

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No. 452 of 2018

Pradeep Kumar Dey S/o Late Shri Rukhmanikant Dey, Aged About 55 Years R/o 12D 3 A Type, Dalli Rajhara, Tehsil Dondi, District Balod Chhattisgarh.

---- Petitioner

Versus

1. Prafull Kumar Dey S/o Late Shri Rukhmanikant Dey, Aged About 61 Years House No. 134, Indira Colony, Near Bsp Hospital, Dallirajhara, Tehsil Dondi, District Balod Chhattisgarh.
2. Smt. Shipra Rai, D/o Late Shri Rukhmanikant Dey, W/o Vimal Rai aged about 47 years, Quarter No. 7/8 Pandri, Raipur, District Raipur Chhattisgarh. (Dead)
3. Smt. Madhumita Dutta, D/o Vimal Rai, W/o Ramul Dutta, Aged About 27 Years, R/o NIG 77 Rajendra Nagar Phase, Niharina, Korba Chhattisgarh
4. Vishal Kumar Rai, S/o Vimal Rai, R/o Quarter No. 7/4 Govind Nagar Near Samrat Hotel, Kali Mandir, Pandri, Raipur, Chhattisgarh (Respondents No.3 and 4 are legal heirs of respondent No.2)
5. State Of Chhattisgarh, Through Collector, Bilaspur Chhattisgarh.

---- Respondents

For petitioner - Shri P. Acharya, Advocate.
For State- Smt. Astha Shukla, PL.

Hon'ble Shri Justice Goutam Bhaduri

Order

16/05/2018

Heard.

1. Instant petition is filed to fast track the proceeding of Civil Case No. 34/2016 for re-hearing on the application filed under Order 41 Rule 21 of CPC of respondent against whom ex-parte decree is made in the appeal.
2. It is contended that initially a decree was passed in the year 2009 which was subject of appeal by one of the defendant who is respondent No.1 herein i.e. Prafull Kumar Dey. It is contended that during pendency of this appeal, counsel for the petitioner Pradeep Kumar Dey did not appear

as such appeal was heard ex-parte, therefore miscellaneous application was filed under Order 41 Rule 21 CPC to re-hear the appeal on merits and same is pending trial. Learned counsel submits that on the basis of the original decree Tehsildar is proceeding to mutate the name, therefore the application under Order 41 Rule 21 of CPC may be decided at urgent basis.

3. Perusal of the record would show that decree was passed in the year 2009, thereafter one of the parties preferred an appeal which was also decided on 1/05/2015. Thereafter one of the defendant preferred an application under Order 41 Rule 21 CPC to re-hear the appeal that he was not heard and requested to hear the application under Order 41 Rule 21 of CPC on the ground that Tehsildar is recording name of other respondent on the basis of the original decree. In any case, unless and until application under Order 41 Rule 21 CPC is decided on merits the trial court or executing court cannot go behind decree. No plausible reason exist to arrest the execution of fruits of the decree which is in favour of one of the respondent. It is also clear that if mutation is effected on the basis of the decree and decree is set aside then right of petitioner shall be restored according to the terms of the decree. Simply because of the presumption of the petitioner fruits of the decree cannot be shelved. In entire petition I do not find any enormous delay has been shown and no reason exist to ask the trial court to fast track the case of the petitioner so as to jump the queue. Petition is devoid of any merit and it is dismissed accordingly.

Sd/-

(Goutam Bhaduri)

JUDGE