

THE HIGH COURT OF TRIPURA
A_G_A_R_T_A_L_A

CRP No.139 of 2015

1. **Smt. Ranu Bala Saha,**
W/o Lt. Kalidas Saha.
2. **Smt. Rupashi Nama (Saha),**
W/o Sri Kshitish Nama.
3. **Smt. Tapati Das(Saha),**
W/o Sri Sukhen Das.
4. **Smt. Nandita Saha,**
D/o Late Kalidas Saha.
5. **Sri Bachan Saha,**
S/o Late Kalidas Saha.
 - All are residents of Bishalgarh, Sital Tilla, PS : Bishalgarh, District -Tripura West at present Sepahijala.
6. **Smt. Tapasi Dutta (Saha),**
W/o Sri Bhanu Lal Dutta
Resident of Bishalgarh,
Lal Tila, P.S : Bishalgarh, District : Tripura West at present
Sepahijala.

..... Petitioners.

– Versus –

1. **Smt. Chandana Saha,**
W/o Late Sankar Ch. Saha.
2. **Smt. Rashmani Saha (Minor),**
D/o Late Sankar Chandra Saha.
3. **Smt. Laxmi Rani Saha(minor),**
D/o Lt. Sankar Ch. Saha.
 - All are residents of Bishalgarh, Sital Till, PS : Bishalgarh, District Tripura West, at present Sepahihala.
(Sl. Nos.2 and 3 are represented by their mother, natural guardian, the Plaintiff Respondent No.1)

..... Respondents.

_B_E_F_O_R_E_**THE HON'BLE CHIEF JUSTICE MR. DEEPAK GUPTA**

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

For the respondents : None.

Date of hearing and : 24.11.2015.
delivery of judgment.

Whether fit for reporting :

Yes	No
	✓

JUDGMENT & ORDER (ORAL)

This revision petition is directed against the order, dated 27th July, 2015 passed by the learned Civil Judge(Sr. Divn.), Court No.2, West Tripura, Agartala whereby he has dismissed the application filed by the petitioners who are originally defendants in the suit, praying for amendment of the judgment and preliminary decree determining the shares of the parties.

2. It would be pertinent to mention that a partition suit(Title Suit No.10 of 2007) was filed by the plaintiffs Smt. Chandana Saha, Smt. Rashmani Saha(minor) and Smt. Laxmi Rani Saha(minor) claiming partition of the property. While decreeing the suit the learned trial Court held as follows :

***“In the result the plaintiff will get total property as follows.
50% + 1/7 o of the rest 50% of the property described in the
schedule A and B of the plaint. The defendant will get 6/7
share of 50% of the total land described in the schedule A
and B of the plaint. The judgment and decree dated 10th
April, 2008 is reviewed with above share among the plaintiff
and defendants.”***

By this order it was clearly held that the plaintiffs were entitled to 50% + 1/7th share of the remaining 50% of the property described in the two Schedules of the plaint. This judgment was passed in presence of the counsel of the defendants. This judgment was passed on 24th August, 2010. No appeal was filed against this judgment. No proceedings were taken out challenging the finding given by the learned trial Court regarding the shares of the parties in the suit property. Therefore, this judgment has attained finality between the parties.

3. The matter does not end here. The plaintiffs filed a petition for preparation of final decree and thereafter a Survey Commissioner was also appointed to ensure implementation of the decree. The Survey Commissioner was given help of the police but then also partition could not be affected. The plaintiffs thereafter made a submission that if the partition could not be affected through the Civil Court then the matter be sent to the Collector. Even that request was opposed to by the defendants. During this entire period when these proceedings are pending before the trial Court, no objection was raised by the defendants that the shares had not been properly determined.

4. Thereafter the plaintiffs approached this Court under Article 227 of the Constitution of India praying that though they have got a partition decree in their favour they are out of possession and the respondents (the original defendants who are powerful persons) are not letting the partition of the land take place. The said case was decided

by this Court on 10th June, 2015. The judgment was delivered orally in Court. In the judgment it has been noted as follows :

“.....Therefore, the plaintiffs are entitled to 57.14% share in the total land measuring 0.70 acres which would mean that there share is 0.39998 acres which can be rounded off to 0.40 acres or 1 Kani. The remaining land has to go to the defendants Smt. Ranu Bala Saha, Smt. Rupashi Nama (Saha), Smt. Tapati Das(Saha), Smti Nandita Saha, Sri Bachan Saha and Smt. Tapasi Dutta(Saha) in equal shares. It is for the defendants to decide whether they want to leave their land holding joint or not but the plaintiff and her minor children cannot be deprived of their right to have 0.40 acres of land. It is indeed unfortunate that twice the Survey Commissioner has gone once even with the help of the police but the plaintiff has been denied the fruits of the decree.”

