

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CR No. 10 of 2018**

1. Chandrakala W/o Bodhlal Patel Aged About 48 Years Caste - Aghariya, R/o Village Ramtek, Tah. Sarangarh, Distt. Raigarh (Chhattisgarh),
2. Basant Kumari W/o Hetram Patel, Aged About 40 Years Caste Aghariya, R/o Village Bhawa, Post Patewa, Tahsil And Distt. Mahasamund (Chhattisgarh),
3. Madnamati W/o Lalitkumar Aged About 36 Years Caste - Aghariya, R/o Village And Post Patsendri, Tah. Saraipali, Distt. Mahasamund (Chhattisgarh)

---- Petitioner**Versus**

1. Radheshyam S/o Ishwar Prasad Patel Aged About 74 Years Caste - Aghariya, R/o Village And Post Farsawani, Tah. Sarangarh, Distt. Raigarh (Chhattisgarh) (Decree Holder),
2. Purshottam S/o Kurso Patel Aged About 44 Years Caste - Aghariya, R/o Village And Post Farsawani, Tahsil Sarangarh, district Raigarh (Chhattisgarh) (Judgment Debtor),

---- Respondent

For Petitioners : Shri Ganesh Barman, Advocate.
For Respondent : None.

Hon'ble Shri Deepak Kumar Tiwari, J**Order On Board****21/10/2021 :**

1. Heard on IA No.1/2018, application for condonation of delay in filing the Revision.
2. For the reasons stated in the application, it is allowed and delay in filing the Revision is condoned.
3. This Revision Application has been preferred against the order dated

13.9.2017 passed by the Additional District Judge, Sarangarh, District Raigarh in Execution Case No.9-A/2008 whereby the application preferred by the applicants has been rejected.

4. Facts of the case are that Radheshyam (Plaintiff/decreed holder) filed a civil suit No.9-A/2008 for specific performance of the contract against Purushottam (defendant/judgment debtor) in the Court of Additional District Judge, Sarangarh. The defendant/judgment debtor did not appear before the Court despite service of summons, therefore, he was proceeded ex-parte. During the course of execution of decree, the applicants filed an application under Order 21 Rule 97, 98, 101 read with Section 151 of the CPC on 10.10.2013. In the said application, it was averred that the suit land belongs to their father Kursho and actual partition has not been taken place between the sons and daughters of Kursho Aghariya. It was also pleaded that the plaintiff had obtained an ex-parte decree fraudulently. The defendant/decreed holder filed reply and resisted the pleadings made by the applicants. The learned Court below rejected the application preferred by the applicants on the sole ground that the plaintiff/decreed holder had obtained possession of the suit land on 21.8.2013 i.e. before filing of the objection by the applicants.
5. Heard learned counsel for the applicants and perused the impugned order.
6. The question for consideration is whether the learned Executing Court was justified in dismissing the application filed on 10.10.2013 under Order 21 Rule 97, 98, 101 read with Section 151 of the CPC by holding that possession of the suit land was already obtained by the decree

holder on 21.8.2013.

7. It is pertinent to mention that the applicants were not claiming any right, title or interest through the judgment-debtor. The applicants are sisters of the judgment debtor. It was alleged that the ancestral property was sold without any partition in collusive manner and claiming independent right, title or interest. Whether their claim was right or wrong on merits is a different matter, but their grievances would go overboard without being considered on merits.
8. In this regard, Order 21 Rule 99 of the CPC is relevant and the same is reproduced hereunder:-

“99. Dispossession by decree-holder or purchaser.- (1) Where any person other than the judgment-debtor is dispossessed of immovable property by the holder of a decree for the possession of such property or, where such property has been sold in execution of a decree, by the purchaser thereof, he may make an application to the Court complaining of such dispossession. (2) Where any such application is made, the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.”

9. Order 21 Rule 100 of the CPC is also relevant and the same is reproduced hereunder:-

“100. Order to be passed upon application complaining of dispossession.- Upon the determination of the questions referred to in Rule 101, the Court shall, in accordance with such determinations,-

(a) make an order allowing the application and directing that the applicant be put into the possession of the property or dismissing the application; or

(b) pass such other order as, in the circumstances

of the case, it may deem fit.”

10. Order 21 Rule 101 of the CPC reads as under:-

“101. Question to be determined.- All questions (including questions relating to right, title or interest in the property) arising between the parties to a proceeding on an application under rule 97 or rule 99 or their representatives, and relevant to the adjudication of the application, shall be determined by the Court dealing with the application, and not by a separate suit and for this purpose, the Court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction to decide such questions.”

11. In view of the above legal provisions, the learned Executing Court is required to pass an order in terms of the Order 21 Rule 99 of the CPC and it is no ground that the application be dismissed on the sole ground that the decree holder has already obtained possession. In such cases also, the law enables that any person other than the judgment debtor is wrongly dispossessed be put into possession of the property. Such questions relating to right, title or interest in the property are to be determined in the execution itself and not by separate suit.

12. Therefore, this Court is of the view that the learned Executing Court fails to exercise jurisdiction vested in it by law.

13. Accordingly, the Civil Revision deserves to be and is hereby allowed.

The learned Executing Court is directed to decide the applicants' application on merits in accordance with law.

14. There shall however be no order as to costs.

Sd/-
(Deepak Kumar Tiwari)
Judge