

**HIGH COURT OF TRIPURA
AGARTALA**

CRP No.19 of 2025

Shri Krishna Podder, S/o Late Satish Chandra Podder, resident of Banshpara Colony, PO & PS- Belonia, Sub-Division- Belonia, District- South Tripura, presently residing at Math Chowmuhani, College Road, PO- Agartala, PS- East Agartala, Sub-Division- Agartala, District- West Tripura

.....Petitioner(s);

Versus

1. Smt. Chhabi Podder alias Chhabi Bala Podder, W/o Shri Binoy Krishna Podder, resident of Math Chowmuhani, College Road, PO- Agartala, PS- East Agartala, Sub-Division- Agartala, District- West Tripura, PIN- 799007

2. Shri Binoy Krishna Podder, S/o Late Satish Chandra Podder, Resident of Math Chowmuhani, College Road, PO- Agartala, PS- East Agartala, Sub-Division- Agartala, District- West Tripura, PIN-799007

.....Respondent(s)

For Petitioner(s) : Mr. Alik Das, Advocate,
Mr. Ashutosh De, Advocate.

For Respondent(s) : Mr. Somik Deb, Sr. Advocate,
Mrs. Adwitiya Chakraborty, Advocate.

HON'BLE THE CHIEF JUSTICE MR. M.S. RAMACHANDRA RAO

Order

29/08/2025

Heard both sides.

2. This revision is filed challenging order dated 07.12.2024 of the learned Civil Judge (Sr. Division), West Tripura, Agartala, Court No.1, allowing objection filed by the respondents/JDs to the execution petition filed by the petitioner being Ex (T) 10 of 2020.

3. There is no dispute that petitioner herein had filed an application to amend to typographical mistakes made in the Schedule of the execution application registered as Ex (T) 10 of 2020, and no objection to the said application was filed by the respondents.

4. The said application for amendment was, therefore, ordered on 06.03.2021.

5. Thereafter a connected application under Order I Rule 10(2) CPC to strike out the name of JD No.3 was also allowed on 06.03.2021.
6. Time was granted to the respondents to file written objection to the amended execution petition after the Schedule thereto is corrected.
7. Thereafter, the objections filed to the original execution petition by the JDs were rejected by the Trial Court by an order dated 09.08.2024.
8. This was challenged by the JDs in CRP No.90 of 2024.
9. On 27.09.2024, the CRP was allowed, and the matter was remitted back to the Trial Court for fresh consideration of the issues raised by the respondents/JDs in their objection under Section 47 of the CPC, and also to the report of the Tehsildar and Amin and the orders dt. 09.08.2024 and 12.08.2024 of the Executing Court were set aside.
10. Post remand, the Executing Court passed a fresh order on 07.12.2024 which is impugned herein.
11. The main reason assigned in the impugned judgment was that the petitioner/decreed holder had wrongly described the decretal land in the execution petition, that the decree holder had not discharged the legal obligation of correctly describing the decretal land, and that on the basis of these discrepancies in the description of the decretal land, if execution is permitted, then the same will result in serious miscarriage of justice.
12. As regards the report of the Tehsildar and Amin which was also directed to be considered by this Court, the Court below observed that the Tehsildar and Amin had failed to give any explanation regarding one aspect i.e. though the date of inspection by them was on 27.02.2023, but the report

mentions the date 28.01.2023 when they were examined as court witnesses, and so their report cannot be accepted.

13. There is no mention in the impugned order of the Executing Court about the order dt. 06.03.2021 in CM(J) 39 of 2021 in the very same execution petition permitting the petitioner to amend the Schedule in the execution application. It also did not take note of the fact that no objection was filed to the said application for amendment of the Schedule to the execution application by the respondents.

14. A perusal of the report filed by the Tehsildar and Amin indicates that the inspection of the land was done by them on 27.02.2023. No doubt the report mentions the date 28.01.2023, but that in my view is obviously a typographical mistake for 28.02.2023 probably, which the Court below ought to have taken into account.

15. We may also point out that the Amin and the Tehsildar were examined in the Executing Court as CW 1 and CW 2, and in the order passed in CRP 90 of 2024, the cross examination of CW 1 was extracted.

16. No question was put to the Amin who was examined as CW 1 by Judgment Debtor's counsel to explain the discrepancy in the date of the report and the date of the inspection. Having failed to cross examine the witnesses on this aspect, it is not open to the respondents to raise that point about the discrepancy in dates, because they are deemed to have waived the same. Therefore, the report submitted by the Tehsildar and Amin dated 28.01.2023 cannot be ignored by the Executing Court.

17. In this view of the matter, the Revision is allowed; the impugned order is set aside; Ex (T) 10 of 2020 is restored to the file of Civil Judge (Sr.

Division), West Tripura, Agartala, Court No.1; and the said Court is directed to re-hear the parties keeping in mind the above conclusions, and then decide the execution petition within 3(three) months.

18. Pending application(s), if any, shall stand disposed of.

(M.S. RAMACHANDRA RAO, CJ)

