

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 914 of 2019

1. Smt. Sumitra Devi Saraf, Wd/o Motilal, Aged About 74 Years, R/o Mahima Niwas, Behind Motilal Service Station, Link Road, Bilaspur, District-Bilaspur, Chhattisgarh.
2. Shivkumar Saraf, S/o Motilal, Aged About 57 Years, R/o Mahima Niwas, Behind Motilal Service Station, Link Road, Bilaspur, District-Bilaspur, Chhattisgarh.
3. Deepak Kumar Saraf, S/o Motilal Aged About 54 Years, R/o Mahima Niwas, Behind Motilal Service Station, Link Road, Bilaspur, District-Bilaspur, Chhattisgarh.
4. Rashmi Singh, W/o Shri Dharmendra Singh, Aged About 51 Years, R/o 25 Bangla, Maharana Pratap Chowk, Bilaspur, Tehsil and District-Bilaspur, Chhattisgarh.

---- Petitioners

Versus

1. Smt. Vidyawati Saraf, W/o Lakhan Lal Saraf, Aged About 82 Years, R/o Geetanjali Nagar, Kashyap Coloney, Gali No.5, Bilaspur, Tahsil and District-Bilaspur, Chhattisgarh.
2. Radheshyam Saraf, S/o Lakhanlal Saraf, Aged About 63 Years, R/o Geetanjali Nagar, Kashyap Colony, Gali No. 5, Bilaspur Tahsil and District-Bilaspur, Chhattisgarh. Mo. No. 9826148080.
3. Smt. Shivani Saraf, D/o Lakhanlal Saraf, Aged About 57 Years, R/o Geetanjali Nagar, Kashyap Coloney, Gali No. 5, Bilaspur, Tahsil And District Bilaspur, Chhattisgarh. Mo. No. 9826148080.
4. Smt. Ramani Saraf, D/o Lakhanlal Saraf, Aged About 45 Years, R/o Geetanjali Nagar, Kashyap Coloney, Gali No. 5, Bilaspur, Tahsil and District-Bilaspur, Chhattisgarh. Mo. No. 9826148080.
5. Smt. Meenakshi Saraf, D/o Lakhanlal Saraf, Aged About 42 Years, R/o Geetanjali Nagar, Kashyap Coloney, Gali No. 5, Bilaspur, Tahsil and District-Bilaspur, Chhattisgarh. Mo. No. 9826148080.
6. Purushottam Saraf, S/o Lakhanlal Saraf, Aged About 47 Years, R/o Geetanjali Nagar, Kashyap Coloney, Gali No. 5, Bilaspur, Tahsil and District-Bilaspur, Chhattisgarh. Mo. No. 9826148080.

---- Respondents

For petitioners	:	Mr. Sudhir Agrawal, Advocate.
For respondents	:	Mr. Aishwarya Pandey, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant
Order On Board

05/12/2019

Heard.

1. The petitioner feeling aggrieved by the order dated 11.11.2019 passed by the District Judge, Bilaspur (CG) in Execution Case No. 14A/2019 by which the application filed by the petitioner under Section 151 of CPC for staying the execution proceedings pending before the Executing Court concerned has been dismissed.
2. It is submitted by the counsel for petitioner, that the learned trial Court has made a patent error in giving description of the suit property, in the judgment and decree which is shown as 'land ad-measuring 0.94 acre', whereas in the pleadings made in the plaint and description given in the documents, area of the land is 0.94 decimal, which is equal to 410 sq.ft. Respondent has filed execution proceedings claiming possession of 0.94 acre by taking benefit of the error in the judgment of the trial Court. Even the decree drawn also does not mention that the area of disputed property is 0.94 acre. Therefore, the petitioner has filed application under Section 47 of CPC raising the question on the executability of the execution application as filed by the respondent. An application was also filed under Section 151 of CPC making a prayer that till the decision of objection raised by the petitioner/judgment-debtor, the execution proceedings may be stayed. The learned Executing Court without appreciating the facts and circumstances of the case has dismissed the application for stay of further proceeding, whereas if the execution proceeding is allowed to continue on the basis of the prayer made by the respondent, that will lead to irreparable loss and harassment to the petitioner. Hence, the petition be allowed.
3. Learned counsel appearing for respondent No.6 opposes the submissions and submits, that no error has been committed by the learned Execution Court in rejecting the application filed by the petitioner.

4. Remaining respondents have not been noticed so far.
5. After perusing the documents filed along with the petition, it is found that the question raised by the petitioner regarding area of suit property needs a proper adjudication. On the basis of the documents of plaint, judgment and decree of the trial Court and the judgment of decree of the First Appeal filed before this Court, I am of this opinion that the dispute regarding area of the suit property is present there and the said ambiguity has to be removed before the execution proceedings should be continued to go on. Hence, this Court is of the view that the learned Executing Court has not properly appreciated the circumstances of the present case while passing the impugned order, therefore, I feel inclined to allow this petition at the motion stage itself.
6. Accordingly, the petition is allowed and the impugned order so far it relates to rejection of application filed under Section 151 of CPC for grant of stay, is hereby set aside and the learned Executing Court is directed to proceed to decide the objection filed under Section 47 of CPC first, before going for the execution of the decree.
7. It is made clear that the execution of the money part of the decree is not stayed, which may be claimed by the respondent according to the calculation that may be made by him, rest of the execution proceedings shall remain stayed till the disposal of objection under Section 47 of CPC.
8. Certified copy as per rules.

Sd/-
(Rajendra Chandra Singh Samant)
Judge