

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 549 of 2014**

1. Nand Kumar S/o Late Dhansai Aged About 40 Years
2. Harishankar S/o Late Dhansai Aged About 36 Years
3. Lalita Bai Wd/o Late Dhansai Aged About 70 Years

All are R/o Village And Post Sankara Tahsil Nagari, Distt. Dhamtari C.G.

---- **Petitioners**

Versus

1. Anshuiya Bai Wd/o Late Romharshan Aged About 41 Years
2. Rekhram S/o Late Romharshan Sahu Aged About 35 Years
3. Keshri Bai W/o Late Loknath Aged About 33 Years
4. Laxmi Bai W/o Mohitram Sahu Aged About 31 Years

All are R/o Village And Post Sankara Tahsil Nagari, Distt. Dhamtari C.G.

5. Chhabi Lal s/o Ramkumar Aged About 39 Years R/o Near Gujrati Bhawan, Baniyapara Dhamtari Tahsil and Distt. Dhamtari Chhattisgarh
6. Lila Bai W/o Umrao Singh Aged About 35 Years R/o Village Mainpur Tah Gariyaband Distt. Gariyaband C.G.
7. State Of Chhattisgarh Through The Collector, Dhamtari, Distt. Dhamtari C.G., District : Dhamtari, Chhattisgarh

---- **Respondents**

For Petitioners	:	Shri R.S. Patel, Advocate
For Respondents No.1-4	:	Shri Adil Minhaj, Advocate
For Respondents-State	:	Shri S.K. Mishra, PL for the State

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

28/02/2018

1. By the instant petition, the petitioners have challenged the order dated 26.04.2014, wherein in an execution proceeding an application under Section 151 CPC was filed with an objection that in the original suit the notices were not served and further the objection was taken as the execution proceedings though the warrant has been issued but the map has not been attached with the execution application, therefore, in absence of notice and further in absence of map the execution cannot be proceeded and the ex-parte proceeding against the petitioner may be stayed.
2. Perusal of the record would show that respondents No.1 to 4 herein were the decree holders before the Court and the petitioners herein were the judgment debtor. Respondent No.5 Chhabi Lal has not been served yet. It appears that the decree holders i.e. respondents No.1 to 4, are primarily affected by the execution of the decree, therefore, in absence of notice to respondent No.5 who is judgment debtor and even in absence of respondent No.5 the case can be heard as primarily the right of respondents No.1 to 4 who are heard are being affected by the said execution.
3. Perusal of the order would show that an application under Section 151 CPC was filed on the ground that an ex-parte proceeding has been drawn and ex-parte decree has been passed against the petitioners in such case. The order records that initially notice was served to respondents on 06.04.2013, however, they did not appear and subsequently on 19.08.2013 ex-parte proceedings were drawn. In any case if the petitioners are aggrieved by the ex-parte decree, which is existing against them they could have availed the remedy of filing application under Order 9 Rule 13 CPC. Filing of application under Section 151 CPC in the execution proceedings, the Court cannot go beyond the decree as such rejection of the application under Section 151 CPC cannot be held illegal. Now coming to the other part, the

execution proceeding if the map has not been produced, the decree holder can always produce the map during the pendency of the execution and thereafter the execution can be proceeded. Perusal of the application under Section 151 CPC dated 24.04.2014 would show that the objection was also filed by the judgment debtor that in absence of map the decree for possession cannot be made, therefore, the map can always be placed during the execution proceeding and the map if is produced, the execution Court shall proceed in accordance with law.

4. With such observation, the petition stands disposed of.

Sd/-

Goutam Bhaduri
Judge

Ashu