

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 217 of 2015

1. Smt. Shanti Pandeya Wd/O Late Parmanand Pandeya, Aged About 70 years
2. Dr. Somesh Pandeya S/O Late Parmanand Pandeya Aged About 58 Years
3. Chetan Pandeya S/O Late Parmanand Pandeya Aged About 56 Years
4. Gurudatt Pandeya S/O Late Parmanand Pandeya Aged About 52 Years
5. Rakesh Pandeya S/O Late Parmanand Pandeya Aged About 47 Years

All R/O Shivmandir Ward, Jagdalpur, P.S. & Post. Jagdalpur, Civil & Revenue District, Bastar, Chhattisgarh

---- Petitioners

Versus

1. Shree Devishankar Pandeya S/o Vishveshwar Pandeya Aged About 50 Years
2. Shree Tulsidas Pandeya S/O Vishveshwar Pandeya Aged About 47 Years
3. Shree Tukaram Pandeya S/O Vishveshwar Pandeya Aged About 45 Years
4. Shree Jgjeevan Pandeya S/O Vishveshwar Pandeya Aged About 43 Years

All R/O Village- Aasna, Jagdalpur, P.S. & Post. Jagdalpur, Civil & Revenue District Bastar, Chhattisgarh

---- Respondents

For Petitioners : Shri Manoj Paranjpe, Advocate
For Respondent/caveator : Shri Keshav Dewangan, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

25/03/2015

1. Petitioners/judgment debtors are challenging the order passed by the executing Court allowing the decree holder's application for appointment of commission for effecting partition for executing the decree for partition.
2. Admittedly, preliminary decree for partition was passed on 26/03/1981 which was affirmed by the High Court on 16/08/1990. Eventually the final decree was drawn

on 12/07/1999 and since then the execution is pending.

3. In course of execution proceeding, an order was earlier passed on 19/07/2002 directing issuance of commission and the said order has attained finality.

4. Learned counsel for the petitioners would submit that a decree for partition cannot be executed by appointing commission, therefore the impugned order cannot be sustained.

5. To effect decree for partition, if the parties do not agree to a formula, the Court has no option but to appoint a commission for drawing a plan for effecting partition. By doing this, the executing Court does not abdicate the power to execute the decree but the Court only seeks assistance of commission in finally arriving at the conclusion for satisfactory execution of the decree. If any party to the suit has any objection to the Commissioner's report, they would be at liberty to object to the report. However, it cannot be stated as a general rule that for execution of a decree for partition Commissioner can never be appointed. In the absence of any bar to such appointment, it is always at the discretion of the Court to see that the decree passed by it is executed and the execution does not remain pending forever.

6. In the considered opinion of this Court, the executing Court has not committed any such irregularity or illegality warranting interference under Article 227 of the Constitution of India.

7. Considering the law laid-down by the Supreme Court in the matter of ***Surya Dev Rai Vs. Ram Chander Rai and Others*** {(2003) 6 SCC 675}; ***Shalini Shyam Shetty and Another Vs. Rajendra Shankar Patil*** {(2010) 8 SCC 329} and ***Sameer Suresh Gupta through pa holder Vs. Rahul Kumar Agarwal*** {(2013) 9 SCC 374}, reiterating the scope of interference under Article 227 of the Constitution of India, the present is not a fit case for interference.

8. Accordingly, writ petition is dismissed.

J U D G E