

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 750 of 2019

Order Reserved on : 23/01/2020

Order Delivered on : 06/03/2020

1. Ashok Kumar Modi, S/o Shri Kishan Lal Modi, Aged About 42 Years, R/o Main Road, Korba, Chhattisgarh.
2. Sanjay Kumar Modi, S/o Shri Kishan Lal Modi, Aged About 55 Years, R/o Main Road, Korba, Chhattisgarh.
3. Raja Modi, S/o Shri Kishan Lal Modi, Aged About 42 Years, R/o Main Road, Korba, Chhattisgarh.

---- Petitioners

Versus

1. Lokpal Thakur, S/o Pratap Singh Thakur, Aged About 45 Years, R/o Purani Basti, Korba, District-Korba, Chhattisgarh.
2. Satendra Thakur, S/o Pratap Singh Thakur, R/o Purani Basti, Korba, District-Korba, Chhattisgarh.
3. Khagendra Thakur, S/o Pratap Singh Thakur, R/o Purani Basti, Korba, District-Korba, Chhattisgarh.
4. Yogendra Singh Thakur, S/o Pratap Singh Thakur, R/o Purani Basti, Korba, District-Korba, Chhattisgarh.
5. Ram Kumar Singh, S/o Harihar Singh, R/o Purani Basti, Korba, District- Korba, Chhattisgarh.
6. Bhagwan Das Modi, S/o Late Dwarika Prasad Modi, Aged About 65 Years, R/o Main Road Korba, District-Korba, Chhattisgarh.

---- Respondents

&

WP227 No. 752 of 2019

1. Ashok Kumar Modi, S/o Shri Kishan Lal Modi, Aged About 42 Years, R/o Main Road, Korba, Chhattisgarh.
2. Sanjay Kumar Modi, S/o Shri Kishan Lal Modi Aged About 55 Years R/o Main Road, Korba, Chhattisgarh.
3. Raja Modi, S/o Shri Kishan Lal Modi, Aged About 42 Years R/o Main Road, Korba, Chhattisgarh.

---- Petitioners

Versus

1. Lokpal Thakur, S/o Pratap Singh Thakur, Aged About 45 Years R/o Purani Basti Korba, District:Korba Chhattisgarh.
2. Satendra Thakur, S/o Pratap Singh Thakur R/o Purani Basti, Korba Chhattisgarh, District : Korba, Chhattisgarh
3. Khagendra Thakur, S/o Pratap Singh Thakur R/o Purani Basti Korba Chhattisgarh, District : Korba, Chhattisgarh
4. Yogendra Singh Thakur, S/o Pratap Singh Thakur R/o Purani Basti Korba Chhattisgarh, District : Korba, Chhattisgarh
5. Ram Kumar Singh, S/o Harihar Singh R/o Purani Basti Korba Chhattisgarh, District : Korba, Chhattisgarh
6. Bhagwan Das Modi, S/o Late Dwarika Prasad Modi Aged About 65 Years R/o Main Road Korba, District:Korba, Chhattisgarh.

---- Respondents

For petitioners	:	Mr. Rajeev Shrivastava & Mr. Malay Shrivastava, Advocates.
For respondents No.1 to 5	:	Mr. Ashok Swarnkar, Advocate.
For respondent No.6	:	Mr. Shobhit Koshta & Vishnu Koshta, Advocates.

Hon'ble Shri Justice Rajendra Chandra Singh Samant
CAV Order

06/03/2020

1. These petitions have been brought being aggrieved by the order dated 14.8.2019 passed by the Civil Judge, Class-I, Korba in Civil MJC No.5/2019 (in WP227 No.750/2019) & Civil MJC No.6/2019 (in WP227 No.752/2019).
2. It is submitted by the counsel for petitioners that the petitioners and respondent No.6 are the members of Hindu undivided family. Partition of joint Hindu family property took place, in which the suit property in Civil Suit No.41A/1997 fell into the share of the petitioners. The suit property is a constructed building in which respondent No.1 to 5 are running a hotel in the name and style of 'Pratap Hotel'. Respondent No.6 in his personal capacity and also representing other joint holders

of the property had filed Civil Suit No.41A/1997 for eviction against the respondents No.1 to 5 and others, who were in occupation of the suit property in capacity of tenant. The civil suit was decreed in favor of respondent No.6 on 14.5.2018 by which respondent No.6 was declared landlord with respect to the tenanted suit premises and the relief of eviction was granted against the respondents No.1 & 2. The said judgment and decree was challenged in Civil Appeal No.15A/2018. The appellate Court decided the said appeal on 2.5.2019 and dismissed the same.

