

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 97 of 2018**

1. Roop Sagar S/o Abhay Ram Aged About 75 Years
2. Mahettar Ram @ Chandra Kumar S/o Abhay Ram Aged About 65 Years

Both R/o Village Tikri (Arjuni) Tahsil Gunderdehi District Balod
Chhattisgarh

---- Petitioners**Versus**

1. Balram S/o Ludu Ram Aged About 43 Years
2. Shyam Kumar S/o Ludu Ram Aged About 43 Years
3. Digvijay Kumar S/o Ludu Ram Aged About 49 Years

All are R/o Village Tikri (Arjuni) Tahsil Gunderdehi District Balod
Chhattisgarh

4. Collector , Balod District Balod Chhattisgarh
5. Tahsildar Gunderdehi District Balod Chhattisgarh.

The Respondent No. 4 And 5 Have Been Made Party Because Learned
Executing Court Had Sent The Case Under Section 54 Of The C P C For
Appropriate Proceedings

---- Respondents

For Petitioners	:	Shri Punit Ruparel, Advocate
For Respondents-State	:	Shri S.K. Mishra, PL for the State

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****31/01/2018**

1. Heard.
2. The instant petition is against the order dated 28.10.2017, whereby an application moved by the petitioners to cross-examine the legal heirs was dismissed in an execution case.

3. The record would show that a decree was passed in favour of Phuleshwari Bai and during the execution proceedings persons claimed to be the legal heirs of Phuleshwari Bai filed an application to bring them on record. The said application was allowed and thereafter the same was subject of challenge in WP 227 No.1080/2015. This Court on 11.04.2016 has directed to make an enquiry to ascertain as to who are the legal heirs of deceased Phuleshwari Bai within a period of 15 days to the trial Court to bring them on record. Consequently, on 16.11.2016, the legal heirs of Phuleshwari Bai filed an affidavit claiming that they are the legal heirs of Phuleshwari Bai, the decree holder, which was not objected by the judgment debtor i.e. the petitioners herein and accordingly the Court passed an order on 16.11.2016 with respect to the legal heirs of Phuleshwari Bai. Subsequently, another application has been filed to cross-examine the said legal heirs to challenge the authenticity of the submission made with respect to the legal heirs to again question the fact that who are the legal heirs. The said application was dismissed and order was passed on 28.10.2017, which is under challenge. Perusal of the order dated 16.11.2016 would reveal that initially the said judgment debtor has chosen not to cross-examine averments of affidavit of the legal heirs and accordingly the order was passed accepting the parties to be proposed legal heirs of Phuleshwari Bai, the decree holder. Subsequently, again the judgment debtor has turned around and prayed for cross-examination of the affidavit, of averments of correctness of the affidavit of an issue which has already been decided by the Court on 16.11.2016. The order dated 16.11.2016 was not subject of challenge before any Court, therefore, that order reaches finality and facts recorded in it cannot be doubted at the later stage at the wish and will of the petitioners.

4. In view of this, I do not find any jurisdictional error to entertain this writ petition. It is accordingly dismissed.

Sd/-

Goutam Bhaduri
Judge

Ashu