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HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved for Order on : 23.01.2020

Order Passed on :23/03/2020

W.P.(227) No. 288 of 2018

1. Purushottam, S/o. Hirji Bhai, aged about 65 years, R/o. Tahsil and District Rajnandgaon (Chhattisgarh) (Decreeholder).
2. Ashok Parekh, S/o. Shri Laxmichand Parekh, R/o.
3. Udayraj, S/o. Mangalchand,
No.1 and 2 both are R/o. G.E. Road, Near C.J. Company, Rajnandgaon (Chhattisgarh) (Interested Purchaser)

---- Petitioners

Versus

State of Chhattisgarh, Through : Collector, Rajnandgaon (Chhattisgarh) (Judgment Debtor).

-----Respondent

For Petitioners	: Mr. Siddharth Shukla, Advocate
For Respondent/State	: Mr. Priyanshu Gupta, Panel Lawyer

Hon'ble Shri Justice Rajendra Chandra Singh Samant

C A V ORDER

23/03/2020

1. Challenge in this petition is to the order dated 08.01.2018, in Execution Case No.31-A/2013, passed by the Second Additional Judge to the Court of First Civil Judge Class-II, Rajnandgaon, District- Rajnandgaon by dismissing the application filed by the petitioners/deGREE holder under Order 21 Rule 32 of C.P.C.

2. The petitioner No.1 had filed a Civil Suit No.3-A/1977, before the Court of Civil Judge Class-II, Rajnandgaon, which was dismissed after completion of trial on 24.03.1977. An appeal was preferred, which was registered as First Appeal No.22-A/1977, before the Court of District Judge, which was allowed by the judgment and decree dated 27.10.1977 and the judgment and decree was passed in favour of the petitioner No.1 granting relief, in his favour by issuing declaration with respect to the title of the suit property and also by granting permanent injunction of restraint against the respondent, prohibiting interference in the possession of the petitioner No.1/plaintiff. Second Appeal No. 269 of 1978 was preferred by the respondent before the High Court of Madhya Pradesh, which was dismissed by the judgment dated 27.11.1978. Thereafter, the judgment and decree in favour of the petitioners became final. Petitioner No.2 and 3 are the purchaser of the suit property, therefore, interested parties.
3. In subsequent development, the respondent has granted temporary lease to some person on some portion of the suit land in the year 1983. The petitioner No.1 sold 30 decimals land to Ashok Kumar Parekh and 30 decimals of land to Uday Raj Parekh, petitioner No.2 and 3 respectively. As the purchasers of the property i.e. the petitioners No.2 and 3 from the petitioner No.1 could not get the possession, they moved an application under Order 21 Rule 32 of C.P.C. in which they could not succeed. Thereafter, a W.P.(C) No.2676 of 2001 was filed by

them, before the High Court of Chhattisgarh, the same was decided on 13.04.2004 by the Division Bench of this Court, in which the petition was dismissed, however, it was observed that the appropriate remedy for the petitioner would be to approach the Civil Court for execution of the decree or for handing over the possession or to approach the revenue authorities in accordance with law and thus other equally efficacious remedy was available to the petitioners.

4. Consequent to the order passed by this Court in W.P.(C) No. 2676 of 2001, the petitioners No.2 and 3 moved an application before the Collector, Rajnandgaon seeking possession of the portion of the suit land, which they had purchased from the petitioner No.1/plaintiff. Because of inaction of the Collector, Rajnandgaon, another W.P.(C) No.5189 of 2007 was filed, before this Court, which was disposed off vide order dated 27.08.2007 with specific direction to consider and decide the application of the petitioners No.2 and 3 within a time frame. Even then the petitioners could not get the possession, however, the mutation has been entered in favour of the interested purchasers, who are petitioners No.2 and 3. In the meanwhile, the possession holder of the suit property have also filed a civil suit making prayer to legalize their possession. Therefore, the petitioners then filed an application under order 21 Rule 32 of C.P.C., before the Execution Court on the basis of their entitlement for possession of the suit property, which has been erroneously dismissed by the

execution Court, holding that judgment and decree in civil suit does not provide for any relief for possession.

