

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CR No. 5 of 2017

- Rambali Vishwakarma S/o Maldeo Vishwakarma, Aged About 52 Years R/o Kotra Road, Police Station Kotra Road, Raigarh, Tahsil And District Raigarh, Chhattisgarh(Judgment Debtor/ Defendant)

---- Petitioner

Versus

1. Omprakash (Dead) Through Lrs - Gayatri Wd/o Late Omprakash Agrawal, R/o Danipara, Raigarh, Tahsil And District Raigarh, Chhattisgarh
2. Pankaj S/o Late Omprakash Agrawal, R/o Danipara, Raigarh, Tahsil And District Raigarh, Chhattisgarh
3. Reetu Rungta D/o Late Omprakash Agrawal, R/o Danipara, Raigarh, Tahsil And District Raigarh, Chhattisgarh
4. Vikash Agrawal S/o Omprakash Agrawal, R/o Danipara, Raigarh, Tahsil And District Raigarh, Chhattisgarh(Decree Holder/ Plaintiffs)

---- Respondents

For petitioner : Mr. Vivek Tripathi, Advocate

For Respondent/State : Mr. Sangarsh Pandey, Dy.G.A.

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

18-01-2017

1. The petitioner has preferred this revision petition against the order dated 24-11-2016 (Annexure A/1) passed by learned 3rd Additional District Judge, Raigarh in Misc. Civil Appeal No. 42 of 2016 whereby the First Appellate Court has affirmed the order dated 14-9-2016 (Annexure A/2) passed by 2nd Civil Judge, Class-1, Raigarh in Execution Suit Case No. 63 of 2003 in between Omprakash Agrawal (since dead) through legal representatives Vs. Rambali Vishwakarma i.e., the petitioner.
2. Brief facts of the case are that a decree for possession over the suit property was passed in favour of Omprakash, now who is represented through legal representatives on 15-1-2000 in respect of part of land admeasuring 300 sq.ft of Khasra No. 141/1. When execution of proceeding

commenced, during such time an application under Order 21 Rule 97 of Code of Civil Procedure was filed on the ground that the decree holder has not encroached upon the land for which possession is sought for.

3. It is contended by learned counsel for the petitioner that the judgment debtor is not in possession of Khasra No.141/1 or part thereof, but he is in actual possession of land bearing Khasra No.26/4 (new No.26/209) area 30 x 17 total area 510 sq.ft., It is stated that for such land a lease was granted by the State and description of land property which is subject of decree is entirely different as the boundary does not tally which shows that the identity of the plot is entirely different.
4. It is on record that the decree was passed on 15-1-2000 and , first appeal was also dismissed. Subsequently second appeal was too dismissed. When decree was being executed, an application under Order 21 Rule 97 of the CPC was filed by the judgment debtor claiming that possession of decree which is being executed is a different land. It is settled proposition that the executing Court cannot go beyond the decree. The judgment-debtor claims that he is in possession of separate part of property, then in such eventuality, naturally the decree for Khasra No. 141/1 of 300 sq.ft may not affect him . It appears that after loosing in second appeal, at the time of execution the application is preferred to defeat the fruits of decree.
5. Consequently, I do not find any illegality or irregularity in the order dated 24-11-2016 passed by the court below warranting any interference by this Court.
6. Accordingly, the instant revision petition being devoid of merit is liable to be and is hereby dismissed summarily.

Sd/-

(Goutam Bhaduri)
Judge

Raju

