

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 142 of 2018**

- Shamim Ahmed Niyazi S/o Shri Jalil Ahmed Khan Niyazi, Aged About 62 Years Occupation Motor Cycle Repairing Shop, Idgah Compound, Masanganj, Bilaspur, Tahsil, District Bilaspur, Chhattisgarh

---- Petitioner**Versus**

- Subhania Anjuman Islamiya Through Vice President Haji Mohamad Ismail Rizvi, S/o Late Abdullah, R/o Telipara, Bilaspur, Tahsil, District Bilaspur, Chhattisgarh

---- Respondent

For Petitioner : Shri Rajeev Bharat, Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****19/02/2018**

1. The instant petition is against the order dated 17.01.2018, wherein an application filed under Section 47 read with Section 151 of the C.P.C. has been dismissed.
2. Learned counsel for the petitioner would submit that the decree though was passed in the year 1998 and it would reveal that the identity of the property itself is not clear. It is further contended that the decree holder is also not the owner of the property which would be evident from the revenue documents which are placed on record and the decree was in-executable because of the uncertainty. It is stated that when the application was filed under Section 47 read with Section 151 CPC to make an enquiry, it was obligatory on the part of the executing Court to decide the question and proceed thereafter. He therefore submits that under the circumstances the order of the executing Court may be set aside and the Court may be

directed to decide the question of identity and ownership of the property.

3. Perusal of the decree would show that it was passed on 17.01.1998 in Civil Suit No.33-A/97. The decree was a compromise decree wherein the judgment debtor agreed to handover the possession of the suit property after 17.01.1998. Admittedly, as appears till today the possession is with the judgment debtor. Perusal of the copy of the plaint would show that the boundaries have been shown in respect of the suit property, therefore, if the identity of the property was itself in question, the fact that the judgment debtor/defendant agreed for a compromise decree laments the fact that the identity of the property is certain and no uncertainty exists. The decree was passed in the year 1998 for ejectment and when the specific prayer is sought for possession of the suit property thereafter it is almost more than 20 years have passed and fruits of decree is still to be materialized. The issue is raised by the judgment debtor after 20 years cannot be gone into and it is a settled position that in case of dispute of identity of property the boundary always will prevail over the other issues.
4. Consequently, the rejection of the application by the Court below is well merited which do not call for any interference. It is expected that when the decree has been passed in the year 1998, that too a compromise decree in order to uphold the faith of the litigants over the Courts, no unnecessary adjournment shall be granted by the Court below and fruits of the decree cannot be deferred until time immemorial at the instance of the litigating party. The application appears to be frivolous and misconceived.
5. Accordingly, the petition is dismissed with a cost of Rs.5,000/- payable to the decree holder.

Sd/-
Goutam Bhaduri
Judge