5. It is submitted that on the strength of the decree in favour of the petitioner No.1, the petitioner No.2 and 3 being the purchaser of the suit property and thus assignee of the decree have right over the property in which they have not received possession so far, therefore, to give complete effect to the decree, it was necessary for the Execution Court to have ordered the respondent to handover the possession of the suit property. Hence, the order passed is erroneous, arbitrary and against the provisions of law, which is liable to be set-aside.
6. Counsel for the petitioners placed reliance on the judgment of Supreme Court in case of ***Bhoop alleged son of Sheo Vs. Matadin Bhardwaj (dead) By LRs.***, reported in ***(1991) 2 SCC 128***, in case of ***Zila Singh & Ors. Vs. Hazari & Ors.***, reported in ***AIR 1979 SC 1066*** and the judgment of Madhya Pradesh High Court in ***Toran Singh Vs. Imrat Singh & Ors.***, reported in ***2012 (3) M.P.L.J. 385***. Therefore, it is prayed that the petitioners be granted relief.
7. State counsel opposes the petition and the submission made in this respect. It is submitted, that clearly there is no decree in favour of the petitioners for grant of possession of the immovable property. Relief granted are only for declaration and permanent injunction, which has been obeyed and complied with by the respondent. The persons concerned are not party, who have

dispossessed the petitioners. The persons interested, who are in actual possession of the suit property have not been made a party in the execution proceeding. Those persons have separately filed Civil Suit No.8-A of 2008, which is pending before the Court of Civil Judge Class-I, Rajnandgaon, in which the petitioner No.2 and 3 are defendants. Therefore, the dispute that exists is between the petitioner No.2 and 3 and the persons in possession of the suit property, which is altogether a new cause of action. It is not a case, in which the decree has been assigned by the petitioner No.1 to petitioner No.2 and 3 and apart from that there is no specific relief for possession granted in the decree in favour of the petitioner No.1. Therefore, no error has been committed by the learned Executing Court in dismissing the application filed by the petitioners. It is prayed that this petition be dismissed at motion stage.

8. I have heard the learned counsel for the parties and perused the documents placed on record.
9. Clearly the judgment and decree dated 27.10.1977 in First Appeal 22-A/1977 is in favour of the petitioner No.1, which has been finalized after the dismissal of the Second Appeal, before the High Court and there being no further appeal before the Supreme Court. The question before this Court is whether the petitioner No.2 and 3 can be regarded as transferee or assignee of the decree.

- 10.** Order 21 Rule 16 C.P.C. provides that interest of any decree holder in the decree can be transferred by assignment in writing or by operation of law, then such transferee has entitlement to apply for execution of decree to the Court. The proviso to Order 21 Rule 16 provides that whenever a decree or such interest has been transferred by assignment, notice of such application shall be given to the transferor and the judgment debtor and the decree shall not be executed until the Court has heard their objections to the execution. In this case, the judgment debtor is only respondent/state. The persons in possession of the suit property were not the parties to the civil suit and neither they were made party in the application filed for execution by the petitioners before the civil Court. The rule and the proviso does not mention anything about the person in possession not being party to the civil suit or any proceeding.
- 11.** The assignment can be made in writing. There is no such statement of the petitioner No.1 that he has assigned the decree in writing. However, the assignment can be presumed by the operation of law, as the the suit property has been sold to the petitioners No.2 and 3. Even if, this is the position of the petitioner No.2 and 3, then it is to this effect that declaration in the civil suit and the relief of permanent injunction in favour of the petitioner No.1 shall operate in favour of the petitioners No.2 and 3. There is no such relief granted in the decree regarding delivery of possession by the respondents or by any other person.

- 12.** Another question which comes before this Court is whether any decree for declaration simplicitor and permanent injunction without the relief of possession, the same can be executed for recovery of possession or not?.
- 13.** In ***Toran Singh Vs. Imrat Singh (Supra)***, the learned Single Judge has held, that as provided under Order 21 Rule 32 (5) of C.P.C., Where a decree for the specific performance of a contract or for an injunction has not been obeyed, the Court may, in lieu of or in addition to all or any of the process aforesaid, direct that the act required to be done may be done so far as practicable by the decree-holder or some other person appointed by the Court. The explanation has been added by the amendment of 2002 under Order 21 Rule 32 that “the act required to be done” covers prohibitory as well as mandatory injunctions and therefore it was held that recommendation was made by the Law Commission for making this amendment only for the purpose that if any order of injunction is disobeyed in that case, the decree holder should not be driven to file a separate suit for getting the relief for possession.
- 14.** In ***Toran Singh Vs. Imrat Singh Case (supra)*** the learned single Judge has observed in Para-10, 11, & 12, which are as under :-
- “10. The main defence of the judgment-debtor is that the suit was only for declaration and permanent injunction and it was not for possession and, therefore, in execution proceedings the trial Court cannot travel beyond what had been prayed and

granted.