Even at the stage when this Court dictated the judgment no objection was raised on behalf of the defendants that the determination of the shares is improper. This Court had clearly mentioned that the plaintiffs (respondents herein) are entitled to 57.14% share and that the defendants (i.e. the petitioners herein) are entitled to the balance amount. This Court had further directed that it is for the defendants to decide whether they want to retain their holding as a joint holding or want to be partitioned but they cannot deny the possession of the share which belongs to the plaintiffs. Thereafter this Court had been constrained to observe as follows :

“3. If the ‘rule of law’ is to prevail in this country then decrees of the Court must be executed and taken to their

logical end. A litigant has a reasonable expectation that after he has won the litigation he will get what is due to him under the decree. It is indeed shocking that this simple execution proceeding has reached such a stage where even the police has stated that it could not execute the decree because trouble was expected. It is the duty of the police to maintain law and order. The police officials cannot raise their hands and say that they are not in a position to ensure execution of the Court order. Otherwise these police officials should resign and give up their posts but they cannot abdicate their functions and say that they cannot maintain law and order."

5. Keeping in view the aforesaid facts this Court had directed as follows :

"5. It must be ensured that the decree is executed because there is no dispute between the parties with regard to their shares. There is no dispute between the parties that such a decree has been passed. This Court is not clear whether it is the plaintiff who is in possession of land excess of their shares or whether it is the defendants who are in possession of land in excess of their shares. Therefore, there are two options open. The first option is given to the parties to settle the matter amicably latest by 15th July, 2015 and to file an affidavit in the trial Court that they have partitioned the land by metes and bounds and put up their boundary after ascertaining their shares. In case the parties cannot come to a mutual agreement by 15th July, 2015 then this Court directs that a Survey Commissioner shall be appointed by the learned Court below and he shall go to the spot along with police officials. A copy of this order along with the order of the Civil Judge executing the decree shall be sent to the Superintendent of Police concerned, who shall ensure that

adequate police force is made available to ensure the decree is executed and any objection to the execution of the decree, by any person, shall be brought to the notice of this Court. It is also made clear that if any person obstructs the execution of the decree without following the legal course, the said person shall be dealt with under the Contempt of Courts Act.”

Therefore, what this Court had directed was that if the parties should come to an amicable settlement by 15th July, 2015 partitioning the land by *metes and bounds* otherwise the trial Court was directed to appoint a Survey Commissioner who was directed to go to the spot along with the police officials and ensure that the land is partitioned and possession of land is handed over. At this stage the petitioners have now filed the application under Section 152 of CPC for amendment of the decree claiming that there is a clerical error. The ground for stating the clerical error is that balance 50% of the property fell to the share of two brothers and the plaintiffs have no share in the land of one of the brothers. This was a ground which should have been taken in their written statement and in the original suit and cannot be said to be an amendment falling within the purview of Section 152 of the CPC.

6. The conduct of the petitioners/defendants/judgment debtors is reprehensible. They on one ground or the other have delayed the execution of the decree. Despite the observations made by this Court in CRP No.21 of 2015 they have again tried to subvert the due process of law by filing this application under Section 152 of CPC. As

pointed out above not only was the decree passed determining the shares but this Court in CRP No.21 of 2015 had clearly indicated what is the extent of land to which the plaintiffs are entitled to and what is the extent of land to which the defendants are entitled to. How could the petitioners expect that this decree which has been approved by this Court in the revision petition could be amended under Section 152 of CPC and the amendment should be in such a fashion that it would virtually nullify the order of this Court? This clearly shows that the petitioners want to use any means, fair or foul, to somehow thwart the execution of the decree. This cannot be permitted. Therefore, the petition is rejected with costs of Rs.20,000/- (Rupees twenty thousand). The plaintiffs shall be entitled to recover the costs from the petitioners.

Send down the LCRs forthwith.

CHIEF JUSTICE

Sukhendu