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HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No.401 of 2021

1. Smt. Rupkunwar W/o Late Shri Dhansai Kewat Aged About 67 Years
2. Ravikiran S/o Late Shri Dhansai Kewat Aged About 45 Years
3. Krishna Kumar S/o Late Shri Dhansai Kewat Aged About 45 Years
   (All are r/o Village Hasuwa, Thana Gidhouri, Tahsil Kasdol, Civil And Revenue District Baloda Bazar-Bhatapara Chhattisgarh)

---- Petitioners

Versus

1. Prabhudayal Keshwarwani Aged About 71 Years S/o Shri Indrajeet Prasad Kesharwani
2. Nawal Kishore S/o Shri Indrajeet Prasad Kesharwani Aged About 58 Years
   (Both are r/o Village Hasuwa, Thana Gidhouri, Tahsil Kasdol, Civil And Revenue District Baloda Bazar-Bhatapara Chhattisgarh)
3. State Of Chhattisgarh Through Collector Raipur Now Balodabazar-Bhatapara, Chhattisgarh
4. Prakash Kumar S/o Late Shri Dhansai Kewat Aged About 27 Years R/o Village Hasuwa, Thana Gidhouri, Tahsil Kasdol, Civil And Revenue District Balodabazar-Bhatapara Chhattisgarh

---- Respondents

For Petitioners	:	Mr. Sunil Sahu, Advocate.
For State/respondent No.3.	:	Mr. Anil Tripathi, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

19/08/2021

1. This petition has been brought being aggrieved by the order dated 06.08.2021 Annexure P-1, passed by learned Execution Court in Execution Case No.55-A/2002.

2. It is submitted by the learned counsel for petitioners that the petitioners are the successors of deceased defendant Dhansai in the Civil Suit filed by the respondent No.1 and 2. The Civil Suit No.55A of 2002 was decreed in favour of the respondents No.1 and 2 granting a relief of their entitlement of possession of the suit land bearing Khasra No.961 measuring 0.045 hectare. The execution case was filed by the respondents No.1 and 2 on the basis of the decree dated 31.10.2003 by the respondent No.1 and 2. The Execution Court ordered for demarcation of the suit property for the delivering possession to the decree holders the respondent No.1 and 2. But according to the reports submitted by the Revenue Authorities, the petitioners were found in possession of only 0.01 decimal land, only of the suit land, therefore, finding that the decree is not executable, the order dated 15.01.2018 was passed and the execution proceeding was closed. This order was challenged by the respondent No.1 and 2 in W.P.(227) No.185 of 2020 which has been decided by this Court on 19.05.2021, in which the petition was disposed off with direction to the Execution Court to order fresh demarcation of the suit property and after receiving the report of the same to proceed with the execution in accordance with law.

3. It is further submitted that the fresh demarcation has been made and the report has been submitted. The petitioners/judgment debtors then filed application under Section 151 of C.P.C. praying for examination and cross-examination of the Revenue Inspector with respect to the demarcation, which application has been rejected by the impugned order.

4. It is submitted that the finding in the demarcation report regarding the possession of the petitioners by revenue inspector is not clear, therefore, the examination and cross-examination of the Revenue

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Inspector for clarification of his report is very essential and despite the ambiguity of the demarcation report, the learned Execution Court has directed for delivery of possession and issued the warrant for possession, hence, the order impugned is unsustainable and it is prayed that this petition may be allowed.

5. Learned State counsel appearing for the respondent No.3 makes formal objection.

6. Considered on the submissions and perused the fresh demarcation report dated 02.07.2021, submitted by the Revenue Inspector, which shows that the fraction of the disputed property is in possession of the petitioner No.2. The report mentions possession of other parties on the suit land. The learned Executing Court has directed the issuance of possession warrant only against the petitioners. Therefore, I am of this view that the ambiguity has to be clarified before the execution can be proceeded with. Hence, for these reasons, this petition is allowed at the motion stage. The impugned order dated 06.08.2021 is hereby set aside. The learned Execution Court is directed to call the Revenue Inspector concerned in exercise of inherent powers under Section 151 of C.P.C. to make a statement before the Court regarding the demarcation report of and the Executing Court is also directed to grant petitioners opportunity to cross-examine him and decide the objections if any before proceeding with the execution case.

7. Accordingly, the petition stands disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

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