3. Partition of joint family property effected on 21.12.1963 was disputed because of which a civil suit bearing No.7A/2014 was pending between the petitioner and other family members. The said civil suit has been decided vide judgment and decree dated 14.12.2018, allotting share in the joint family property to Late Kishanlal Modi, which includes the present suit property. Petitioners are the heirs of decree holder Late Kishanlal Modi. On the strength of this judgment & decree, the petitioners then filed an application praying for their impleadment in the First Appeal as a party, which was rejected and against which the petitioners have preferred a miscellaneous appeal before this Court which was also dismissed vide judgment dated 10.4.2019. Subsequent to that, the petitioners moved the Supreme Court by filing Special Leave Petition (C) No.10049/2019 which was disposed off, by the Supreme Court vide order dated 26.4.2019, refusing to interfere in the matter. However, the Supreme Court has observed that dismissal of SLP will not come in the way of right to enforce the decree if it is so executable.
4. It is submitted that as the petitioners have become entitled for the suit property by virtue of the judgment and decree passed in Civil Suit No.41A/97, therefore, the petitioners have right to execute the decree passed in their favor. It is submitted that the petitioners have become assignee of the decree in favor of the respondent No.6 by operation of law, as it is provided under Order 21 Rule 16 of Code of Civil Procedure (for short 'CPC'), and also under Section 146 of the CPC. Subsequent to the dismissal of appeal filed by respondents No.1 to 5 and confirmation of the decree of the trial Court in Civil Suit No.41A/1997, the petitioners moved application under Order 21 Rule

11 of CPC and also filed application under Section 47 read with Order 21 Rule 16 of CPC. The learned executing Court dismissed the application of the petitioners and also Execution Case registered as 2/2019. The petitioner then filed review petition against the order dated 18.6.2019. The review petition of the petitioners has also been dismissed by the order dated 14.8.2019.

5. It is submitted that the petitioners are aggrieved by the orders dated 18.6.2019 & 14.8.2019 by which the learned Executing Court has erroneously and arbitrarily dismissed the applications filed by the petitioners, who have the entitlement to execute the decree passed in Civil Suit No.41A/1997 on the strength of the judgment and decree passed in their favor in the partition suit No.7A/2014. As the judgment and decree of the partition suit has not been challenged by the respondent No.6, therefore, it has attained finality. No question is there with respect to the suit property being in the share of the petitioners. Therefore, the decree in favour of respondent No.6 operates in favor of the petitioners and their entitlement to execute the same is present under the provision under Order 21 Rule 16 read with Section 146 of CPC. The learned Executing Court has misinterpreted the provision and held in the order dated 18.6.2019 that the petitioners were not party in Civil Suit No.41A/1997 and their application for impleadment as party has been dismissed by the appellate Court, High Court and also by the Supreme Court, therefore, they have no entitlement for execution of decree in Civil Suit No.41A/1997. Subsequent to that the review application has also been dismissed without appreciating the true intention of law as it is provided under the provision mentioned herein above. Therefore, it is prayed that the impugned order be interfered with and the learned Executing Court be directed to execute the decree and civil suit No.41A/1997 in favor of the petitioners.
6. On behalf of respondent Nos.1 to 5, it is submitted that respondent Nos.1 to 5 were not party in the civil suit and a second appeal is pending against the partition decree. The efforts made by the petitioners, to become party in the civil proceedings, has totally failed and further, the respondents No.1 to 5 have also filed appeal against the appellate decree of eviction against them. Therefore, the petitioners have no entitlement to execute the decree in their favor.

