

HIGH COURT OF CHHATTISGARH, BILASPUR**FA No. 137 of 2016**

Purushottam Dewangan S/o Late Sonuram Dewangan, Aged About 60 Years R/o Pratapganjpara (Kevramunda Ward), Jagdalpur, Bastar, Police Station And Post Jagdalpur, Civil And Revenue District Bastar (C.G.)

---- Appellant**Versus**

1. Pramod Kumar Parakh S/o Ranulal Parakh, Aged About 38 Years R/o Nayapara, Jagdalpur, Police Station And Post Jagdalpur, Civil And Revenue District Bastar (C.G.)

2. Abhimanyu Dewangan S/o Late Madhusudan Dewangan, Aged About 52 Years,

3. Sitaram Dewangan S/o Late Madhusudan Dewangan, Aged About 36 Years,

4. Smt. Gulabbai D/o (wrongly typed as Wd/o) Late Madhusudan Dewangan, Aged About 38 Years,

All above Respondents No.2 to 4 are R/o Village Niyanar, Tahsil, Police Station And Post Jagdalpur, Civil And Revenue District Bastar, Chhattisgarh

5. Smt. Muntobai Dewantan W/o Gorakhnath Dewangan, Aged About 36 Years R/o Village Palari, Tahsil Kondagaon, Police Station And Post Kondagaon, Civil And Revenue District Kondagaon, Chhattisgarh,

At Present R/o. Aadka Chhepra Naka, Amravati, Kondagaon, Police Station And Post Kondagaon, Civil And Revenue District Kondagaon, Chhattisgarh

---- Respondents

For appellant- Shri Manoj Paranjpe and Shri Anurag Singh, Advocates.
For respondent No.1 – Shri Rajeev Shrivastava, Advocate.

Hon'ble Shri Justice Goutam Bhaduri**Order****13/09/2017**

1. Heard.
2. Instant first appeal is against the order dated 5/03/2016.
3. Brief facts of this case are that a decree for specific performance of contract was passed on 4/05/1999 in Civil Suit No.6-A/1995. The

suit property is comprised in sheet no.92 of nazul plot No. 165 admeasuring 2232 sq.ft. In respect of such property decree for specific performance was passed. When decree was put to execution, an objection was raised on 25/04/2014 by Purushottam Dewangan S/o Sonuram Dewangan projecting the ground that he came to know about such decree and the suit for the first time and he being in possession of the property without making him party decree was obtained. It was further stated that if decree is executed his right would be affected as it would amount to without hearing to him. It was further stated that the objector alongwith his mother Kekti Bai and brother Madhusudan were living in the said house which are subject of the suit property and obtained electricity meter in 1980 and is running his tailoring shop from 1992 till date. It is stated that during the course of time out of total 3064 sq. ft. a division had taken place and out of the division 1500 sq.ft. house/shop fell into share of the objector. Further the brother Madhusudan during his life time has sold his part of the property 832 sq.ft to one Pusha Bai and remaining part 2232 sq.ft though right of the objector was vested in it by playing fraud a decree was obtained by the decree holder. With those pleadings an application was filed in execution proceeding under Order 21 Rule 97 to 101 read with section 151 of CPC objecting the decree. Further in support of the contention, statement of Purushottam Dewangan, Devendra Dewangan, K. Nageshwar Rao Soni were examined whereas decree holder had examined himself.

4. The legal issue and contention of applicant is no more res-integra in view of the decision rendered in case of **Usha Jain and others Vs. Manmohan Bajaj and Ors.** reported in **1980 M.P.L.J. Full**

Bench 623. Here in this case decree holder has not applied under Order 21 Rule 97 CPC, therefore neither a person obstructing or resisting can apply under that rule to have his title and possession investigated. An enquiry at the instance of a third party in possession is contemplated only after he is dispossessed in execution can apply under Order 21 Rule 100 complaining such dispossession. Third party is not judgment debtor or representative in interest of the judgment debtor, therefore he has no locus standi at that stage to apply. Application of the decree holder for actual delivery of possession should be dismissed. The copy of the objection and evidence by Purushottam Dewangan, who had resisted the decree would show that it was stated that suit property plot no.165 sheet no.92 belonged to Nanku Ram S/o Gada wherein objector was residing with his mother Keki Bai and brother Madhusudan. Though submission was made that objector was lineal descendant of Nanku Ram and he is related to Madhusudan but nothing was placed on record to prove those facts much less the genealogical tree by way of averments. It is also difficult to believe that if objector was claiming Madhusudan to be his brother and the judgement debtor namely Abhimanyu Dewangan and others to be his relative, if they were residing together it is difficult to presume how such facts was not known to the objector. Two contradictory averments were made on record that one the judgement debtors alongwith decree holder had played fraud thereby allegation have been attributed to both other judgement debtor and decree holder yet in another part it was stated that the objector and judgement debtors were residing together.

5. On the contrary, the order further records that Nanku Ram has

executed will in favour of Madhusudan. Para 19 of the cross-examination of the objector would show that objector has admitted that both property was in joint name of both brother and presently land is in name of Madhusudan. Thereby fact that property is in name of Madhusudan was admitted by the objector.

6. It appears that after decree was passed in favour of the judgment debtor Pramod Kumar Parakh, in the year 1999 when decree was put to execution, as a measure of last resistance such objection has been made. Apparently, it appears that fruits of the decree has not been received by the decree holder and when the decree was put to execution objection is made by one of the relative of the judgement debtor on the ground that family members of the judgement debtor has concealed entire facts. Facts would suggest that entire efforts have been made to render the decree as infructuous which was passed in the year 1999 and efforts are made to push the litigants for another bout of litigation. Considering the statement and objection of the appellant no case is made out to interfere in the order.

7. Consequently, first appeal has no merit and it is dismissed.

Sd/-

(Goutam Bhaduri)

JUDGE