

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 322 of 2014

1. Inder Jeet Singh S/o Late Ishwar Singh, Aged About 47 Years
R/o Main Road, Katghora, P.S. Katghora, District Korba,
(Chhattisgarh)

---- Petitioner

Versus

1. Sahebana Begum, Wd/o Syed Ahmad Ali, Aged About 64 Years
2. Syed Ali S/o Lt Shri Syed Ahmad Ali, Aged About 43 Years
3. Aashique Ali S/o Lt Shri Syed Ahmad Ali Aged About 40 Years

All by Caste Muslim, R/o Old Bus Stand, Katghora, Ps & & Tah
Katghora, Distt Korba, (Chhattisgarh)

4. State Of Chhattisgarh Through Collector, Distt Korba,
(Chhattisgarh)

---- Respondent

For Petitioner	Shri R.K. Tiwari, Advocate
For Respondent No.1 to 3	Shri Ravish Verma, Advocate
For Respondent-State	Shri Avinash Singh, Panel Lawyer

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

20/06/2016

1. In course of execution of decree passed by the Civil Judge Class
II, Katghora, declaring the petitioner's title over the House
No.350/5 and restraining the defendant Sahebana Begum to
interfere with the plaintiff's possession, the executing Court has

passed the impugned order *suo moto* exercising powers under Order 26 Rule 9 of the Code of Civil Procedure, 1908 ('the CPC' in short) to direct the Tahsildar, Katghora, to act as Commissioner to demarcate the land to ascertain as to on which part of the suit land the defendant/judgment debtor is in possession.

2. In the judgment and decree passed by the trial Court on 19-4-1993 issues were framed as to whether the plaintiff has purchased the property on 15-3-1977 and whether the plaintiff is in possession and, thereafter, the defendant has been restrained to interfere with the plaintiff's possession.
3. It is only when the defendant/judgment debtor tried to interfere in the plaintiff's possession by entering into the suit land the execution proceedings were initiated.
4. Since a decree for permanent injunction is also executable under Order 21 Rule 32 of the CPC, the trial Court should have proceeded to execute the decree unless the judgment debtor comes out with a plea that he has not interfered with the plaintiff's possession over the suit land.
5. On a reading of the order passed by the executing Court, it does not appear that any such plea was raised by the judgment debtor. In such view of the matter, the executing Court was not at all justified in exercising *suo moto* power under Order 26 Rule 9 of the CPC to direct issuance of commission.

6. The executing Court has apparently exceeded its jurisdiction and has acted with material irregularity while passing the impugned order, which needs to be corrected in exercise of the power under Article 227 of the Constitution of India because otherwise it will defeat the ends of justice inasmuch as the plaintiff who has obtained the decree is denied the fruits thereof by unnecessarily protracting the execution by directing issuance of commission, which is not at all required.
7. As an upshot, the impugned order dated 25-2-2014 is set aside. Accordingly, the writ petition is allowed, leaving the parties to bear their own costs.

Sd/-

Judge

Prashant Kumar Mishra

Gowri