

HIGH COURT OF CHHATTISGARH AT BILASPUR

Review Petition No. 53 of 2015

1. Krishna Kumar Soni, S/o. Late Makhanlal Soni, R/o. Jimmy Enterprises Right Choice, Banjari Chawk, Naya Para Road, Raipur, Tahsil And District- Raipur C.G.
2. Pillu Lal Soni, S/o. Late Makhanlal Soni, R/o. Jimmy Enterprises Right Choice, Banjari Chowk, Naya Para Road, Raipur, Tah. And Distt. Raipur C.G.
3. Narendra Kumar Soni, S/o. Late Makhanlal Soni, R/o. Jimmy Enterprises Right Choice, Banjari Chowk, Naya Para Road, Raipur, Tah. And Distt. Raipur C.G.
4. Ashok Kumar Soni, S/o. Late Makhanlal Soni, R/o. Jimmy Enterprises Right Choice, Banjari Chowk, Naya Para Road, Raipur, Tah. And Distt. Raipur C.G.
5. Dhannulal Soni, S/o. Late Makhanlal Soni, R/o. Jimmy Enterprises Right Choice, Banjari Chowk, Naya Para Road, Raipur, Tah. And Distt. Raipur C.G.
6. Suresh Kumar Soni, S/o. Late Makhanlal Soni, R/o. Jimmy Enterprises Right Choice, Banjari Chowk, Naya Para Road, Raipur, Tah. And Distt. Raipur C.G.
7. Smt. Meena Soni, W/o. Radhelal Soni, R/o. Saras Vihar Colony, House No. 82, Near F.C.I. Raipur, Tah. And Distt. Raipur C.G.

---- Applicants

Versus

1. Babulal Soni, S/o. Chandulal Soni, R/o Motipara, Infront Of Luchki Talab, Durg, Tahsil And District- Durg, C.G.
2. Smt. Shashi Soni, W/o. Baldau Soni, R/o. Ward No. 12, Brahmnpura, P.S. Khamharia, Tahsil Saja, District- Durg, C.G.
3. Smt. Sandhya Soni, W/o. Vimal Soni, R/o. Beside Bus Stand, Committee Hall, Mungeli, Distt. Bilaspur C.G.
4. Sushil Kumar Soni, S/o. Late Kamta Prasad Soni, R/o. Shri Furniture Mart, Luchki Talab, Beside Mandir, Motipara, Durg, Tah. And Distt. Durg C.G.

5. Shailendra Soni, S/o. Late Kamta Prasad Soni, R/o. Shri Furniture Mart, Luchki Talab, Beside Mandir, Motipara, Durg, Tah. And Distt. Durg C.G.
6. Devendra Kumar Soni, S/o. Late Kamta Prasad Soni, R/o. Shri Furniture Mart, Luchki Talab, Beside Mandir, Motipara, Durg, Tah. And Distt. Durg C.G.
7. Yuvaraj Soni, S/o. Late Kamta Prasad Soni, R/o. Shri Furniture Mart, Luchki Talab, Beside Mandir, Motipara, Durg, Tah. And Distt. Durg C.G.
8. Rajulal Soni, S/o. Chandulal Soni, R/o Motipara, Near Luchki Talab, Durg, Tah. And Distt. Durg C.G.

---- Respondents

For Petitioners : Mr. Ajay Shrivastava, Advocate
For Respondents : Mr. Sanjay S. Agrawal, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

09.09.2015

1. This review petition is filed by Krishna Kumar Soni and others who are claiming through one Makhanlal Soni. Review is sought of the order dated 12.02.2015.
2. Brief facts of this case are that one Rajulal Soni filed a suit for partition and share of property wherein the preliminary decree was passed on 24.04.2001. Against such judgment and decree passed in Civil Suit No.11-A/2000, an appeal was preferred before the High Court by the legal representative of Makhanlal Soni. The First Appeal bearing No.90/2001 was dismissed on 24.08.2007 and the same was confirmed by the Hon'ble Supreme Court on 23.11.2007 in SLP No.21267/2007. So the preliminary decree dated 24.04.2001 attained the finality and eventually the final decree was

drawn on 13.10.2011 in terms of preliminary decree wherein the share of the properties were demarcated on the basis of Nazri Fard Batwaranana.

3. Learned counsel for the applicants submits that after final decree an execution petition was filed by one of the co-sharer Rajulal Soni for getting partition and in that execution Smt. Shashi Soni & Others who are the Legal Representatives of Kamta Prasad Soni and Applicants in Civil Revision No.88/2014 had filed an application under Section 151 of C.P.C. to get their share demarcated /allotted. Such application filed by Smt. Shashi Soni & Others under Section 151 of C.P.C. was rejected by order dated 03.04.2013 and therefore the applicants could not have preferred a separate execution again and if they were aggrieved by rejection of order in decree, they should have challenged the order dated 03.04.2013, which was passed in execution proceeding.
4. Per contra, learned counsel for the non-applicants vehemently opposes the argument and would submit that the review petition is completely frivolous and misconceived and the entire effort of applicants herein to arrest the fruits of decree and to obtain possession of the demarcated share of non-applicants herein.
5. I have gone through the order dated 12.02.2015 which is sought to be reviewed as also the annexures and order sheet dated 03.04.2013 filed in this review petition.
6. Reading of the order dated 03.04.2013 would show that the order in execution proceeding was on the basis of an application under Section 151 of C.P.C. filed by one of the beneficiary of decree i.e. Rajulal Soni. No orders have been passed on merit. It is also

settled proposition that once the final decree has been drawn, the share of the parties by metes and bound are settled by partition. Consequently, reading the instant application would show that the applicants herein who are in possession of part of property fell to share of non-applicants apart from their own do not want to deliver the same. It appears that efforts are there to have an undue enrichment by avoiding the final decree.

7. Further, reading of the review petition would go to show that nothing has been substantiated that the applicants came to know of discovery of new important facts or evidence, which was not within the knowledge of the applicants, consequently, could not be placed at the time of earlier hearing. The case is also not to the like nature that certain facts were not in knowledge of the applicants on account of some mistake and error apparent from the order, the review can be sought.
8. In view of the above, it appears that the review petition is completely frivolous and is filed with ulterior motive. No legal question arises for consideration in this petition and in view of the facts of the case it deserves to be dismissed with compensatory cost.
9. Consequently, after due consideration of the review petition, no case for review of the order dated 12.02.2015 is made out. In the result, the review petition is dismissed having no merit with a compensatory cost of Rs.10,000/- payable by the applicants to the non-applicants.

Sd/-
(Goutam Bhaduri)
Judge