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HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 171 of 2018**

- Rajesh Dewangan S/o Late Raghunath Aged About 40 Years R/o Kevramuda Ward, Jagdalpur, District- Bastar, Chhattisgarh, (Proposed Non-Applicant)

---- Petitioner**Versus**

1. Pramod Kumar Parakh S/o Late Ranulal Parakh Aged About 55 Years R/o Nayapara, Jagdalpur, Jagdalpur, District- Bastar Chhattisgarh. (Decree Holder)
2. Abhimanyu Dewangan S/o Late Madhusudan Dewangan Aged About 52 Years
3. Sitaram Dewangan S/o Late Madhusudan Dewangan Aged About 36 Years
4. Smt. Gulab Bai D/o Late Madhusudan Aged About 38 Years

No. 2 to 4 are R/o Village- Niyanar, Tahsil- Jagdalpur, District- Bastar, Chhattisgarh

5. Smt. Munto Bai Dewangan W/o Gorakhnath Dewangan Aged About 36 Years R/o Village Palari, Tahsil Kondagaon, At Present Of Aadka Chhepra Naka, Amravati Road, Kondagaon, District- Kondagaon, Chhattisgarh
6. Hansa Dewangan W/o Late Murlidhar Dewangan
7. Vivek Dewangan S/o Late Murlidhar Dewangan
8. Mitesh Dewangan S/o Late Murlidhar Dewangan

No. 6 to 8 are R/o Pratapganjpara Kevramunda, Near Jain Mandir, Jagdalpur, District- Bastar, Chhattisgarh

---- Respondents

For Petitioner : Shri Goutam Khetrapal, Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****23/02/2018**

1. The instant petition is against the order dated 25.01.2018, whereby an application preferred by the petitioner under Order 1 Rule 10 CPC was dismissed.
2. Learned counsel for the petitioner would submit that one suit was initially filed in the year 1981 by Budhiyarin Bai & Raghunath against Nanku Dewangan & Madhusudan Dewangan, the said suit was dismissed in the year 1983. Thereafter, the first appeal was preferred and the same was dismissed in the year 1994. The second appeal was preferred before this Court and the same was dismissed for want of prosecution. One of the defendant in such case in the year 1992 had entered into an agreement with one Pramod Kumar Parakh for sell of the part of land. Subsequently, a suit was filed by Pramod Kumar Parakh and the suit was for specific performance and the same was decreed in the year 1999. The First appeal was preferred by defendant Madhusudan Dewangan, which was dismissed and also was affirmed by the Supreme Court. He would further submit that the petitioner is the son of the original plaintiff Raghunath Dewangan and application for restoration of second appeal is pending adjudication before this Court, however, in the meanwhile, the execution proceeding has been preferred by Pramod Kumar Parakh and if the execution of the specific performance is effected then in such case the right of the petitioner shall be seriously prejudiced, therefore, an application under Order 1 Rule 10 CPC by son of Raghunath Dewangan, the original plaintiff, was preferred and the same is dismissed and the order will affect the right of the petitioner, therefore, execution proceedings may be stayed and he may be allowed to participate in the execution.
3. I have perused the order dated 25.01.2018. The second appeal which originated from the original suit filed in the year 1981, was dismissed. The

order and the document would show that the second appeal which is pending restoration and originated from the original suit filed in the year 1981, however, in the meanwhile, the specific performance of decree which is being sought for in the execution, the petitioner wanted to become a party. It is a settled preposition that the executing Court cannot go beyond the decree. Admittedly, the petitioner was not before the Court of specific performance and the same is eventually affirmed by the different higher Courts. Consequently, the original decree dated 04.05.1999 which has been affirmed by this Court and thereafter by the Supreme Court again allowing the application of the petitioner at this stage in the execution would amount to retrial of the said case.

4. In the result, I do not find any reason to interfere with the impugned order. Accordingly, the petition is dismissed. In case of restoration of second appeal, the petitioner shall have his remedy as available to him under the law.

SD/-

Goutam Bhaduri
Judge

Ashu