

HIGH COURT OF CHHATTISGARH, BILASPUR**Civil Revision No. 69 of 2018**

1. Deepak Khetrapal, aged about 32 years, S/o Late Nanhumal,
 2. Prakash Khetrapal, S/o Late Nanhumal, aged about 29 years,
- Both are resident of Karbala, P.S. City Kotwali, District – Bilaspur (C.G.)
3. Smt. Reeta Aajudani, aged about 35 years, W/o Sonu Aajudani, D/o Late Nanhumal, resident of Gudhiyari, District Raipur (C.G.)

----Applicants/judgment debtor**Versus**

1. Laxmi Prasad, S/o Vedprasad (Un-sound-mind) (mentally disorder)(died) through mother Smt. Anusuiya Bai (Died) through Smt. Lata Pandey, W/o Late Laxmi Prasad, aged about 50 years, resident of Baikunthpur, Raigarh, District-Raigarh (C.G.)
2. State of Madhya Pradesh now State of Chhattisgarh, through Collector, District – Bilaspur (C.G.)

---- Respondents/decreed holder

For Applicants	: Mr. Sunil Tripathi, Advocate.
For Respondent No. 1	: Mr. B.P. Sharma & Mr. Hemant Kesharwani, Advocate.
For Respondent No. 2	: Mr. Arun Sao, Deputy Advocate General.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****31/08/2018**

1. “That the difficulties of a litigant begin when he obtains a decree”

The above-stated proverbial observation rendered by privy council aptly applies to the facts of present case, which was quoted with approval by Hon'ble Supreme Court in the matter of **Shub Karan Bubna alias Shub Karan Prasad**

Bubna Vs. Sita Saran Bubna and othes¹

2. The decree for recovery of possession was passed by the trial Court in favour of original plaintiff – Laxmi Prasad way back on 1.8.1997. But due to the objection filed by the applicants/judgment debtors, decree could not be executed and the matter went up to the Hon'ble Supreme Court. Ultimately, the SLP (Civil) No. 13535 / 2010 was dismissed by the that court on 10.07.2017, thereafter when the execution was laid by respondent No. 1/deGREE holder in the month of December, 2017 for execution of decree, a fresh objection was filed by the applicants/judgment debtors that in the decree passed by the trial Court there is no compliance of the provisions contained in Order 7 Rule 3 of the Code of Civil Procedure (henceforth “CPC”) and Order 20 Rule 3 of the CPC, as the decreed property is not identifiable in the judgment and decree and, therefore, the decree is not executable.

3. The trial Court, while considering the objection raised by the judgment debtors, held that executing Court cannot go beyond the decree. Questioning the order of the trial Court, instant civil revision has been filed under Section 115 of the Code of Civil Procedure.

4. Learned counsel appearing for the applicants would submit that in the decree passed by the trial Court, provisions contained in Order 7 Rule 3 of the Code of Civil Procedure (henceforth “CPC”) and Order 20 Rule 3 of the CPC have not been complied with, as such, the decreed property is not identifiable, therefore, the decree cannot be executed, as such, the trial Court is absolutely unjustified in rejecting the objection of the applicants/judgment debtor.

1 (2009) 9 SCC 689

5. Per contra, Shri B.P. Sharma, learned counsel appearing for the respondent No.1/decreed holder would vehemently oppose the submissions raised by counsel for the applicants and submit that the decree is clearly identifiable in the suit property, as such, it cannot be held that the trial Court is unjustified in rejecting the application filed by the applicants/judgment debtor. He would further submit that objection raised by the judgment debtor that suit accommodation is situated on the Government's land bearing Khasra No. 258/1 has already been decided by the trial Court while answering the issue No. 6, as such, the civil revision is liable to be dismissed.

6. I have heard learned counsel appearing for the parties and perused the order impugned with utmost circumspection.

7. The plaintiff's suit was mainly for eviction of defendants from suit accommodation situated at Juna, Bilaspur. The defendants took specific defence that suit accommodation is situated at Khasra No. 258/1, which is government nazul land, for which the issue has been framed by the trial Court and the same has been answered by the trial Court that it has not been proved that suit accommodation is situated at government nazul land. The defendants allowed the decree to become final as the matter has been travelled up to the Hon'ble Supreme Court and ultimately the S.LP. (Civil) No. 13535 / 2010 was dismissed by order dated 10.07.2017 and when the fresh execution has been filed, objection has been taken that suit accommodation is situated at the Government land and the suit property is identifiable and, therefore, the decree is not executable.

8. True it is that the map attached with the plaint is not mode part of the decree as required under Order Rule 7 Rule 3 read with Order 20 Rule 3 of the Code of Civil

Procedure but the defendants' defence has already been rejected that the suit accommodation is situated on the Government land by the trial Court while answering the issue No. 6 and that has attained finality. Thereafter, the defendants cannot be allowed to raise the same plea, which has already been adjudicated against him. This is one way to avoid the execution of decree.

9. In this regard, in the matter of **Pratibha Singh and another Vs. Shanti Devi Prasad and another**², their Lordships of the Supreme Court held that a decree of the competent court should not be allowed to be defeated by an accidental slip or omission. Relevant paragraph of the report states as under:-

“17. When the suit as to immovable property has been decreed and the property is not definitely identified, the defect in the court record caused by overlooking of provisions contained in Order 7 Rule 3 and Order 20 Rule 3 CPC is capable of being cured. After all a successful plaintiff should not be deprived of the fruits of decree. Resort can be had to Section 152 or Section 47 CPC depending on the facts and circumstances of each case – which of the two provisions would be more appropriate, just and convenient to invoke. Being an inadvertent error, not affecting the merits of the case, it may be corrected under Section 152 CPC by the court which passed the decree by supplying the omission. Alternatively, the exact description of decreetal property may be ascertained by the executing court as a question relating to execution, discharge or satisfaction of decree within the meaning of Section 47 CPC. A decree of a competent court should not, as far as practicable, be allowed to be defeated on account of an accidental slip or omission. In the facts and circumstances

2 (2003) 2 SCC 330

of the present case, we think it would be more appropriate to invoke Section 47 CPC.”

10. Thus, it is quite vivid that decree passed by the court of competent jurisdiction has to be respected and it should be allowed to be avoided at the instance of judgment debtor on flimsy grounds.

11. In view of the aforesaid legal analysis, in the considered opinion of this Court that this is a case where the decree is fully identifiable and the defendants' plea has already been rejected by the trial Court by answering the issue No. 6, and the decree passed on 8.1.1997 is sought to be avoided on fishy grounds raised after 20 years of the passing of the decree, which cannot be allowed by this Court following the observation made by Supreme Court in the matter of **Pratibha Singh** (supra) as in this instant case such a defect is accidental slip or omission.

12. Thus, the civil revision, being devoid of merit, is liable to be and his hereby dismissed with a cost of Rs. 10,000/- payable by the petitioners/defendants to the respondents No. 1/plaintiff.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-