7. On behalf of respondent No.6, it is reiterated that the petitioners were not the parties in eviction suit and the decree holder in civil suit No.41A/1997 is only respondent No.6, therefore he is the only reason entitled for execution. Respondent No.6 has not assigned the decree in favor of the petitioners in writing and further there is nothing to suggest that the decree has been assigned in favor of the petitioners by operation of law. It is further submitted that the decree in partition suit is under challenge in second appeal. It is also argued that respondent No.1 to 5 were not made party in partition suit, there the decree in partition suit is not finding upon them. Therefore, at this stage, the petitioners cannot make a claim for execution of the decree in their favor.
8. In reply, it is submitted by the counsel for petitioners that there is no dispute regarding the suit property. Replying to the argument of the respondent No.6, it is submitted that the tenants are not necessary party in a partition suit. It is submitted that the respondents No.1 to 5 and respondent No.6 are in collusion and, therefore, submission of the respondents has no force of law, and hence appropriate order be passed.
9. I have heard both the parties and perused the documents on record.
10. Considered on the submissions made by the counsel from both the sides. Perused all the documents present in the record of the petition. There appears to be no dispute that there is a decree in favor of the petitioners in Civil Suit No.7A/2014, according to which they have been declared entitled for the suit property on the strength of partition between the members of Joint Hindu family. It may be so that such decree is under challenge, but still that decree shall remain in force until it is set aside by a competent superior Court. Similarly, there is a decree of eviction in favor of respondent No.6 against the respondent No.1 to 5 in Civil Suit No.41A/1997 which has been confirmed in the **Civil Appeal No.15A/2018**. It may be so that the second appeal may be pending but until and unless the decree is set aside in the second appeal, the decree has force.

11. The question is whether on the strength of decree in partition suit, the petitioners have entitlement to pray for execution of the decree or not. For this, the judgment and decree in Civil Suit No.41A/1997 is perused. The learned trial Court has very clearly given relief in favor of the respondent No.6 by holding that the respondent No.6 is landlord with respect to the tenancy of the suit shop and on that basis, the decree of eviction has been granted in his favor.
12. The civil suit No.41A/1997 was filed under the provision of M.P. Accommodation Control Act, 1961, which is now repealed after the enactment of the Chhattisgarh Rent Control Act, 2011.
13. As the civil suit was filed in 1997, therefore, the enactment of 1961 would be applicable. The word "landlord" has been defined in Section 2 (b) of the Act, 1961, according to which, a person, who, for the time being, is receiving, or is entitled to receive, the rent of any accommodation, whether on his own account or on account of or on behalf of or for the benefit of, any other person or as a trustee, guardian or receiver for any other person or who would so receive the rent or be entitled to receive the rent, if the accommodation were let to a tenant and includes every person not being a tenant who from time to time derives title under a landlord. This definition is very much explicit. Even if it is so that respondent No.6 had let out the suit property to the respondent No.1 to 5, when the property was still in the joint stock of the joint hindu family in that case, the position of the respondent No.6 cannot be regarded as an independent title holder of the property. Further, in an eviction suit, the title of the landlord over the suit property is never a question for determination. Apart from that, the learned trial Court has also very clearly mentioned in the relief granted in the eviction suit that respondent No.6 is landlord with respect to the tenancy of the suit shop, which cannot be interpreted that respondent No.6 has been held title holder of the suit property.
14. Another question for consideration is whether the petitioners have become assignee of the suit property? Order 21 Rule 16 of CPC provided as under:-

"When there is a transfer of a decree either by operation of law or by mutual private arrangement such

decree can be executed by transferee after permission is granted under order 21 rule 16 of CPC.”

The above mentioned provision clearly provides for two categories of transferee of decree, firstly, when a decree holder transfers the decree to the assignee in writing, his interest, which is not the case here and in the second category, the decree stands transferred by operation of law, which has to be considered in this case.

15. What would be the transfer of operation of law has been considered by a three judge Bench of Supreme Court in Jugalkishore Saraf vs Raw Cotton Co. Ltd, reported in AIR 1955 SC 376:

“49. The transfer contemplated under this rule is either by assignment in writing or by operation of law. It was not contended by the Appellant at any stage of the proceedings that there was in this case a transfer by operation of law or that the agreement dated the 7th February 1949 was not an assignment of all the rights which Habib & Sons had in connection with the Indian business. The question therefore that falls to be considered is whether the deed of assignment dated the 7th February 1949 operates as a transfer of the decree by assignment in writing within the meaning of Order XXI, rule 16 of the Code of Civil Procedure.

