
(2015) 06 TP CK 0071
In the Tripura High Court
Case No : CRP No. 21 of 2015

Chandana Saha and Others

APPELLANT

Vs

Ranu Bala Saha and Others

RESPONDENT

Date of Decision : 10-06-2015

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2015) 06 TP CK 0071

Hon'ble Judges : Deepak Gupta, C.J

Bench : Single Bench

Advocate : A.K. Bhowmik, Senior Advocate and M. Choudhury, for the Appellant; D.R. Choudhury and S. Sarkar, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Deepak Gupta, C.J.

1. This is an unfortunate case where the decree of the Court deciding the shares of the party was passed in the year 2010, the same has not been challenged by any party but the decree is still unexecuted.

2. The petitioner No. 1 herein is the daughter-in-law of the respondent(Late kalidas Saha). Initially a preliminary decree was passed on 10th April, 2008 declaring the rights of the parties in the property. Thereafter a review petition was filed and the same was disposed of on 24th August, 2010 and a decree was passed and in the fresh decree the rights of the parties were determined as follows :

"The plaintiffs i.e. the petitioners herein Smt. Chandana Saha and her two minor daughters Smt. Rashmani Saha and Smt. Laxmi Rani Saha were held entitled to 50% of the suit property and one seventh share in the remaining 50% of the suit property."

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.

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.

4. Many technical objections are being raised as to how this decree is to be executed. First a Survey Commissioner was appointed. He was also given help of the police but to no avail. Thereafter the plaintiff realising that this was homestead land assessed to land revenue even made a prayer that the matter be sent to the Collector. I am of the view that this Court exercising the powers under Article 227 should intervene in the matter and pass further directions to ensure that the decree is executed in letter and spirit.

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.

6. With these observations the petition is disposed of. Send down the LCRs forthwith.