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HIGH COURT OF CHHATTISGARH, BILASPUR

(Arising out of order dated 03.03.2010 in Civil Appeal No. 12 of 2009 passed by the Learned Second Additional District Judge, Baloda Bazar, District Raipur, Chhattisgarh)

Writ Petition (227) No. 1740 of 2010

- Laxmi Prasad Sahu S/o Pati Ram Sahu, aged about 40 years, Occupation- Agriculturist, R/o Village- Marda, Tahsil Baloda Bazar, District- Raipur (C.G.)

---- Petitioner**Versus**

1. Dev Charan S/o Sukhram Satnami, aged about 33 years, Occupation Agriculturist R/o Village- Marda, Tahsil Baloda Bazar, District Raipur (C.G.)
2. Hetram S/o Sukhram, aged about 35 years, Chowkidar, Central Jail, Surajpur, District- Ambikapur
3. Roopa Bai D/o Sukhram, aged about 40 years, R/o Village- Kodabhatha, Police Station and Tahsil Janjgir, District- Janjgir- Champa (C.G.)
4. Kera Bai D/o Sukhram, aged about 37 years, R/o Village- Marda Police Station- Kasdol, Tahsil- Baloda Bazar, District Raipur (C.G.)
5. Mankunwar D/o Sukhram, aged about 60 years, R/o Village- Marda, Tahsil- Baloda Bazar, District Raipur (C.G.)
6. State of Chhattisgarh, through Collector, Raipur, District Raipur (C.G.)

---- Respondents

For Petitioner	:	Shri Vivek Tripathi, Advocate
For Respondents 1 to 5	:	Shri Hanuman Prasad Agrawal, Advocate
For State/Respondent No.6 :		Shri U.N.S. Deo, Government Advocate

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice**Order on Board****29/11/2017**

1. This is an application under Article 227 of the Constitution of India is filed by the plaintiff in a suit for specific performance of a contract for sale of immovable property. The matter arises in execution.
2. Heard the learned counsel for the Petitioner/Plaintiff and the Defendants

who are among the Respondents, apart from the learned Government Advocate.

3. The plaintiff sued for specific performance of a contract for sale alleging that an amount of Rs.30,000/- was paid as advance. The trial Court granted a decree which, in turn, says that the plaintiff can get the document of transfer on payment of the balance amount. No period for payment of the balance amount of sale consideration was provided in the decree in terms Rule 12A of Order 20 of the Code of Civil Procedure. There is also no direction in terms of Section 28 of the Specific Relief Act, 1963 regarding the execution of the conveyance or requiring the vendee (purchaser) to deposit the balance sale consideration. No time limit is also fixed for payment of the balance of sale consideration. Therefore, the command in the decree that the sale-deed be executed on payment of the balance ought to be one that would operate immediately upon the pronouncement of the decree. Without making any deposit and the instead of invoking Section 28 of the Specific Relief Act, 1963 for further direction in terms that the statutory provision, the plaintiff filed an application for execution. Since no amount was deposited by the plaintiff, the defendants deposited the advance amount of Rs.30,000/- which he had obtained and the executing Court recorded due satisfaction of the decree and closed the execution proceedings. This was done though there was payment of amount by the plaintiff into the Court after the defendants had deposited the amount of Rs.30,000/-.
4. The aforesaid facts and factors would clearly indicate that having regard to the express terms of the decree and conduct the parties, particularly that of the defendants, who deposited the amount of Rs.30,000/-, the executing Court was abundantly justified in holding that the executing proceedings should terminate. This is the inexcusable conclusion having regard to the

situation where the decree does not contain any direction to the defendants to execute the document, in failure of which alone, the Court could have ordered further steps for execution of the document through Court or by issuance requisite further direction in terms of Section 28 of the Specific Relief Act.

5. In the aforesaid fact situation and having regard to the law as noted above, no error of jurisdiction, illegality or jurisdictional infirmity is made out to visit the impugned order of the executing Court in exercise of power under Article 227 of the Constitution of India. This application, therefore, fails.
6. In the result, the writ petition is dismissed.

Sd/-
(Thottathil B. Radhakrishnan)
Chief Justice