

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Writ Petition (227) No. 429 of 2016**

1. Shashi Sekhar Rath S/o Late Abhimanyu Rath, aged about 60 years, Residing at Ward No. 4 Bramhanpara, Bhairamganj Jagadalpur, Tahsil & Post Jagadalpur, P. S. Kotwali District Bastar Jagadalpur, Civil & Revenue District Bastar (Chhattisgarh)
2. Smt. Shobha Rath Wd/o Late Shitanshu Shekhar Rath, aged about 50 years, Residing at Ward No. 4 Bramhanpara, Bhairamganj Jagadalpur, Tahsil & Post Jagadalpur, P. S. Kotwali District Bastar Jagadalpur Civil & Revenue District Bastar (Chhattisgarh)
3. Sushant Rath, S/o Late Shitanshu Shekhar Rath, aged about 29 years, Residing at Ward No. 4 Bramhanpara, Bhairamganj Jagadalpur Tahsil & Post Jagadalpur, P. S. Kotwali District Bastar Jagadalpur, Civil & Revenue District Bastar (Chhattisgarh)
4. Shidharth Rath, S/o Late Shitanshu Shekhar Rath, aged about 26 years, Residing at Ward No. 4 Bramhanpara, Bhairamganj Jagadalpur Tahsil & Post Jagadalpur, P. S. Kotwali District Bastar Jagadalpur Civil & Revenue District Bastar (Chhattisgarh)
5. Shidhant Rath, S/o Late Shitanshu Shekhar Rath aged about 24 years, Residing at Ward No. 4 Bramhanpara, Bhairamganj Jagadalpur Tahsil & Post Jagadalpur, P. S. Kotwali District Bastar Jagadalpur, Civil & Revenue District Bastar (Chhattisgarh)

---- Petitioners**Versus**

Sadanand Jha (Dead) through Legal Heirs

1. **(a)** Smt. Sukhsagar Devi Wd/o Late Sadanand Jha R/o D. D.

Uppdhyay Ward, Jagadalpur, Post Jagadalpur, P. S. Kotwali
District Bastar (Chhattisgarh)

1. **(b)** Gouri Devi D/o Sadanand Jha R/o D. D. Uppdhyay Ward,
Jagadalpur, Post Jagadalpur P. S. Kotwali, District Bastar
(Chhattisgarh)

1. **(c)** Savitri Jha R/o D. D. Uppdhyay Ward, Jagadalpur Post
Jagadalpur P. S. Kotwali District Bastar (Chhattisgarh)

1. **(d)** Indradev Jha R/o D. D. Uppdhyay Ward, Jagadalpur Post
Jagadalpur P. S. Kotwali District Bastar (Chhattisgarh)

1. **(e)** Vishnudev Jha R/o D. D. Uppdhyay Ward, Jagadalpur Post
Jagadalpur P. S. Kotwali, District Bastar (Chhattisgarh)

1. **(f)** Kamaldev Jha R/o D. D. Uppdhyay Ward, Jagadalpur Post
Jagadalpur P. S. Kotwali District Bastar (Chhattisgarh)

---- Respondents

For Petitioners : Shri Jitendra Nath Nande, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

13/12/2016

The petitioners through the present writ petition under Article 226/227 of the Constitution of India pray for a limited prayer for a direction to the Court below i.e. the First Civil Judge, Class-I, Jagdalpur, District Bastar for proceeding further with the Execution Case No. 5/2014 and pass an appropriate order expeditiously.

2. Counsel for the petitioners submits that it is a case where the present petitioners are the decree-holders who were defendant no.8 and the legal heirs of the original defendant No.9 in Civil Suit No.36A/2000. The present petitioners had also preferred a counter claim in Civil Suit No. 36A/2000 before the Second Civil Judge Class-1, Jagdalpur, District Bastar. The Court below initially had dismissed the civil suit as well as the counter claim on 12.01.2007. Against the said dismissal of the Civil Suit as well as the counter case, the plaintiffs as well as the defendants preferred appeals before the Court of Second Additional District Judge, Bastar at Jagdalpur. The appeal which was preferred by the original plaintiffs was registered as Civil Appeal No. 7A/2012 and the appeal preferred by the defendants 8 and legal heirs of defendant no.9 was registered as Civil Appeal No.6A of 2012.

3. The lower Appellate Court vide its judgment and decree dated 12.05.2014 dismissed the Appeal preferred by the original plaintiffs whereas allowed the appeal preferred by the defendants 8 and the legal heirs of defendant no. 9. Against the dismissal of the Civil Appeal No.7A/2012, the original plaintiffs preferred a Second Appeal

before the High Court registered as Second Appeal No. 226/2014. So far as the allowing of Civil Appeal No.6A/12 is concerned, the parties have not preferred any appeal till date. Thereafter, the present petitioners preferred an application for execution proceeding before the First Civil Judge Class-I, Jagdalpur registered as Execution Case No. 5/2014. Counsel for the petitioners submits that though the said execution case was filed on 02.08.2014 and the High Court had not granted any stay in favour of the original plaintiffs in the second appeal, the Executing Court is simply adjourning the matter on the garb of the pendency of the Second Appeal before the High Court.

4. Counsel for the petitioners submits that when there is no interim order in favour of the original plaintiffs against the judgment and decree dated 12.05.2014 by the High Court in Second Appeal No. 226/14 arising out of the Civil Appeal No. 7A/12 in addition to the fact that there has been no appeal preferred against the allowing of Civil Appeal No. 6A/12 in favour of the petitioners i.e. the decree-holders, there is no reason why the trial Court i.e. Executing Court should not proceed further with the matter and decide the same expeditiously. Thus, counsel for the petitioners prayed for an appropriate direction to the Executing Court.

5. Without venturing into the merits of the case this Court is of the opinion that when there is no interim relief in the Second Appeal against the judgment and decree passed in favour of the decree-holders and no appeal has been preferred against the allowing of Civil Appeal No.6A/2012, there is no good reason for the Executing Court for not proceeding with the execution case if preferred by the decree-holder. Another aspect which has been brought to the notice of this Court is that according to the counsel for the petitioners, the record of

Civil Appeal No. 6A/12 has also not been requisitioned by the High Court for hearing the Second Appeal No.226/2014 and it is still lying in the record room of the Court below which also all the more is a good ground for the trial Court to proceed further with the execution case.

6. In view of the aforesaid factual matrix of the case, without entering into the merits of the case and also without intending to keep the matter pending before this Court, ends of justice would meet if the Executing Court i.e. First Civil Judge, Class-I, Bastar, place Jagdalpur is directed to proceed further with the Execution Case No. 5/2014 unless there is an interim order from any of the superior Courts. It is ordered accordingly.

7. The present petition thus stands disposed of with the aforesaid direction.

Sd/-
(P. Sam Koshy)
JUDGE