

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 349 of 2015**

- Hemnarayan S/o Jugraj Singh Gaur Aged About 59 Years Caste- Rajput, R/o Village Bhakhara, P.O. Bhakhara, Tahsil Kurud, Civil And Revenue District Dhamtari (Chhattisgarh)

---- Petitioner**Versus**

1. Shyam Singh S/o Jugraj Singh Gaur Aged About 50 Years
2. Smt. Shashi Gaur W/o Shyam Singh Gaur, Aged About 45 Years

Both By Caste- Rajput, R/o Risaipara Ward, Dhamtari, Civil And Revenue District Dhamtari (Chhattisgarh)
3. Jitendra Singh Gaur S/o Jugraj Singh Gaur Aged About 32 Years Caste- Rajput, R/o Village Bhakhara, P.O. Bhakhara, Tahsil Kurud, Civil And Revenue District Dhamtari (Chhattisgarh)
4. The State Of Chhattisgarh, Through: The Collector, Dhamtari, Civil And Revenue District Dhamtari (Chhattisgarh)

---- Respondent

For Petitioner	Shri P. P. Sahu, Advocate
For Respondent-State	Shri P. K. Bhaduri, GA
For Respondent Nos.1 & 2	Shri B. P. Singh, Advocate
For Respondent No.3	Shri Ravish Verma, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****30/08/2016**

1. The present petition arises out of order passed by the Executing Court on 26.03.2015 dismissing the execution case preferred by the petitioner for executing the judgment and decree passed by

the First Civil Judge, Class-I, Dhamtari in Civil Suit No.58A/05 on 30.03.2005. By the said judgment and decree, the petitioner Hemnarayan, respondent No.1 Shyam Singh and respondent No.3 Jitendra Singh Gaur and three brothers of Jugraj Singh Gaur were allotted 1/3rd share each in the suit lands, which are agricultural land. After the said decree for partition, the petitioner moved an application before the Additional Tahsildar, Bhakhara for affecting the partition, wherein an order was passed on 06.02.2012 directing the Halka Patwari to correct the record in accordance with *Fard Batwara*.

2. It is argued by the learned counsel for the petitioner that in the said *Fard Batwara* prepared by the Tahsildar, the petitioner has been allotted inferior quality of land, therefore, the decree has not yet been executed in its true letter and spirit. On the other hand, the respondents would argue that the application for partition was moved before the Tahsildar for execution of the Civil Court's decree, wherein final order has been passed, therefore, the present application for execution is barred, because there cannot be two execution proceedings arising out of the same decree.
3. Having heard learned counsel for the parties and on perusal of the order passed by the Tahsildar on 06.02.2012, it would appear that Khasra Nos.650, 715, 1460 & 1959 have been allotted to one of the party but is possessed by some other party to the suit and in this view of the matter, the Tahsildar has directed these lands to be recorded jointly in the name of all the three brothers. Thus, the Tahsildar has not affected complete partition in respect of all

the lands but has left some lands to be recorded jointly, which is not permissible in law. Even otherwise, when a decree for partition of agricultural land is passed by the Civil Court, the same cannot be put to execution before the Tahsildar, because the question as to whether the decree has been executed to its full satisfaction is to be determined by the Court passing the decree and not by a Revenue Officer. Although, the petitioner himself was guilty in moving the Tahsildar and not applying before the Executing Court, yet considering the lack of jurisdiction in the Tahsildar in executing a decree passed by the Civil Court without intervention of the Executing Court, the learned Executing Court should have dealt with the execution application on its own merits and decided the same after hearing all the parties concerned.

4. For the foregoing, the impugned order is set aside and the matter is remitted back to the Executing Court for deciding the execution application on its own merits.

Sd/-

JUDGE

PRASHANT KUMAR MISHRA

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