

HIGH COURT OF CHHATTISGARH, BILASPUR

WP(227) No. 7269 of 2009

1. Kishanlal, Aged about 42 years, S/o. Late Shri Punulal Mehar.
2. Ramla Bai, Aged about 33 years, D/o. Late Punulal Mehar.
3. Smt. Purniya Bai, Aged about 65 years, Wd/o. Punulal Mehar.
4. Bhushan Lal, Aged about 37 years, S/o. Late Punulal Mehar.
5. Rajesh Kumar, Aged about 29 years, S/o. Late Shri Punulal Mehar.
6. Kamal Kumar, Aged about 46 years, S/o. Late Shri Punulal Mehar.

All are R/o. Tatibandh, Raipur, Distt.-Raipur (C.G.).

---- Petitioners

Versus

Kumar Kannojiya Mehar, Aged about 52 years, S/o. Shri Rama Kannojiya,
R/o. Tatiband, Raipur, Tahsil & District Raipur (C.G.).

---- Respondent

For Petitioners : Mr. Sushil Sahu, Advocate
For Respondent : Mr. Suresh Tandan, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

16.01.2018

Heard on I.A.No.7, application for condonation of delay in filing the application for bringing legal representatives on record.

1. This petition is against the order dated 23.07.2009 passed by the Court of Second Civil Judge, Class-II, District Raipur wherein an application under Section 144 read with Section 47 of C.P.C. which was preferred in execution proceeding of the Civil Suit No.3A/90 was dismissed and in such application, the petitioner claimed back the possession on the ground that possession of the land other than comprised in the decree has been obtained by the decree holder.

2. Perusal of the order would show that a decree was passed for possession in favour of the deceased respondent Kumar Kannojiya Mehar and pursuant to the execution of decree on 27.01.2006 the decree for possession of the suit land was issued and thereafter possession was obtained. Subsequently, an application was filed by the petitioner claiming that over and above the decree, the possession has been taken over by the deceased respondent; however, the trial Court dismissed the same holding that identification of the property *prima facie* appears to be of the disputed suit land and application filed was too vague to say that how much possession has been acquired apart from the decree. The trial Court also held that no particulars of the property has been given that which part the possession has been obtained and such prayer was dismissed.
3. Perusal of the order would show that in pursuant to the judgment and decree passed by the Civil Court in Civil Suit No. 3A/90, the possession of the property was given. The petitioner also failed to bring the facts that apart from the decree which part of land has been taken over. Therefore, such finding of fact that the possession was obtained according to the decree cannot be gone into by this Court. The petitioner if is aggrieved by such taking over possession he could have filed a suit for possession. Furthermore, the application filed for bringing legal heirs would show that the sole respondent died on 21.10.2013, thereafter, the application was filed to bring the legal heirs. Thereafter, it was intimated to the respondent on 11.08.2015. Subsequent to it, an application to bring the legal heirs was moved on 24.02.2016 wherein the death of the sole respondent Kumar Kannojiya was stated to be on 21.10.2013 and the application filed to bring legal

heirs on record is also too vague, no reasons have been assigned as to why the petitioner was delayed to bring the legal heirs.

4. Considering the order dated 23.07.2009 as also the subsequent fact that the petitioner failed to bring the legal heirs on record within reasonable time and no plausible explanation has been given to condone the delay, I do not find any merit in this case to exercise the jurisdiction vested in this Court under Article 227 of the Constitution of India.
5. Accordingly, the petition has no merit and is dismissed.

Sd/-
(Goutam Bhaduri)
Judge