

HIGH COURT OF CHHATTISGARH AT BILASPUR**WP227 No. 278 of 2019**

1. Smt. Revtibai Janghel W/o Late Shri Kriparam Janghel Aged About 39 Years (Presently 51 Years).
2. Rishi Janghel S/o Late Shri Kriparam Janghel Aged About 35 Years.
3. Smt. Mamta Janghel D/o Late Shri Kriparam Janghel Aged About 18 Years (Presently 36 Years).
4. Jagdish Janghel S/o Late Shri Kriparam Janghel Aged About 14 Years (Presently 28 Years).
5. Ku. Manisha Janghel D/o Late Shri Kriparam Janghel Aged About 26 Years
6. Manish Janghel S/o Late Shri Kriparam Janghel Aged About 24 Years
7. Ashish Janghel S/o Late Shri Kriparam Janghel, aged 21 years
All R/o Near Balaji Mandir, Dheshbadi, Anand Nagar, Raipur C.G.

**---Petitioners
(Defendants No. 2 to 9)**

Versus

1. Chandra Bhan Kriplani, S/o Jiyomal Kriplani, resident of Geetanjali Nagar, Tehsil and District Raipur C.G. presently residing at D-12, Sales Tax Colony, Gayatri Nagar, Raipur C.G.

(Plaintiff)

2. Jairam Das Degwani (Dead) S/o Danmal Degwani, R/o Anil Cloth Agency Shop No. 41, Whole Sale Cloth Market Pandri, Raipur Chhattisgarh. Through Legal Heir Anil Kumar Degwani, S/o Late Jairam Das Degwani, Aged 26 Years, Resident Near Sindhu Bhawan, Devendra Nagar, Raipur Chhattisgarh.

(Defendants No. 1)

---- Respondents

For Petitioners	:	Mr. B.P. Sharma, Advocate & Mr. Hari Agrawal, Advocate
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Hon'ble Shri Justice Sanjay K. Agrawal
Order on Board

05/04/2019

1. This writ petition is directed against the Order dated 18/03/2019 passed by the execution Court by which petitioners/objectors' application under Section 151 of the CPC has been rejected and the execution court has held that there is no dispute about the identity of land and local inspection by appointment of Commissioner is not necessary.
2. Learned counsel for the petitioners submits that the order of the execution court is unsustainable and bad in law. I have heard learned counsel for petitioners and went through the records carefully.
3. In the suit filed by Chandrabhan Kriplani for eviction and arrears of rent, the trial Court in Civil Suit No.20-A/2002 (Chandrabhan Kriplani v. Jairamdas Dengwani) decreed the suit for eviction and arrears of rent on 20-12-2002 directing the judgment debtor Jairamdas Dengwani to deliver the peaceful possession of the suit land and arrears of rent. When the decree was put to execution, the present petitioners filed an application under Section 94(5) read with Section 151 of the CPC which was rejected by order dated 12-5-2005 by the trial Court and which was challenged before this Court in W.P.No.2131/2005. This Court by order dated 15-6-2005 dismissed the petition as misconceived, however, directed the executing court to ask the decree holder to move an application under Order 21 Rule 97 of the CPC and to enquire the possession of the petitioners in accordance with Order 21 Rule 97 and Order 21 Rule 101 of the CPC. Thereafter, the decree holder filed an application under Order 21 Rule 97 of the CPC and that application was enquired by the trial Court, even the Commissioner was appointed to find out whether the plaintiff is in possession of the land on which the decree has been passed and whether the petitioners herein is in

possession of the suit land pursuant to the registered sale deed dated 28-12-2002 which he has claimed. The trial Court after detailed enquiry, which continued for more than ten years, held that the present petitioners are not the sub-tenant protected by Section 15 of the Chhattisgarh Accommodation Control Act, 1961 (for short, 'the Act of 1961') and they have failed to prove their independent title over the suit accommodation, as they are in possession of the suit accommodation which is in Khasra Nos.92/6 & 92/7, whereas they have purchased the land bearing Khasra No.292/2 by sale deed dated 28-12-2002 and as such, Section 23 of the Act of 1961 would be applicable and they are bound by the decree of the trial Court granted on 20-12-2002. On appeal preferred, the said judgment & decree has been affirmed by the first appellate Court.

4. Against the judgment and decree of the first appellate Court, only petitioner No. 2 preferred second appeal No. 728 of 2018. This court dismissed the second appeal summarily by the judgment and order dated 8-1-2019, thereafter, petitioners filed 151 CPC application for demarcation of suit land in which the execution Court clearly held that there is no dispute about the identity of land, as such, there is no need for appointment of the Commissioner for inspection/demarcation, in which I do not find any illegality or perversity, warranting interference under Article 227 of the constitution of India.
5. Accordingly, the writ petition being devoid of merit is liable to be and is hereby dismissed *in limine* without notice to other side. No cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge