

**NAFR**

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**WP227 No. 898 of 2019**

- Sanjay Kumar Shukla S/o Bhagwati Prasad Shukla Aged About 52 Years R/o Village of Ringani, Tahsil Dhamdha, District Durg Chhattisgarh., District : Durg, Chhattisgarh

**---- Petitioner /**

**Judgment-debtor**

**Versus**

1. Smt. Parwati Wd/o Late Rajkumar, R/o Village Urla, Tahsil Patan District Durg Chhattisgarh., District : Durg, Chhattisgarh
2. Smt. Yasoda D/o Late Rajkumar D/o Late Rajkumar, Presently Resident of Kolihapur, Gunderdehi, District Durg Chhattisgarh., District : Durg, Chhattisgarh
3. Vijay Shanker S/o Late Rajkumar, R/o Village Urla, Tahsil Patan District Durg Chhattisgarh., District : Durg, Chhattisgarh
4. Ravishanker S/o Late Rajkumar, R/o Village Urla, Tahsil Patan District Durg Chhattisgarh., District : Durg, Chhattisgarh
5. Smt. Asha Wd/o Late Nilkanth @ Lilkant, R/o Village Urla, Tahsil Patan District Durg Chhattisgarh., District : Durg, Chhattisgarh
6. Ku. Damini D/o Late Nilkanth @ Lilkant, R/o Village Urla, Tahsil Patan District Durg Chhattisgarh., District : Durg, Chhattisgarh
7. Rohan S/o Late Nilkanth @ Lilkant, R/o Village Urla, Tahsil Patan District Durg Chhattisgarh., District : Durg, Chhattisgarh
8. Ku. Dimpal D/o Late Nilkanth @ Lilkant, R/o Village Urla, Tahsil Patan District Durg Chhattisgarh., District : Durg, Chhattisgarh
9. Smt. Sharda Bai D/o Ganga Prasad, R/o Village Kurva Tahsil Nawagarh, District Bemetara., District : Bemetara, Chhattisgarh ..... (Judgment-holders)
10. Smt. Sheela Yadav D/o Late Birjhanand Yadav, R/o Near Central Jail Durg, District Durg Chhattisgarh., District : Durg, Chhattisgarh ..... (Judgment-bebtor)
11. Vicky Yadav S/o Late Ajay Yadav, R/o Behind Sharda Talkies, Durg, District Durg Chhattisgarh., District : Durg, Chhattisgarh
12. State Of Chhattisgarh Through Collector Durg, District Durg Chhattisgarh., District : Durg, Chhattisgarh

**----Respondents**

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For Petitioner – Shri Ravindra Kumar Agrawal, Advocate.

For Respondents No.1 to 8 – Shri Avinash Chand Sahu, Advocate.

For State/Respondent No.12 – Shri Alok Nigam, Govt. Advocate.

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**Hon'ble Shri Justice Rajendra Chandra Singh Samant**

**Order on Board**

**22-09-2021**

1. This petition has been brought being aggrieved by the order dated 24-

09-2019 passed by the execution Court, III<sup>rd</sup> Civil Judge Class-I, Durg (C.G.) in Execution Case No.08/2017.

2. The plaintiff Rajkumar (deceased), whose LRs. are respondents No.1 to 8, and Sharda – Respondent No.9 had filed a civil suit praying for reliefs of declaration of title, permanent injunction and possession. Civil Suit No.4A/84 was decreed in their favour. The suit property in that civil suit was Khasra No.220/59 measuring 2.69 acres situated in Village Devbaloda and Khasra No.156 measuring 4.30 acres situated in Village Ringani. The defendant therein Birjhanand, whose legal representative is respondent No.10, preferred Appeal No.18-A/92 which was dismissed by the appellate Court by judgment dated 14-09-1994. The Second Appeal No.544/1994 was preferred before the High Court, and the same was dismissed by order dated 06-02-2008 on the ground of abatement.

3. It is submitted that the petitioner was not a party in that civil suit or in appeal. The petitioner had purchased a land from Birjhanand of description Khasra No.204 measuring 4.22 acres, which is a different land from that of the suit property. The decree in the civil suit is clearly not against the petitioner even then the decree holder-respondents have filed execution application on 03-07-2017, in which the petitioner has been arrayed as a party. The petitioner raised objection by filing application under Section 151 of the CPC, stating that there is no decree against him, therefore, his name may be deleted from the execution application. The application was contested by the respondents-decree holders. The impugned order has been passed, in which it has been observed by the learned execution Court that the petitioner/judgment-debtor No.2 has made admission regarding making purchase of some suit land. The observation made by the learned execution Court is without any basis as no such admission was ever made by the petitioner in the application under Section 151 of the CPC or in the arguments submitted before the execution

Court. Therefore, the impugned order suffers from grave infirmity and the execution case against the petitioner is causing him great harassment. Hence, it is prayed that the impugned order be set aside and relief be granted to the petitioner.

4. Learned counsel for the respondents No.1 to 8 opposes the submission made by learned counsel for the petitioner and submits that the land that the petitioner had purchased is the suit land. The original khasra number of the suit land has been renumbered, therefore, the impugned order is sustainable which requires no interference. Hence, the petition may be dismissed.

5. Learned counsel for the State/respondent No.12 makes formal objection.

6. In reply, it is submitted by learned counsel for the petitioner that the application for mutation filed by the respondents-decree holders has been dismissed by the Additional Tahsildar vide order dated 21-09-2015 (Annexure-P/6). The appeal preferred before the SDO against that order has also been dismissed vide order dated 31-03-2017 and the revision before the Commissioner has also been dismissed by order dated 30-11-2018. The renumbering of survey numbers of the suit land is a misconception. Therefore, the petition may be allowed.

7. Heard learned counsel for the parties and perused the documents.

8. Considered on the submissions. Without any doubt, the petitioner had never been a party in Civil Suit No.4A/84 before the trial Court and in the first appeal and also in the second appeal. The description of the suit land given in the judgment and decree dated 14-09-1992 is Khasra No.220/59 measuring 2.69 acres situated in Village Devbaloda and Khasra No.156 measuring 4.30 acres situated in Village Ringani. The property purchased by the petitioner from the deceased defendant has description of Khasra No.204 measuring 4.22

acres situated in Village Ringani. Dispute has been raised by the respondents-judgment debtors that the property sold to the petitioner by deceased defendant Birjhanand is the same property which is mentioned as Khasra No.156 measuring 4.30 acres. As the identity of the land in the sale deed in favour of the petitioner and the land described in the judgment and decree is not matching, in that case the learned executing Court should not have passed the order cursorily. An enquiry was required to be made for resolving the dispute present regarding identity of the suit property and regarding the correctness of the claim made by the respondents-judgment debtors on the property belonging to the petitioner. Therefore, I am of this view that the learned executing Court has not passed the impugned order correctly. Hence, the petition is disposed off at motion stage. The impugned order is set aside. The application filed by the petitioner under Section 151 of the CPC is restored. The learned executing Court is directed to make an enquiry on the question as to whether the land purchased is the suit property as described in the judgment and decree. It is also directed that a reasoned and appropriate order be passed on this application by the learned executing Court after giving opportunity of hearing to both the parties.

9. The petition is disposed off.

Sd/-  
**(Rajendra Chandra Singh Samant)**  
**Judge**