

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No. 919 of 2015**

Chetan Kumar Soni S/o Late Shri Ramlal Soni, Aged About 43 Years
R/o Village Keregaon, Tahsil Nagari, District Dhamtari, (Chhattisgarh)

---- Petitioner**Versus**

1. Karan Singh S/o Shri Toran Singh Chandrakar, R/o Village / P.O. Kukrel, Tahsil Nagari, District Dhamtari, (Chhattisgarh)
2. Tilakram, S/o Ramlal Soni, R/o Village Keregaon, Tahsil Nagari, District Dhamtari, (Chhattisgarh)

---- Respondents

For Petitioner	:	Shri Somnath Verma, Advocate.
For the Respondents	:	Not noticed.

Order On Board**5/11/2015**

1. Heard on the maintainability and also on admission of the instant writ petition without even noticing the Respondents at this stage.
2. The facts in brief of the instant Writ Petition (227) are that the Second Civil Judge, Class-I, Dhamtari, Chhattisgarh vide judgment and decree dated 29.8.2009 dismissed Civil Suit No. 18-A of 2007 filed by Respondent No.1 and the said order was challenged before the Additional District Judge, (FTC), Dhamtari, Chhattisgarh in Civil Appeal No. 3-A of 2013. The learned Additional District Judge vide judgment and decree dated 26.6.2013 set aside the judgment and decree passed by the trial Court and allowed the appeal and decreed in favour of Respondent No.1.
3. On the basis of the said judgment and decree, the decree holder i.e. the Respondent No.1/ Appellant in Civil Appeal No.3-A of 2013 filed execution proceedings before the Executing Court for the execution of the Judgment and decree passed by the First Appellate Court. In the said

proceedings, the present Petitioner filed an application under Order XXI Rule 99 of the Code of Civil Procedure, 1908 (for short 'the Code') read with Section 151 praying therein that he was not impleaded as a party in the said litigation. He had received the suit property on partition and he is in possession. He prays that an opportunity may be given to defend his case and to put all the facts and further he may be impleaded as a necessary party in the proceedings before the Civil Court. He also prays that warrant of the possession may be stayed.

4. The Execution Court vide order dated 27.10.2015 rejected the application holding that no concrete and acceptable grounds have been shown in support of the application and as such the application is devoid of merit.

5. Against the impugned order, the Petitioner had filed the instant Writ Petition (227) and prays that under the jurisdiction of to this Court under Article 227 of the Constitution of India the order dated 27.10.2015 may be quashed and also to direct the Executing Court for providing a reasonable opportunity to the Petitioner and after inquiry adjudicate the dispute raised under Order XXI Rule 99 of the Code.

6. On behalf of the Petitioner it is prayed that in view of the grounds mentioned in the petition, the petition may be allowed and appropriate orders may be passed in favour of the Petitioner by quashing the impugned order .

7. Heard on the question of maintainability and also on admission at this stage without noticing the Respondents.

8. Learned counsel for the Petitioner submits that he had no knowledge whether any second appeal has been preferred against the judgment and decree passed by the First Appellate Court in Civil Appeal No. 3-A of 2013.

9. The prayer of the Petitioner is solely based on the provisions of Order XXI Rule 99 of the Code alongwith Section 100 of the Code. Order XXI Rule 99 of the Code is as under:

“[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.]”

10. On a close scrutiny of the facts as raised in the application, it is apparent that the Petitioner is in possession of suit land after the partition about 4 to 5 years back from the date of the application i.e. 29.9.2015. If we calculate the approximate time for the partition for the sake of submission it goes somewhere in the year, 2010 and yet no exact date for the partition has been mentioned in the application in the matter before the trial Court. From the pleadings of the Civil suit it may be presumed that at least the civil suit has been filed in the year 2007. In the said application it is mentioned that the judgment-debtor is his younger brother. From perusal of the material, it cannot be held for the moment whether the judgment-debtor at any stage has informed the trial Court or the First Appellate Court regarding any partition between him and the present Petitioner. Even if assuming the Petitioner was not a party of the suit as well as in the first appeal, he had received the property on partition somewhere in the year 2010 and he was not known regarding the fact of any decree against the property wherein he is in a possession, he is required to file a civil suit showing all the pleadings

and to get the dispute adjudicated by the Civil Court in accordance with law. Even otherwise, the Order XXI Rule 99 is *prima facie* not attracted in the facts of the present case.

11. In the considered view of this Court, the Petitioner has failed to demonstrate the maintainability of the instant Writ Petition (227) and as such the matter is not worth for admission.

12. Consequently, the instant petition is not maintainable and also not liable to be admitted for the consideration. However the Petitioner, if so advised, may file civil suit regarding all his rights over the property and may get an appropriate relief, if available under the law.

13. With the aforesaid observation, the instant petition is dismissed.

14. No order as to costs.

Sd/-
Chandra Bhushan Bajpai
Judge