

**HIGH COURT OF CHHATTISGARH, BILASPUR****Second Appeal No.243 of 2003****Judgment reserved on :26.10.2018****Judgment delivered on:14.11.2018**

Daulat Ram aged about 40 years S/o Udai Ram Sonkar, Resident of Village Gunder Dehi, District Durg (CG)

**---- Appellant****Versus**

1. Devantin Bai (died) Through Lrs.

1-(i) Somnath, aged about 35 years, S/o Late Sitaram Sonkar, R/o Gunderdehi, Police Station Gunderdehi, District Durg (CG)

1-(ii) Smt. Usha Bai, aged about 34 years, wife of Poshan Lal, R/o Balod, Police Station Khursipar, District Durg (CG)

1-(iii) Smt. Janki Bai, wife of Shri Mahesh, aged about 33 years, R/o Kagdehi, District Raipur (CG)

1-(iv) Smt. Mayabai, aged about 32 years, W/o Mukaddar, R/o Village Chhatrega, Police Station Raipur, District Raipur (CG)

2. Udai Ram Sonkar (died)

2-1(i) Smt. Sohodra Bai, aged about 70 years, Wd/o Late Shri Uderam

2-(ii) Smt. Ansuiya Bai, aged about 35 years, Wd/o Late Shri Yuvraj

2-(iii) Ku. Monika, aged about 18 years,

2-(iv) Ku. Jiya, aged about 16 years

Both daughters of Late Shri Yuvraj

2(v) Bhishm, aged about 14 years, S/o Late Shri Yuvraj

(2-iv and 2-v) minors through natural guardian mother Smt. Ansuiya Bai

All R/o Gunder Dehi, Tahsil Gunderdehi. District Balod (CG)

**---- Respondents**


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|--------------------------|---|------------------------------------------------------------------------|
| For Appellant            | : | Mr.P.K.C.Tiwari, Senior Advocate with<br>Mr.Ashutosh Trivedi, Advocate |
| For Res.No.1(i) to 1(iv) | : | Mr.Vimlesh Bajpai, Advocate                                            |
| For Res.No.2(i) to 2(v)  | : | None present                                                           |

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**Hon'ble Shri Justice Sanjay K. Agrawal**

**C.A.V. Judgment**

1. The substantial question of law involved, formulated and to be answered in the appellant/objector's second appeal is as under:-

“Whether without affording proper opportunity to the appellant his objection, could have been dismissed by the Executing Court ?”

2. The appellant/objector herein filed an application to the execution of decree dated 14.10.2000 passed in Civil Suit No.47A/96 (Devantin Bai v. Udai Ram) under Order 21 Rule 97 to 103 of the CPC stating inter-alia that he is in possession of the suit shop running welding and motor binding works and respondent No.1/decreed-holder is trying to dispossess him from the suit premises and his possession be protected, which was replied by the decree-holder. The trial Court by its order dated 22.2.2001 rejected the application, against which, the appellant/objector preferred first appeal, which was dismissed by the First Appellate Court. Being aggrieved and dissatisfied with the order of the First Appellate Court, this second appeal under Section 100 of the CPC has been preferred by the appellant/objector, in which substantial question of law has been framed by this Court, which has been set-out in opening paragraph of this judgment.
3. Mr.P.K.C.Tiwari, learned Senior Advocate appearing for the appellant/objector, would submit that the trial Court has not given proper and due opportunity of hearing as provided under Order 21

Rules 97, 98 and 99 of the CPC to the applicant before rejecting his application. Therefore, the impugned decree is unsustainable and bad in law.

4. On the other hand, Mr. Vimlesh Bajpai, learned counsel for respondents No.1(i) to 1(iv), would support the impugned decree.
5. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the records with utmost circumspection.
6. Civil suit No. 47-A/1996 (Devantin Bai v. Uderam) was decreed by the trial Court on 21.01.2000 granting decree for possession in favour of plaintiff-Devantin Bai, which was duly upheld by the First Appellate Court in Civil Appeal No.03-A/2000 (Uderam v. Devantin Bai) on 14.10.2000. Thereafter, Shri Daulatram Sonkar, son of judgment-debtor, filed an application under Order 21 Rule 97, 98, 101,102,103 and Section 47 of the CPC stating inter alia that he is in possession of suit house since 1998 running welding works and motor binding shop and has obtained three phase connection in the said shop. It was further pleaded that on the basis of decree obtained by decree-holder, she tried to dispossess him from the suit shop in which he is continuing in peaceful possession since 1998, which is totally unauthorized in law and his possession be protected and reasonable opportunity be afforded to him before finally deciding the application filed by him. The said application was opposed by decree-holder and ultimately, the trial Court rejected the application, which was duly

upheld by the Appeal Court.

7. In order to decide the question, it would be appropriate to notice Rule 99 of Order 21 of the CPC, which states as under:-

**“R. 99. Dispossession by decree-holder or purchaser.—**(1) Where any person other than the judgment-debtor is dispossessed of immovable property by the holder of a decree for the possession of such property or, where such property has been sold in execution of decree, by the purchaser thereof, he may make an application to the Court complaining of such dispossession.

(2) Where any such application is made, the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.”

8. The aforesaid Rule clearly provides that a person complaining of dispossession must be a person other than judgment-debtor and he must not be in possession of suit property on the date of making the application.
9. Reverting to the facts of the present case, it is *quite vivid* that the appellant herein is the son of decree-holder and he is claiming to be in possession of the suit shop since 1998, whereas in order to maintain an application, a person complaining must be dispossessed of the suit property in question in order to attract the provisions of Order 21 Rule 99 of the CPC. Where an application under Order 21 Rule 99(1) of the CPC is maintainable, by virtue of Order 21 Rule 99(2) of the CPC, the court shall proceed to adjudicate upon the application in accordance with the provisions herein contained. It is the case of the appellant herein

that he is in possession of the suit property on the date of making the application and he has not been dispossessed from the suit property. That application under Order 21 Rule 99(1) CPC is not maintainable and adjudication as required under Order 21 Rule 99(2) of the CPC would not be applicable, as such, the trial Court is absolutely justified in rejecting the application under Order 21 Rule 99 of the CPC, which has rightly been affirmed by the First Appellate Court, in which I do not find any illegality or perversity. The substantial question is answered accordingly.

10. As a fallout and consequence of the above-stated discussion, the second appeal deserves to be and is accordingly dismissed, leaving the parties to bear their own cost(s).
11. A decree be drawn up accordingly.

Sd/-

(Sanjay K. Agrawal)  
Judge

B/-