2011 and suit NO.48/2010 and Case NO.EXN(T)-18/2011, and suit NO.47/2010 date of order 27.01.2012 by 10-02-2012.

It is also to be mentioned here that as per enquiry report of Tehsilder of Maharani T. K. it is revealed that the proposed land vide plot Hal dag NO.861/1113 and Plot NO.197/1116, land measuring 6.00 acres each has been allotted in favour of Sri Bishu Mohan Jamatia S/O. Lt. Sukramani Jamatia of Hirapur, North Maharani and Sri Rebati Mohan Jamatia S/O. Charan Jamatia of Hirapur (Tingharia). After getting allotment of the proposed land vide Khatian No.515 and 512 has been incorporated in favour of them. But those allotment has been cancelled during the revisional survey and now recorded under Forest Deptt. As P.F. land and posted at Khas Khatian NO.5/1, Hal dag NO.1364, classification-Tilla, land measuring-71.06 acres and Hal dag NO.1337, Classification-Tilla, land measuring-282.70 acres, (in respect earlier Khatian NO.512 and sabek dag NO.861/1113) and Khas Khatian NO.5/1, hal dag NO.378, Khas Khatian NO.5/3, Hal dag NO.1510/378, 1511, Khas Khatian No.5/4, Hal dag NO.1512, 1513, 1514, 1515, Classification – Tilla respectively (in respect earlier khatian NO.515 and sabek dag NO.197/1116).

Under the above circumstances, it is to inform your honour that the PF land not transferable as per state Govt. Rules."

04. The said District Registrar has also apprised the development to the Deputy Secretary to the Revenue Department, Government of Tripura. The Divisional Forest Officer, Udaipur Forest Division by a communication dated 10.05.2012 (Annexure-P/5) has placed the khatian No.515 in the records of the execution case. The grievance of the revisional petitioner is that even though the Forest Department has not approached the execution court by filing any proper application challenging the executability of the decree or to establish their right relating to the decretal land, subject-matter of the impugned judgment and decree dated 23.05.2012, it has been ordered by the executing Court with observation as under:

"It is an admitted fact that no formal petition under Order 21 Rule 99 of C.P.C. has been filed by the Forest Department. However, the Forest Department by letter dated 10.05.12 informed this Court about the present position of the decretal land along with necessary documents and I treat the said letter as a petition under Order 21 Rule 99 of the C.P.C. It is also to be mentioned that from the records as provided by the D.F.O. Udaipur Forest Division, shows that now, the decretal land is in the name of the Forest Department. Hence, before proceeding with the execution of the decree of the present case an enquiry is necessary to be made and which can be done only by treating the information given by the D.F.O., Udaipur Forest Division dated 10.05.12 to be a petition under Order 21 Rule 99 of the C.P.C.

The D.F.O. Udaipur Forest Division is hereby directed to take necessary step in this case positively by the next date."

05. Mr. Somik Deb, learned counsel appearing for the petitioner has contended that the suit was between the two private individuals and from Annexure-1, khatian, it would be apparent that the defendant was the allottee who entered in an agreement for sale in favour of the plaintiff and on observance all procedures as prescribed by law, the decree has been passed which reached finality by efflux of time and no person including the Forest Department has ever raised any objection. Even though, the plaintiff's case as

decreed by the court is that he by virtue of the agreement for sale is in the possession of the decreetal land. The document as produced by the said Divisional Forest officer or the communication as made by the District Registrar, Gomati does not show that the Forest Department is in the possession of the suit land, now described as the PF land. No court has declared the said land as the PF land. Moreover, it has to be presumed in law that allotment has been caused in terms of Section 15 of the Tripura Land Revenue & Land Reforms Act, 1960 after due enquiry by the District Collector. Thereafter, khatian has been opened on field enquiry in terms of the provision of Section 46 of the Tripura Land Revenue & Land Reforms Act, 1960. Unless the presumption is rebutted, in view of Section 43(3) of the Tripura Land Revenue & Land Reforms Act, 1960 the records of right as finally published shall until the contrary is proved, be presumed to be correct.

06. Mr. Deb, learned counsel for the petitioner has further emphatically contended that it has not been brought to the knowledge of the defendant or to the Court that the allotment order or the entry in the khatian has been altered or cancelled with the notice to the parties. Mr. Deb, learned counsel for the petitioner has questioned the authority of the court to treat a letter of the Divisional Forest officer as a petition under Order 21 Rule 99 of the CPC when the sale deed was presented for registration in terms of the decree. He has also indicated that the Divisional Forest Officer has got no authority to file any petition under Order 21 Rule 99 of the CPC unless the State of Tripura is made party or the State has authorized the Divisional Forest Officer to carry out such action at law. Apart that, he has contended that Order 21, Rule 99 of the CPC has no application in the context inasmuch as it is only when the dispossession has been caused by the decree holder or by the purchaser

through him then the right to approach the execution court under Order 21, Rule 99 of the CPC accrues. For the purpose of appreciation, the Order XXI, Rule 99 of the CPC is extracted hereunder:

"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 the 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."

