

HIGH COURT OF CHHATTISGARH, BILASPUR

Civil Revision No. 39 of 2019

Bajrang Prasad Agrawal S/o Late Banwari Lal Agrawal Aged About 76
Years R/o Near Mission Hospital, Bilaspur Chhattisgarh. --- (Defendant)

---- **Petitioner**

Versus

1. Rev. E. Bhagirathi (Dead) Through Rev. N. L. Soni, Executive Secretary Church Council Of The Disciple Of The Christ, Civil Line, Bilaspur Chhattisgarh. --- (Plaintiffs)
2. Rev. S. Nathaniel S/o Late Shri L. Nathaniel Pastor Disciple Church, Link Road, Bilaspur, Chhattisgarh
3. Christian Women's Board Of Mission, America Through Rav. F.C. Jonarthan, S/o C. Jonarthan, Napiyar Tower, Jabalpur, Madhya Pradesh
4. United Christian Missionary Society, America Through Rav. F.C. Jonarthan, S/o C. Jonarthan, Napiyar Tower, Jabalpur, Madhya Pradesh
5. State Of Madhya Pradesh / Presently State Of Chhattisgarh Through Collector, Bilaspur Chhattisgarh

---- **Respondents**

For the Revisioner	: Mr. Manoj Paranjpe, Advocate
Non-applicant No.1	: Mr. N.L. Soni, in person
For the State /Non. Applicant No.5	Ms. Sangeeta Mishra, Govt. Adv
For applicant in I.A. No. 3	: Mr. Prafulla Bharat with Ms. Anjali Singh Chauhan, Advs.

Hon'ble Shri Justice Sharad Kumar Gupta

Oral Order

17.05.2019

1. Heard on I.A. No. 3, application under Order 1 Rule X of CPC.
2. In brief the applicant's case is that Indian Church Council of Disciples of Christ (in short 'ICCDC') is represented by Executive Secretary i.e. applicant No. 1 A.D. James. REV. S. Nathaniel Paster, Disciples of Christ Church has died and applicant No. 2 A. Nathaniel, Paster of Disciples of Christ Church is his son. Disciples of Christ Church is now represented by applicant A. Nathaniel, Paster of Disciples of Christ Church, thus the applicants may be impleaded as party in place of non-applicants No. 1 and 2.
3. In this Civil Revision, this Court has to examine only the propriety and legality of the impugned order dated 11-1-2019 passed by the Executing Court vide Annexure P-4. At the time of passing impugned

order applicants were not party in the execution process. They had also not filed any application before the Executing Court. Thus, this Court finds that applicants cannot be substituted at this stage, in place of non-applicants No. 1 and 2. Thus, I.A No. 3 is without substance and deserves to be rejected and hence rejected.

4. In this civil revision the revisioner has challenged the order dated 11.01.2019 passed by the First Additional District Judge, Bilaspur in Ex. C.S. No. 18-A/15 whereby and whereunder he rejected the written objection Annexure P-2 filed by revisioner.

5. Non-applicant No.1 had filed an execution application vide Annexure P-1 on 25.07.2015 against revisioner before the Additional District Judge, Bilaspur stating that earlier he had filed an execution application on 31.03.2006 which was dismissed in default on 29.04.2008.

6. Revisioner had filed the written objection Annexure P-2 on 18.09.2015 wherein following objections have been raised-

(a) The judgment and decree passed in first appeal No. 86/80 dated 04.05.1989 were not passed in favour of ICCDC, thus neither ICCDC nor alleged REV. Shri N.L. Soni has a right to file an execution application.

(b) The execution application has been filed after 26 years from the date of decree dated 04.05.1989 thus it is barred by limitation under Article 136 of the Limitation Act, 1963 (in short 'the Act').

(c) Disputed property was not given to non-applicant No. 1 on lease by State Government.

(d) Disputed property has been given on lease to him till 31.03.2043.

7. Non-applicant No. 1 had filed the reply of written objection vide Annexure P-3 raising following facts :-

(i) A Letters Patent Appeal No. 39/989 was filed against the said judgment and decree. During the pendency on account of death of REV. E. Bhagirathi, Executive Secretary of ICCDC, an application under Order 22 Rule 10 read with 151 Civil Procedure Code (in short 'the Code') was filed, Hon'ble M.P. High Court allowed the said application on 11.08.1984 and ordered description of the respondent to be shown as follows :-

“ICCDC represented by its Executive Secretary REV. N.L. Soni.”

(ii) The said Letters Patent Appeal has been dismissed by Division Bench of Hon'ble M.P. High Court on 14.09.2005. Now it has become final because it was not challenged before the Hon'ble Supreme Court.

(iii) The execution application has been filed after the dismissal of said Letters Patent Appeal, thus execution is within time.

