

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 282 of 2019

- Rajnarayan Kesharwani, S/o Late Satya Narayan Kesharwani, Aged About 56 Years, R/o Old Bus Stand, Ward No. 8, Baloda Bazar, District Baloda Bazar Bhatapara Chhattisgarh.

---- Petitioner

Versus

1. Manjeet Kaur Saluja, D/o Late Ajit Singh, Aged About 42 Years, R/o Old Bus Stand, Baloda Bazar, District-Baloda Bazar, Bhatapara Chhattisgarh.
2. Mahendra Kaur, Wd/o Nihal Singh, Aged About 60 Years, R/o Old Bus Stand, Baloda Bazaar, District-Baloda Bazar, Bhatapara, Chhattisgarh.
3. Simple Saluja, D/o Nihal Singh, Aged About 27 Years, R/o Old Bus Stand, Baloda Bazaar, District Baloda Bazar Bhatapara, Chhattisgarh.
4. Revati Bai, D/o Itwari Satnami, R/o Village - Dotopar, Tehsil and District Baloda Bazar, Bhatapara, Chhattisgarh.
5. Munni Bai, D/o Itwari Satnami, R/o Village - Dotopar, Tehsil and District Baloda Bazar Bhatapara, Chhattisgarh.
6. Jamvantin Bai, D/o Itwari Satnami, R/o Village - Dotopar, Tehsil and District-Baloda Bazar, Bhatapara, Chhattisgarh.
7. Bhoga Bai, D/o Itwari Satnami, R/o Village-Dotopar, Tehsil and District Baloda Bazar, Bhatapara, Chhattisgarh.
8. Potin Bai, D/o Itwari Satnami, R/o Village - Dotopar, Tehsil and District Baloda Bazar, Bhatapara, Chhattisgarh.
9. Jablu Ram, S/o Kejuram Kurre, R/o Village - Dotopara, Tehsil and District-Baloda Bazar, Bhatapara, Chhattisgarh.

10. Jagdev, S/o Kejuram Kurre, R/o Village - Dotopara, Tehsil and District Baloda Bazar, Bhatapara, Chhattisgarh.

11. Mant Bai, Wd/o Kejuram Kurre, R/o Village - Dotopara, Tehsil and District-Baloda Bazar, Bhatapara, Chhattisgarh.

---- Respondents

For petitioner	:	Mr. Vishnu Koshta with Mr. Shobhit Koshta, Advocates.
For Respondents	:	Mr. Rahil Arun Kochar, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

17/12/2019

1. Petition has been brought challenging the impugned order dated 19.2.2019 passed by the Executing Court in Execution case No.61A/83.
2. It is submitted that the petitioner was not a party to the civil suit in which the decree has been passed in favor of respondent No.1 to 3. There is a clear mention in the relief clause that the respondents/ plaintiffs have entitlement on the land bearing khasra No.70/6, which is a part of khasra No.70/4 ad-measuring 0.349 hectares. In the first round, the execution case proceeded in which the possession warrant was issued by the execution Court for delivering the possession of the above mentioned suit property. The Court Bailiff gave a report that the Patwari has given in writing that there is no mention of land bearing khasra No.70/6 in the revenue map, therefore, order for delivering possession of khasra No.70/6, the part of Khasra No.70/4, could not be executed. Subsequent to this report, the execution Court concluded the execution proceeding on 28.4.2017.
3. It is submitted that on 9.10.2017 the respondents /decree holders again filed execution proceeding praying for possession of the land mentioned herein above. The petitioner has no connection with the

decreetal property, however, he has title over the property bearing Khasra No.70/4, area 0.405 hectare. As there is already a report of Court Baliff based on the information given by the Patwari that the suit land bearing khasra No.70/6 is not in existence, the petitioner has apprehension that his property shall be proceeded against in the execution. On the basis of this apprehension, the petitioner filed an application under Order 21 Rule 58 of CPC, which has been dismissed by the Executing Court.

