

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 439 of 2015

1. Smt. Jugga Devi Wd/o. Ranu Lalji Saklecha, Aged About 76 Years, R/o Sadar Bazar, Dhamtari, District Dhamtari Chhattisgarh, Chhattisgarh
2. Hamchand Saklecha S/o Late Ranu Lalji Saklecha, Aged About 52 Years, R/o Amapara Dhamtari, District Dhamtri Chhattisgarh, District : Dhamtari, Chhattisgarh
3. Pravin Saklecha S/o Late Ranu Lalji Saklecha, Aged About 50 Years, R/o Amapara Dhamtari, District Dhamtri, Chhattisgarh, District : Dhamtari, Chhattisgarh

---- Petitioners

Versus

1. Tahira Bagam Wd/o Late M.A. Mukim Bharti, Aged About 74 Years, R/o Ratna Bandha Dhamtari, District Dhamtari Chhattisgarh, Chhattisgarh
2. Rashrat Parwesh S/o Rahmat Ali Aged About 42 Years, R/o Risai Para Dhamtari, Chhattisgarh, District : Dhamtari, Chhattisgarh
3. Kumari Shabnam, D/o Rahmat Ali, Aged About 41 Years, R/o Risai Para Dhamtari, Chhattisgarh, District : Dhamtari, Chhattisgarh
4. Smt. Sabina Bagam W/o Rizwan Ali, Aged About 40 Years, R/o Baran Bazar, Raipur Chhattisgarh, District : Raipur, Chhattisgarh
5. Kumari Nishat Parwin D/o Rahmat Ali, Aged About 37 Years, R/o Risai Para Dhamtari, Chhattisgarh, District : Dhamtari, Chhattisgarh
6. Ahsan Parwesh S/o Rahmat Ali Aged About 37 Years, R/o Baran Bazar, Raipur Chhattisgarh, District : Raipur, Chhattisgarh
7. Smt. Naiyyar Nigar W/o Isaque Khan Aged About 35 Years, R/o Risai Para Dhamtari, Chhattisgarh, District : Dhamtari, Chhattisgarh
8. Abida Bagam W/o Late Shekh Hamid, Aged About 66 Years, R/o Risai Para Dhamtari, Chhattisgarh, District : Dhamtari, Chhattisgarh
9. Sufi Khan D/o Naim Khan Aged About 26 Years, R/o Risai Para Dhamtari, Chhattisgarh, District : Dhamtari, Chhattisgarh
10. Sahida Bagam W/o Kazi Habiburrahman, Aged About 60 Years, R/o H.B. Colony, Shankar Nagar, Raipur Chhattisgarh, District : Raipur, Chhattisgarh
11. Akila Bagam S/o Mohd. Ibrahim Khan R/o Risai Para Dhamtari Chhattisgarh., District : Dhamtari, Chhattisgarh
12. Lalit Saklecha S/o Late Ranu Lalji Saklecha, R/o Amapara Dhamtari, District Dhamtari Chhattisgarh., District : Dhamtari, Chhattisgarh

----Respondents

For Petitioners – Shri Shobhit Koshta, Advocate.

For Non-applicant No.12 – Shri Ashish Surana, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

15-11-2019

1. This petition has been brought being aggrieved with the order dated 19-12-2014 passed by the execution Court, i.e, the Court of Additional District Judge, Dhamtari in Execution Case No.1A/1966.
2. It submitted that the petitioners are legal representatives of Ranulal Saklecha. Ranulal Saklecha along with Ranideen, Natthulal and Phoolchand entered into the agreement for sale of land with father of defendants Tahira Begum and others for the purchase of suit land. According to the agreement executed Ranideen had 22% share and Natthulal had 22% share, Phoolchand had 12% share and Ranulal Saklecha had 25% share. As the sale was not executed by the vendor parties, a civil suit 1-A/1966 was filed. In the meanwhile the development that took place was that one of the party to agreement namely Phoolchand sold his share 12% in the agreement to Ranulal Saklecha, on that basis Ranulal Saklecha became entitled for 37% share in the subject matter of that agreement.
3. The trial Court framed issues on the basis of subsequent development that whether the plaintiff No.4 had assigned his share to plaintiff No.1, i.e., Ranulal Saklecha. Another issue was also framed that if so, is that assignment valid and it vests right of Plaintiff No.4 on the Plaintiff No.1. In the judgment dated 23-01-1970 by the trial Court both the issues were decided in affirmative. However on the basis of the findings given in other issues, the suit for specific performance was dismissed.
4. The judgment and decree of the trial Court was challenged in First Appeal No.25/1970 before the High Court of Madhya Pradesh, which was decided on 29th of July, 1974, by which the appeal was allowed and the suit was decreed for specific performance. It is submitted that the findings in the issue No.1 and 2 mentioned hereinabove were neither challenged not set aside in the first appeal.
5. Defendant Mohd. Ibrahim have filed Civil Appeal No.2032/74 before

Hon'ble the Supreme Court of India. Hon'ble the Supreme Court has by judgment dated 05-10-1988 upheld the judgment and decree of the High Court.