(iv) State Government was party in both the appeals, thus judgment and decree are binding upon State Government.

8. After considering the Annexure P-2 and P-3 the First Additional District Judge passed impugned order Annexure P-4.

9. In this Civil Revision revisioner raised following main grounds for consideration before this Court :-

(i) The executing Court committed grave error in giving finding that the decree was passed in favour of ICCDC. Actually said judgment and decree were passed in favour of Christian Mission, Bilaspur.

(ii) The executing Court erred to appreciate that Shri N.L. Soni is allegedly the representative of ICCDC.

(iii) The execution application is barred by limitation.

(iv) The disputed property was owned by State Government and was not a private property owned by non-applicant No. 1.

10. Non-applicant No.1 submitted that :-

(i) The judgment and decree are in favour of him, thus he is competent to file an execution application.

(ii) The execution application is filed within 12 years from date of disposal of said Letters Patent Appeal, thus it is not barred by limitation.

(iii) The judgment and decree have become final, thus it is binding upon non-applicant No. 5 and alleged lease has no effect.

11. The certified copy of the judgment and decree passed in First Appeal No. 86/1980 dated 04.05.1989 passed by Hon'ble M.P. High Court vide Annexure P-11 reveals following facts :-

i. The appellants were Padri E. Bhagirathi, Executive Secretary, Society, Indian Church Council of the Disciples of Christ and Padri S. Nathaniyal, Paster, Disciples of Christ Church, Link Road, Bilaspur.

ii. Respondents were directed to handover the vacant possession of

the suit land to the appellants who will receive the same on behalf of the aforesaid Christian Mission.

12. As per Annexure P-3 a Letters Patent Appeal No. 39/1989 was filed against the said judgment and decree. During the pendency on account of death of REV. E. Bhagirathi, Executive Secretary of ICCDC, an application under Order 22 Rule 10 read with 151 of the CPC was filed, Hon'ble M.P. High Court allowed the said application on 11.08.1984 and ordered that description of the respondent shall be shown as follows :-

“ICCDC represented by its Executive Secretary REV. N.L. Soni.”

13. The said Letters Patent Appeal has been dismissed by Division Bench of Hon'ble M.P. High Court on 14.09.2005. Now it has become final because it was not challenged before the Hon'ble Supreme Court.

14. The executing Court had also observed that he had examined the order of said Letters Patent Appeal.

15. From the aforesaid factual matrix it is quite vivid that in letters patent appeal decree was passed in favour of ICCDC represented by its Executive Secretary Padri N.S. Soni and Padri S. Nathaniel, Paster, Disciples of Christ Church, Link Road, Bilaspur.

16. Record shows that Padri S. Nathaniyal, Paster, Disciples of Christ Church, Link Road, Bilaspur has died.

17. In the case in hand execution application Annexure P-1 has not been filed by ICCDC represented by its alleged Executive Secretary Padri N.S. Soni.

18. Looking to the above mentioned facts and circumstances of the case this Court finds that executing Court has committed illegality and material irregularity in giving finding that REV. Shri N.L. Soni, alleged Executive Secretary of ICCDC has a right to file an execution application.

19. This ground that REV. N.L. Soni is not allegedly Executive Secretary of ICCDC, was not raised clearly, strongly and firmly before the executing Court. Thus, revisioner can not raise this fact first time before this Court.

20. As per the Article 136 of the Limitation Act, for the execution of any decree (other than a decree granting a mandatory injunction) or order of

any civil court, limitation is 12 years which starts when the decree or order becomes enforceable, or where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, when default in making the payment or delivery in respect of which execution is sought, takes place.

21. In the case in hand the execution application Annexure P-1 has been filed within 12 years from the date of decree i.e. 14.09.2005.

22. Looking to the above facts and circumstances of the case this Court finds that executing Court has not committed any illegality or material irregularity in giving finding that Annexure P-1 is not barred by limitation.

23. The aforesaid judgment and decree have become final. Non-applicant No. 5 was party in it. Thus, granting of lease of disputed property in favour of revisioner has no effect and it does not affect the right of decree holder. Though executing Court has not given any finding regarding this fact, but it should have done so.

24. Looking to the above mentioned facts and circumstances this Court sets aside the impugned order of Executing Court Annexure P-3 in the reference that REV. Shri N.L. Soni, alleged Executive Secretary of ICCDC has a right to file an execution application. The Executing Court is directed to dispose of the execution proceeding according to law and procedure in the light of the order made hereinabove.

25. It is made clear that Rev. Shri N.L. Soni, alleged Executive Secretary of ICCDC may file an amendment application in Annexure P-1 subject to the provisions of Limitation Act and legal provisions. Subject to the limitation and legal provisions, ICCDC may also file an execution application through his executive secretary.

Sd/-
(Sharad Kumar Gupta)
Judge