50. A strict and narrow construction has been put upon the words "where a decree is transferred by assignment in writing" by the High Court of Madras in *Basroovittil Bhandari v. Ramchandra Kamthi*(1) and the decisions following it, particularly *Kangati Mahanandi Reddi v. Panikalapati Venkatappa & Another*(2) and by the High Court of Calcutta in *Mathurapore Zamindary Co. Ltd. v. Bhasaram Mandal*(1) which is followed in *Prabashinee Debi v. Rasiklal Banerji*(4). They have held that the words "decree-holder" must be construed as meaning decree-holder in fact and not as including a party who in equity may afterwards become entitled to the rights of the actual decree-holder and that the language of Order XXI, rule 16 (old [section 232](#)) cannot be construed so as to apply -to a case where there was no decree in existence at the time of the assignment and this position was in effect conceded by Dixit, J. and by the Division Bench when they observed that on a strict construction of Order XXI, rule 16 there was no assignment of the decree in favour of the Respondents.

53. Order XXI, rule 16 of the Code of Civil Procedure is a statutory provision for execution by the transferee of a decree and unless and until a person applying for execution establishes his title as the transferee of a decree he cannot

claim the benefit of that provision. He may establish his title by proving that he is a transferee of a decree by assignment in writing or by operation of law. [Section 5](#) of the Transfer of Property Act defines a "transfer of property" as an act by which the transferor conveys property in present or in future to the transferee or transferees. A transfer of a decree by assignment in writing may be effected by conveying the decree in present or in future to the transferee. But even for the transfer to operate in future the decree which is the subject matter of the transfer must be in existence at the date of the transfer. The words "in present or in future" qualify the word "conveys" and not the word "property" in the section and it has been held that a transfer of property that is not in existence operates as a contract to be performed in the future which may be specifically enforced as soon as the property comes into existence.

16. According to the view expressed by the Supreme Court in Jugalkishore Saraf's case (supra) a wider construction has been given in the matter of transfer of a decree by operation of law. As the factual situation present in this case is this, that respondent No.6 and the petitioners were joint holders of the suit property which was partitioned between them and which has been for the present decided by the trial Court, the learned Second Additional District Judge, Korba. It is a statement of the respondent No.6 that he has filed appeal against the said judgment and decree in Civil Suit No.7A/2014, but in that regard, there is no written statement or production of any document to show that any such appeal is pending for decision before this Court. Be that as it may, if any such appeal is present then it is yet to be decided. Therefore, the decree in favor of the petitioner is still in force until it is set aside by the High Court or the Apex Court. The suit property in this partition suit and the suit property in the eviction suit is the same and the interest of respondent No.1 to 5 is only to resist the execution of the decree and apart from that there is no other interest created in their favor. Therefore, in this case, according to the statutory law the suit property being partitioned in favor of the petitioners, not only gives them title on the suit property but also all the other rights appurtenant to the same also fall in the share of the petitioners. Therefore, the right to eviction which was earlier in favor of the respondent No.6, on the strength of decree in Civil Suit No.41A/1997 has also fallen in the share of the petitioners by virtue of the decree in Civil Suit No.7A/2014 judgment and decree in 7A/2014. Therefore, it is held that the petitioners have the right acquired by operation of law to execute the

decree present in their favor in the eviction suit.

17. After the view taken on the point of entitlement of the petitioners herein above, there is no force left in the argument of the respondents. The Supreme Court has also in SLP(C) No. 10049/2019, in order dated 26.4.2019" ordered that the dismissal of that Special Leave Petition will not come way in the petitioners to enforce the decree in their favor it is so executable". The finding in this order is very clear that the petitioners have entitlement to execute the decree in the eviction suit, hence, it being so it is held that there is no illegal restraint on the part of the petitioners to pray for execution of the decree in eviction suit in their favor.

18. After considering on all the facts and circumstances and the law applicable in this case, I am of this view that the learned Execution Court has failed to exercise its jurisdiction and dismissed the application filed for execution of the decree by the petitioners by order dated 18.6.2019 and at the same time by dismissing the revision petition by the order dated 14.8.2019. Accordingly, these petitions are allowed and both the impugned orders are set aside. The application filed by the petitioners filed under Section 47 read with Order 21 Rule 16 CPC is allowed. It is ordered that if there is no stay order in operation by any superior Court, in that case the learned executing Court shall proceed with execution case on the basis of the entitlement of the petitioners under Order 21 Rule 16 of CPC and in accordance with law.

Sd/-

(Rajendra Chandra Singh Samant)
Judge