In support of the submissions, reliance has been placed on the judgment of Supreme Court in the matter of Maya Devi v. Lalta Prasad, reported in AIR 2014 SC 1356; judgment dated 4.10.2019 passed in Civil Appeal No.10521/2013, Prathvirajsinh Nodhubia Jadeja(D) by LR's v. Jayesh Kumar Chhakaddas and judgment of M.P. High Court delivered in the matter of Laxmi Sarda vs. Khushal Chand Khimji & Company and others, reported in 2008 SCC OnLine M.P. 342, Sameer Singh and another v. Abdul Rab & others, reported in AIR 2015 SC 591, and also the judgment of this High Court in Ram Kumar Tiwari v. Deenanath, reported in 2001(4) MPHT 1 CG

It is submitted that on such a dispute being raised, the execution Court is bound to make an inquiry before adjudicating upon it. However, the execution Court has not made any inquiry and passed the impugned order holding that the petitioner has no locus standi to intervene in the execution proceeding.

It is submitted that the respondent/decree holders by suppressing this fact that land bearing khasra No.70/6 is not in existence, have obtained a decree, therefore, the petitioner has a right to intervene and object under Order 21 Rules 58, 97, 98 & 101 of CPC. Hence, it is prayed that the impugned order be set aside and the case be remanded back to the execution Court with a direction to adjudicate upon the dispute raised by the petitioner.

4. Learned counsel for respondent/decree holders opposes the submissions and submits that the petitioners are owners of a separate land and they have made the purchase on 24.4.2018 i.e. during the pendency of the execution proceeding. Therefore, this purchase is hit by principle of *lis pendence*. Even otherwise, if it is considered that the

property purchased by the petitioners is separate, then in that case also the petitioners have a separate cause of action for which they can institute a separate civil suit. There is no application of Order 21 Rules 58, 97, 98 or 101 of CPC in such cases. Hence, this petition be dismissed.

5. In reply, it is submitted that the property belonging to the petitioner is not decreetal property and since there is a question of identity of the decreetal property and the property belonging to the petitioner, an inquiry is required. Hence, this petition be allowed.
6. As per the facts presented, the petitioner has purchased the property bearing khasra No.70/4 ad-measuring 0.405 hectare from Satyanarayan Rice Mill. The vendor of the said property does not appear to be one of the defendants in Civil Suit No.6A/2017. In the plaint, decree & execution application the description of decreetal property is mentioned as khasra No.70/6, which is claimed to be part of khasra No.70/4.
7. On perusal of the documents, it is found that the Bailiff report in the earlier execution proceeding, which is supported by the submission of Patwari, says that the revenue map does not show khasra No.70/6. Therefore, identity of particular khasra i.e. Khasra No.70/6, area 0.349 hectare, is a question which is to be decided first by the execution Court in view of the objection raised by the applicant. It has been held in Ram Kumar Tiwari's case (supra) that any person apprehending his dispossession can file an application or objection before the execution Court and the Court shall be obliged to make an inquiry into the allegation and pass an order after making an inquiry into the right title or interest of the party. It has also been held by Supreme Court in Shreenath & another v. Rajesh & others, reported in AIR 1998 SC 1827 that a third party in possession can make an application seeking adjudication on his objection under Order 21 Rule 97 of CPC, which is a provision having wide scope. As interpreted in the above decisions, a third party claiming any right, title & possession over a decreetal property can also raise objection and then the execution Court shall

have the obligation to adjudicate upon the dispute so raised.

8. This case has a difference because the petitioner is not claiming that he has right title or possession over the decreetal property. His dispute is only with regard to the identification of the disputed property as the property of his title and possession has been identified as the suit property. This submission and apprehension of the petitioner is not without any basis as there is a report of Bailiff present in the earlier execution proceeding filed by the respondent/decreed holders. Therefore, on the basis of these discussions, I am of this opinion that the execution Court has committed an error in rejecting application filed by the petitioner without making any inquiry.
9. Accordingly, this petition is allowed at the motion stage. Impugned order dated 19.2.2019 (Annexure P-7) is hereby set aside. The application filed under Order 21 Rule 58 CPC by the petitioner, which is now restored, shall be treated as an application filed under Order 21 Rule 97 of CPC, and the execution Court is directed to make an inquiry on the objections raised by the petitioner, afford opportunity to both the sides for submissions of documents, reply and evidence and thereafter to pass appropriate order in accordance with law before executing the decree.

Sd/-

(Rajendra Chandra Singh Samant)
Judge

Nisha