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HIGH COURT OF CHHATTISGARH, BILASPUR

Order Reserved on : 02.08.2021

Order Passed on :17/08/2021

W.P.(227) No. 273 of 2021

Shri Chitrabhan Singh, S/o. Late Chatur Singh, aged about 72 years,
R/o. New Bus Stand Gharghoda, Raigarh, P.S. and Tahsil Gharghoda,
Distt. Raigarh (Chhattisgarh).

---- Petitioner

Versus

1. Shri Jagannath Singh, S/o. Late Chatur Singh, aged about 64 years, R/o. New Bus Stand Gharghoda Raigarh, P.S. and Tehsil Gharghoda, Distt.- Raigarh (Chhattisgarh).
2. Girja, D/o. Narayan Singh, aged about 34 years, R/o.- Pusaur, Department Of Mahila Bal Vikas, Pusaur, Distt.- Raigarh (Chhattisgarh).
3. Tarun Kumar, S/o. Narayan Singh, aged about 34 years,
4. Komal, S/o. Narayan Singh, aged about 30 years,
No.3 and 4 both are R/o. Village Gharghoda, Raigarh, P.S. and Tehsil Gharghoda, Distt.- Raigarh (Chhattisgarh).
5. Shankar Singh, S/o. Late Chatur Singh, aged about 58 years,
6. Rameshwari, Wd/o. Raghuraj Singh, aged about 50 years,
No.5 and 6 both are R/o Village Gharghoda, Raigarh, P.S. and Tehsil Gharghoda, Distt.- Raigarh (Chhattisgarh).
7. Nandini, D/o. Late Raghuraj Singh, aged about 36 years, R/o. Balco- Korba, Distt.- Korba, Chhattisgarh.
8. Yashoda, D/o. Late Raghuraj Singh, aged about 36 years, R/o. Village Khaira, Tehsil- Ratanpur, Distt.- Bilaspur (Chhattisgarh).
9. Jaishree, D/o. Late Raghuraj Singh, aged about 36 years, R/o. Near Circuit House, Raigarh, Distt. - Raigarh (Chhattisgarh).
10. Sunil Singh, S/o. Late Raghuraj Singh, aged about 40 years, (as per impugned order), R/o. Vill. and Tahsil - Gharghoda, Distt. Raigarh Chhattisgarh.

---- Respondents

For Petitioner : Mr. Rajesh Roshan Singh, Advocate

For Respondent No.1 : Mr. Pankaj Singh, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

C A V Order

1. This petition under Article 227 of the Constitution of India has been brought being aggrieved by the order dated 31.05.2021, passed by the Execution Court in Civil Execution Case No.96/2002.
2. The respondent No.1 had filed a Civil Suit No. 96-A/2002, in which the petitioner was defendant No.8. During the pendency of that civil suit, the parties settled their dispute and executed an agreement dated 11.10.2017. It was on that basis, the suit was decreed by order dated 13.10.2017 by the Court of Civil Judge Class-I, Gharghoda. Respondent No.1/decreed holder has filed an application for execution of the decree dated 13.10.2017, seeking possession of the suit land. The petitioner raised objection and filed application under Section 47 read with Order 21, 97, 98 and 101 of C.P.C., claiming that khasara numbers mentioned in the execution application are not correct. Subsequent to which W.P. (227) No. 182 of 2021 was filed by the respondent No.1, which was disposed off on 24.03.2021 by this Court directing the execution Court to expedite the proceeding in execution case and complete the same within a period of three months. It is submitted that the learned Execution Court has instead of deciding the application pending under Section 47 read with Order 21, 97, 98 and 101 of C.P.C. ordered for issuance of possession warrant on 31.05.2021.
3. It is submitted that in the further proceeding in the execution case regarding which, copy of order sheets have been filed, it is reveals that warrant of possession could not be executed, as the

respondent No.1 was not satisfied with the demarcation of the suit property. Subsequent to which, the execution proceeding have been stayed consequent to the order passed by this Court on 10.06.2021 in this petition. Relief is prayed for.

4. Counsel for the respondent opposes the petition and the submission made in this respect. It is submitted that the respondent No.1 has been declared entitled for the possession of the suit land of the description mentioned in the judgment and decree dated 13.10.2017. After filing of the execution application and on the petition filed by the respondent No.1 as W.P.(227) No. 182 of 2021, there is specific direction of this Court to dispose of the execution case within a time frame. The petitioner is adopting dilatory tactics to deny the rightful claim of the respondent No.1. The impugned order does not suffer from any infirmity. Reliance has been placed on the judgment of Supreme Court in case of **Brakewel Automotive Components (India) (P) Ltd. V. P.R. Selvam Alagappan**, reported in **(2017) 5 SCC 371**, judgment of Andhra Pradesh High Court in case of **Pothuri Thulasidas Vs. Potru Nageswara Rao**, reported in **AIR 2005 AP 171**, judgment of High Court of Madras in case of **Gnanadurai Vs. Suseelammal**, reported in **AIR 1995 Madras 133**, in case of **Shalini Shyam Shetty & Anr. Vs. Rajendra Shankar Patil**, reported in **(2010) 8 SCC 329**.
5. In reply, it is submitted by the learned counsel for the petitioners that the entire dispute present between the parties is regarding the identification of the land only, therefore, the objection raised by the petitioner needs a decision by the executing Court.

6. I have heard the learned counsel for the parties and perused the documents placed on record.

7. Section 47 (1) of the Code of Civil Procedure reads as under :-

“Section 47. Questions to be determined by the Court executing decree. (1) All questions arising between the parties to the suit in which the decree was passed or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.

8. This provision simply mentions that all questions regarding execution, discharge or satisfaction of the decree are subject to the determination by the Execution Court, in case any such objection is filed. Further clarification is given in Rule 101 of Order 21 of C.P.C., which shows that all the question including the question regarding 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.

9. The dispute that has been raised by the petitioner in his application under Section 47 read with Order 21, 97, 98 and 101 of C.P.C. is that the respondent No.1 has made claim on the basis of the judgment and decree dated 13.10.2017, the survey No.455/8/1 and 455/10/1, which is not mentioned in the judgment and decree and thus the executability of the execution application has been questioned. Prayer has been made for spot inspection for the purpose of proper execution of decree.

10. The question regarding the execution of a decree can be raised under Section 47 and Order 21 Rule 101 of C.P.C., which are required to be decided first. The objection raised by the petitioner has relevance, therefore, it has to be decided and answered by the learned Executing Court, before proceeding with the execution case. Hence, for this reason, this petition is allowed and disposed off at motion stage. The proceeding of the trial Court, which has been initiated by the impugned order are hereby quashed. The learned execution Court is directed to decide the pending application filed by the petitioner under Section 47 read with Order 21, 97, 98 and 101 of C.P.C. without being influenced by the observation made in this order and subsequent to that proceed with the execution in accordance with the law.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Balram