

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (Art. 227) No.927 of 2015

Bishan Ji Bhai (dead) through Jayant Kumar Gohil, S/o Bishan Ji Bhai Gohil, aged about 45 years, R/o Pacharipara, Durg, Tahsil and District Durg (C.G.)

(Judgment Debtor No.2)
---- Petitioner

Versus

1. Smt. Pratibha Dani, W/o Veer Abhimanyu Dani, aged about 32 years, R/o Durg, Tahsil and District Durg (C.G.)
(Decree Holder)

2. Ramkhilawan Pandey (dead)

3. Ramsanehi (dead)

4. Lalji Bhai (dead)

(Judgment Debtor No.1, 3 & 4)
---- Respondents

For Petitioner: Mr. H.B. Agrawal, Senior Advocate with Mrs. Meera Jaiswal, Advocate.

For Respondent: Mr. Veer Abhimanyu Dani and Mr. Avinash Chand Sahu, Advocates.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

26/10/2016

1. The trial Court passed a decree for eviction in favour of Smt. Pratibha Dani on 27-10-1979 against Ramkhilawan Pandey, Bishanji Bhai, Ram Sanehi and Lalji Bhai. According to the decree holder, possession has been given and all the judgment debtors except Bishanji Bhai have vacated their part but Bishanji Bhai continued in possession and in the meanwhile, in the year 2000, he died. Number of applications were filed by Bishanji Bhai and decree could not executed against the LRs of Bishanji Bhai.

2. Challenge in this writ petition under Article 227 of the Constitution of India is to the order dated 30-9-2015 passed by the 2nd Civil Judge Class-I, Durg, in Execution Case No.49-A/1976, whereby the application for impleading the LR's of Bishanji Bhai has been rejected by the executing court holding that the decree has become final as by virtue of Order 22 Rule 12 of the CPC, the provisions of Order 22 Rule 3 of the CPC are not applicable.
3. Mr. H.B. Agrawal, learned Senior Advocate appearing for the petitioner, would submit that the order passed by the executing court rejecting the application filed by the petitioner for execution is unsustainable and bad in law, whereas, Mr. Avinash Chand Sahu, learned counsel appearing for the respondent/decreed holder, would support the decree.
4. I have heard learned counsel for the parties and perused the order impugned.
5. Order 22 Rule 12 of the CPC provides that nothing in Rules 3, 4 and 8 shall apply to proceedings in execution of a decree or order. Whereas Section 50(1) of the CPC provides that where a judgment-debtor dies before the decree has been fully satisfied, the holder of the decree may apply to the Court which passed it to execute the same against the legal representative of the deceased.
6. Thus, a careful perusal of Order 22 Rule 12 read with Section 50 (1) of the CPC would show that the decreed holder is entitled to proceed against the legal representative of the judgment debtor and execute the decree as such, the executing Court is absolutely justified in rejecting the application for impleading the LR's of

judgment-debtor No.2 as party in the execution proceeding. The writ petition deserves to be and is accordingly dismissed. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Soma