

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 907 of 2017

- Goverdhan S/o Dayaram, Aged About 40 Years By Caste Dhanvar, R/o Village Pondidih, Tahsil And Thana Khadgawa, District Koriya, Chhattisgarh.

---- Petitioner

Versus

- Vimla Bai W/o Shri Goverdhan, Aged About 37 Years By Caste Dhanvar, R/o Village Chanvaridand, Thana And Tahsil Khadgawa, District Koriya, Chhattisgarh.

---- Respondent

For Petitioner	:	Shri Parag Kotecha, Advocate.
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For Respondent	:	None.
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Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

18/09/2017

Heard.

1. This petition has been brought under Section 482 of Cr.P.C. with a prayer to quash the impugned order dated 10.4.2017 passed by the learned Family Court, Manendragarh, District-Koriya.
2. It is submitted that petitioner and respondent are husband and wife. Respondent, who is living separately, filed an application under Section 125 of Cr.P.C. before the Family Court, Manendragarh seeking maintenance. A compromise in the said matter was arrived at on 27.12.2007, and the same was recorded by the Judge, Family Court. According to the terms of compromise, petitioner had agreed to give half

portion of the land owned by him to his son from respondent. However, by mistake the area of the land was mentioned as 2.030 Hectare, which was in fact to be mentioned as “acre”. Subsequent to that respondent is pressurizing the petitioner to comply with the terms of compromise which has become impossible because of that typographical error in the order of the learned Family Court.

3. It is submitted that Criminal Revision No.107 of 2008 filed by the applicant has been withdrawn with liberty to file application before the learned Family Court for correction of clerical error in the order passed and accordingly an application was filed for correction of typographical error, however, the same has been rejected by the learned Family Court by the order dated 20.10.2016 against which Cr.M.P. No.18/2017 was preferred before this Court. The said petition has been dismissed by this Court vide order dated 21.2.2017 observing, that it would be another matter before the Court to examine as to the extent to which, order could be passed against the petitioner as he does not actually possess land to the extent indicated in the compromise.
4. After passing of the order dated 21.2.2017 in CRMP No.18/2017 the learned Family Court by order dated 10.4.2017 has held that petitioner is the owner of 0.98 Hectare land and that since the compromise between the parties was for half of the land of 2.030 hectare, it was ordered that the whole land belonging to the petitioner i.e. 0.98 hectare, be recorded in the name of the respondent herein in compliance of the terms of compromise.
5. It is submitted by learned counsel for the petitioner that the stand of petitioner is this, that he agreed to transfer half portion of the land owned

by him in favour of the respondent and her son, whereas by the impugned order the Court below has directed for transfer the entire land possessed by the petitioner which is not in accordance with order passed by this Court in CRMP No.18/2017.

6. Respondent did not appear before the Court despite service of notice and as such there was no representation on her behalf.
7. Heard both the parties and perused the documents on record.
8. In order dated 20.10.2016 passed by the learned Family Court, it has been observed in Para-7 that though the petitioner was possessed of 2.030 hectare land prior to the agreement dated 20th December, 2007, however, but he had transferred half of the land to his second wife Gulabiya Bai and he did not disclose the fact either to his first wife or before the Court. Thus, it is clear that petitioner was not in ownership and possession of 2.030 Hectare land on the date when the compromise took place.
9. Thus, it is apparent that the terms of compromise, as aforementioned in compromise order dated 27.12.2007, the area of land mentioned is typographical error because of which it was ordered in CRMP No.18/2017 that the Court should examine as to the extent to which order could be passed, which indicate that the learned Court below on the basis of factual position of the ownership and possession of land in favour of the petitioner should have taken action and passed the order accordingly. A typographical error in the order regarding the terms of compromise cannot be insisted upon, because if the respondent intends to convince the Court that the petitioner was in reality in possession & ownership of 2.030 hectare lands, in that case that the burden to prove

the said fact before the learned Family Court would be of the respondent.

10. In these circumstances, the terms of compromise between the parties can be complied only to the extent of that land which is under ownership and the possession of petitioner and could be transferred to the respondent.

11. In view of above, this petition is allowed at the motion stage and the learned Court below is directed to conduct an inquiry in the matter to ascertain the true and real fact about the area of land in ownership of the petitioner on the date of compromise, if necessary, after giving an opportunity to the respondents to approach and contest the stand of the petitioner and to pass orders thereafter in accordance with observations made in this order.

Sd/-
(Rajendra Chandra Singh Samant)
JUDGE