

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No.18 of 2021

Derha (Died) Through Its Legal Heirs :-

1. Jagtaram Sahu Aged About 65 Years,
2. Aktukram Sahu Aged About 63 Years,
3. Jeevanlal Sahu Aged About 57 Years,
4. Jai Kumar Sahu Aged About 52 Years,
5. Hemant Kumar Sahu Aged About 42 Years,

(All are Son Of Late Derha Ram Sahu, Resident Of Village Dhaneli,
Tehsil And District Raipur Chhattisgarh)

---- Petitioners

Versus

1. Vishal S/o Phannuram Sahu Aged About 75 Years Resident Of Village Dhaneli, Tehsil And District Raipur Chhattisgarh
2. Kejabai W/o Ramcharan Sahu Aged About 65 Years Resident Of Village Chhatouna Via Mahasamund, Tehsil Mahasamund, District Raipur Chhattisgarh

---- Respondents

For Petitioners

– Mr. Ankur Agrawal, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

14-01-2021

Heard.

1. The present petition has been brought under Article 227 Constitution of India being aggrieved by the order dated 29.02.2020 passed by the learned Executing Court dismissing the execution proceeding in the Execution Case No.20/2013 pending before the Court of 7th Civil Judge, Class-II, Raipur (C.G.)
2. It is submitted by the learned counsel for the petitioners that the reason mentioned in the impugned order is this that the decree holder has expired about 7 to 8 years prior to the date, the case was taken up for hearing and no application for substitution of Lrs was filed within the

time provided under the Limitation Act. Hence, the execution proceeding has abated.

3. It is submitted that the ground mentioned in the impugned order is erroneous. The learned Court failed to appreciate that the application was filed by the petitioner on 21.03.2013 immediately after the death of the decree holder on 25.02.2013, within the limitation, of which, the reply was submitted by the respondent No.1 on 12.04.2013. This application was never decided by the Execution Court and without taking notice of these facts, the impugned order has been passed in an erroneous and arbitrary manner.
4. Perusing the certified copy of the order sheets and taking note of the filing of the application by the petitioner for substitution of Lrs of the deceased decree holder filed on 21.03.2013, the petition is disposed off at motion stage. The impugned order is set aside and the learned Execution Court is directed to take up the execution case and after hearing the parties, pass appropriate order on the application dated 21.03.2013 filed by the petitioner for substitution of legal representatives of the deceased decree holder.
5. Accordingly, this petition is disposed off.

Sd/-

(Rajendra Chandra Singh Samant)
Judge