11. It is relevant to notice here that the trial Court in its judgment has given a specific finding that petitioner is in possession and accordingly directed that his right and possession be not disturbed and a permanent injunction in this regard was issued. On the cost of repetition, it may be noticed that this finding of trial Court was affirmed till this Court. Thus, this fact cannot be disputed that the allotment with regard to the petitioner was not disturbed and petitioner was in possession. Thus, in view of the aforesaid findings with regard to allotment and possession in favour of the petitioner, if petitioner claims enforcement of judgment and decree, the question is, whether he can seek enforcement of this nature of decree in execution proceedings. Before dealing with the matter any further, it is profitable to notice the report of Law Commission which persuaded the parliament to include the aforesaid explanation in Civil Procedure Code. The relevant portion of recommendation of Law Commission reads as under:-

"8.1.12 Recommendation-Clarification is obviously needed on the point at issue. It is suggested that as a matter of legislative amendment. It is preferable to incorporate the wider view (though the majority of the High Courts have taken a contrary view) and to provide that the words "act required to be done" cover prohibitory (as well as mandatory) injunctions. This would also be in conformity with Section 3(2). General Clauses Act, 1987 which provides that in all Central Act, the words "act" includes illegal

omissions. Besides this, on the merits, there is also justification why a decree holder should be driven to a separate suit for getting relief in the nature of enforcement of a decree which he must have obtained after considerable expenditure of time, labour and money".

12. A bare perusal of the recommendation shows that the intention was to adopt a wider view to cover prohibitory as well as mandatory injunctions. Interestingly, this recommendation was made by Law Commission even contrary to the views taken by various High Courts before such recommendation. It was felt necessary to include that explanation in the interest of justice so that decree holder should not be driven to a separate suit for getting relief in the nature of enforcement of a decree which will ultimately save his time, labour and money. Once the said recommendation is translated in reality by including it in Civil Procedure Code by way of explanation, the basic question is whether petitioner can succeed on the strength of existing provision, i.e., Order 21 Rule 32 (1)(5), read with explanation. In the opinion of this Court, the executing Court has power and jurisdiction to pass any order to see that the decree is enforced and implemented and it is obeyed by the judgment-debtor. Even a decree of a permanent prohibitory injunction needs to be enforced as per the said explanation. If the judgment-debtor had gained possession on the decree holder's property by violating decree, said judgment debtor needs to be expelled by the executing court by exercising powers under Order 21 Rule 32 or by exercising inherent powers under Section 151 of C.P.C.

15. Now the question arises, that is it the respondent/judgment debtor in this case, who has disobeyed the decree willfully and placed the person in possession on the part of the suit land despite prohibitory order, that the respondent shall not interfere with the possession of the decree holder. As it is claimed by the petitioners that it was the respondent, who has placed the persons in possession, subsequent to passing of decree. This claim needed enquiry, to find out, whether it was the suit property on which the respondent had granted patta to the person presently in possession and if it is so proved, then the Executing Court may be in a position to hold that permanent injunction has been breached and then proceed to restore possession to the decree holder/interested purchaser in accordance with the provision of amended explanation Order 21 Rule 32 of C.P.C.
16. On perusal of the impugned order, it is found that the learned Executing Court has erroneously held that the petitioner No.2 and No.3 are not the interested parties and that as there is no decree of possession, therefore, the decree can not be executed. This finding is erroneous without the appreciation of the law present in this respect. It is already held in this order, that the petitioner No.2 and 3 are entitled to execute the decree in capacity of assignee of decree under Order 21 Rule 16 of C.P.C.. As regards the executability of the decree, the Executing Court is bound to make an enquiry to find out whether the decree holder was dispossessed from the suit property by the act of the

respondent at a subsequent stage after finalization of the decree.

17. Hence, with these observations and findings, this petition is disposed off. The impugned order dated 08.01.2018 is set-aside. The proceeding on the application filed by the petitioners before the Executing Court is restored and Executing Court is directed to make an enquiry in accordance with the observations made hereinabove and proceed in accordance with law, in case the decree is found executable.
18. Accordingly, the petition stands disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Balram