6. The petitioners then filed application for execution in which he has claimed his own share of 25% and also 12% share of Phoolchand according to the assignment made. The judgment debtor then filed an application under Article 136 of the Limitation Act 1963 read with Section 151 of the CPC, in which it is prayed that the petitioners are entitled only for 25% share. The execution Court allowed the application and ordered in the impugned order that the execution of sale deed in favour of the petitioners shall be to the extent of only 25%.

7. It is submitted that the order 21 Rule 16 of the CPC very clearly provides that where a decree has been passed jointly in favour of two or more persons, the interest of any decree holder in the decree is transferred by assignment in writing or by operation of law, the transferee may apply for execution of decree to the Court which passed it. The execution Court has passed the order in total disregard to this provision of law. Therefore, it is prayed that the impugned order be set aside.

8. Learned counsel for the respondent No.12 submits that the High Court has decreed the suit in accordance with the terms of the agreement and there is no mention in the judgment of the High Court that the petitioners shall be entitled for share assigned to them by Phoolchand, therefore, the assignment if any has not been recognized.

Reliance has been placed on the judgment of Hon'ble the Supreme Court in **Saraswati Devi Gupta Vs Sudha Rani and others**, (2006) 1 SCC 725 in which it was held that the execution Court cannot go behind the decree which has attained finality and on that basis it is submitted that the judgment and decree of the High Court which has not recognized any assignment has attained finality.

Further reliance has been placed on the judgment of Hon'ble the Supreme Court in the matter of **Jugalkishore v. Raw Cotton Co.**, AIR 1955 SC 376, it is submitted that it is not a case of transfer of decree, therefore the application was rightly rejected by the execution Court.

9. In reply it is submitted by the learned counsel for the petitioners that in Explanation of Order 21 Rule 16 of the CPC it is clearly mentioned that the transferring of right in the property which is subject matter of the suit, may apply for execution of decree without a separate assignment of the decree as required under Order 21 Rule 16 of the CPC. Hence, the petition deserves to be allowed.

10. Heard learned counsel for the parties and perused the documents.

11. On the basis of the submission made by learned counsel for both the sides it can be very clearly made out that it is not a case of transfer of decree. For the reason according to the averment made by the petitioners and not denied by the respondent, it was during pendency of the civil suit, the said Phoolchand transferred his share in the agreement to Ranulal Saklecha, therefore, this transfer of interest in agreement by Phoolchand in favour of the Ranulal Saklecha was prior to the grant of decree by the Court.

12. Section 130 of the Transfer of Property Act, 1982 provides for transfer of actionable claim. The trial Court has in judgment decided on the issue No.1 mentioned that Phoolchand had by registered document Ex.-P/1 assigned his interest in the suit property to Ranulal Saklecha, fulfills the requirement of such transfer under Section 130 of the Transfer of Property Act, 1982 and further provides that after execution of instrument, the right and remedies of the transferrer shall vest in the transferee. Therefore, on this basis transferee Ranulal Saklecha had become entitled to pursue for the remedy with respect to the agreement which was earlier in favour of Phoolchand. This situation is further covered under explanation of Order 21 Rule 16 of the CPC that in such

a case transfer of right in the property which is subject matter of the suit may apply for execution of decree without separate assignment of decree as required under the rule. Therefore, on the basis of these observations made and discussion of the law applicable, I am of this opinion that the execution Court has erred in dismissing the application of the petitioners, hence, the impugned order passed is not sustainable. Accordingly, the petition is allowed and the impugned order is set aside. The petitioners are entitled for their own share of 25% as well as share which they have received in transfer from Phoolchand of 12%, therefore, they have entitled of 37% on the subject matter of the execution. The trial Court is directed to proceed with the execution accordingly.

12. The petition stands disposed off.

Sd/-

(Rajendra Chandra Singh Samant)
Judge