It has been provided in the Order XXI Rule 100/101 of the CPC how to dispose of such application as would be made under Order XXI Rule 99 of the CPC.

07. Mr. Deb, learned counsel for the petitioner has further contended that the trial Court has exceeded its jurisdiction as the Court has not been provided with any authority for exempting the provisions of law to treat a letter if received from a public servant as the petition under Order XXI Rule 99 of the CPC and set it in motion for adjudication. Therefore, there was no ground for holding any enquiry as directed.

08. Mr. S. Chakraborty, learned Addl. Government Advocate appearing for the State respondents who are made party in this revision petition, has made a reference to the khatian which are available at Annexure-R/1 to show that the Government of Tripura in the Forest Department is in the possession of the decreetal land but in the northern boundary of such land some private individuals are in possession. In the para-20 of the affidavit as filed by the State respondent it has been contended that from the letter of the

District Registrar dated 26.04.2012 it surfaced that allotment made in favour of Bishu Mohan Jamatia and others has been cancelled. But there is no averment in the entire affidavit how the said allotment was cancelled. In the letter dated 26.04.2012 the District Registrar has simply stated that from the recent khatian it appeared to him that the land falls in the PF land and the same cannot be transferred. All these facts have surfaced by way of some extraneous document beyond the proceeding.

09. Mr. Chakraborty, learned Addl. GA for the respondents has not made any satisfactory response to the jurisdictional objection as raised by the revisional petitioner. This Court is in total agreement with the submission of Mr. Deb, learned counsel for the petitioner that the said letter dated 10.05.2012 written by the District Forest Officer, Forest Department cannot be treated as a petition under Order 21 Rule 99 of the CPC.

10. The Gauhati High Court in ***Musstt. Rezia Khatoon vs. Md. Abul Naser*** reported in ***(1990) 2 GLR 192*** has held that:

"9. With respect to R 97, in my judgment, it is the right and privilege of a decree holder or auction purchaser alone to move the executing Court under O 21, R 97 when either of them is resisted or obstructed in obtaining possession and that a third party cannot file an application under O 21, R 97, Code of Civil Procedure. As regards Rule 99, I am of the opinion that the rule will come into play when the third party is dispossessed and the third party shall have no cause of action in anticipation that he would be dispossessed. Procedure for adjudication of the claim under R 97 or 99 has been provided in the Code. However, an application under section 151 is maintainable, if the equity intervenes in a case where a third party has been in possession of the decrial land or a part of it. In that case, the Court is to make are enquiry into the question as to whether the rule of equity is attracted. Therefore, I respectfully agree with the decisions of the above cited cases so far as it relates to provisions under section 151, Code of Civil Procedure, but with respect, I am unable to agree with the views expressed regarding O 21, R 97, and 99 in those cases."

11. In *H. Seshadri vs. K. R. Natarajan and another* reported in **(2003) 10 SCC 449** the apex court has held that:

"13. For the purpose of considering an application under Order 21 Rules 99 and 100 of the Code of Civil Procedure what was required to be considered was as to whether the application herein claimed a right independent of the judgment-debtor or not. A person claiming through or under the judgment-debtor may be dispossessed in execution of a decree passed against the judgment-debtor but not when he is in possession of the premises in question in his own independent right or otherwise."

12. The right of the State of Tripura or the trustees of the PF in the Forest Department to approach the Court cannot be questioned since they are claiming to be in possession in the decreetal land as the decreetal land according to their records is the part of the protected forest. But the entire case as can be gathered from the judgment and decree is based on the fact that the plaintiff/decreed holder was in possession from the date of entering into the agreement for sale on payment of the consideration money. As such, there is no decree for recovery of the khas possession from the defendant or from any person claiming through the defendant. As such, there is no question of dispossession.

13. Situated thus, it cannot be held that the questioned application can be treated as the application under Order 21, Rule 97 or 99 of the CPC read with Order 21, Rule 100/101 of the CPC as the decree is for execution of the sale deed in favour of the plaintiff-decreed holder and nothing more. Even in the communication of the Divisional Forest Officer, there is no allegation of the threatened dispossession. As such, this Court is of the considered opinion that the impugned order dated 23.05.2012 is liable to be interfered with and is accordingly interfered with and set aside. As consequence thereof, both the civil

revision petitions are allowed. Before parting, it is recorded for obviating any confusion that the State of Tripura in the Forest Department or its officer notwithstanding this order of this Court will be at liberty to approach the civil court of the competent jurisdiction or even the executing court by instituting the appropriate legal action.

There shall be no order as to costs.

JUDGE

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