

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on : 12-09-2023

Pronounced on : 09 -10-2023.

FA No. 127 of 2023

1. Smt. Laxmi Been Wd/o - Late Narayan Been Aged About 62 Years
R/o- Village Chathirma, Tahsil Ambikapur, District : Surguja
(Ambikapur), Chhattisgarh
2. Bishakha @ Beshoka D/o- Late Narayan Been Aged About 44 Years
R/o- Village Silfili Chowk, Ambikapur, Tahsil- Ambikapur, District :
Surguja (Ambikapur), Chhattisgarh
3. Sitendra Soni S/o- Gokul Prasad Soni Aged About 40 Years
Caste- Sonar, Occupation- Self Employed, R/o- Namnakala, P.S. And
Tahsil Ambikapur, District : Surguja (Ambikapur), Chhattisgarh
4. Smt. Sangeeta Soni W/o- Gokula Prasad Soni Aged About 60 Years
Caste- Sonar, Occupation- Housewife, R/o- Namnakala, P.S. And
Tahsil Ambikapur, District : Surguja (Ambikapur), Chhattisgarh

---- Appellants

Versus

1. Vivek Kumar Singh S/o- Narendranarayan Singh Aged About 52
Years Caste Rajput, R/o- Colony Kedarpur, Post And Tahsil
Ambikapur, District : Surguja (Ambikapur), Chhattisgarh.
2. Ganesh Been S/o- Late Shiv Prasad Narayan Aged About 45 Years
R/o- Village Chathirama, Tahsil Ambikapur, District : Surguja
(Ambikapur), Chhattisgarh
3. Smt. Suchitra D/o- Late Narayan Been Aged About 50 Years
W/o- Suresh Mandal, R/o- Pratappur Chowk, Ambikapur, District :
Surguja (Ambikapur), Chhattisgarh
4. State Of Chhattisgarh Through The Collector, District : Surguja
(Ambikapur), Chhattisgarh

---- Respondents

For appellant : Mr. Ashok Kumar Shukla, Advocate

For State/respondent : Mr. Raghavendra Verma, Govt. Advocate.
No.4.

For other respondents : Ms. Priyanka Mehta, Advocate.
No. 1 to 3.

Hon'ble Shri Justice Narendra Kumar Vyas

CAV ORDER

1. Heard on I..A.No.1 which is an application for grant of interim relief.
2. The appellants have filed the instant first appeal against the order dated 2-8-2023 (Annexure A/1) passed by the First Additional District and Sessions Judge, Ambikapur, District Surguja (CG) in Civil Execution Case No. 165/2011 by which the objection taken by the appellants No. 1 and 2 has been rejected.
3. The brief facts as reflected from the record are that the respondent No.1 – Vivek Kumar Singh has filed a suit for specific performance of contract in respect of the suit land Survey No. 337, area 0.80 RS situated at village Chathirma, Tahsil Ambikapur, District Surguja (CG) against respondent No.2 Ganesh Been and the State. It has also been contended that despite service of notice, respondent No.2 Ganesh Been has chosen not to appear therefore, he was proceeded ex parte and ex parte decree was passed against him on 10.12.2012. Thereafter, the decree holder has filed execution case before the learned Executing Court on 08.04.2013, which was registered as Civil Execution Case No. 165/2011.
4. The learned Executing Court issued notice to the appellants wherein appellant No. 1-Laxmi Been has raised objection under Order 21 Rule 58 read with Section 47 of the CPC mainly contending that the suit land was given to one Vishvanath Been by the Rehabilitation Department, Surguja. The appellant No. 1-Laxmi Been is legally second wedded wife of Late Narayan Been who was son of Viswanath Been. It has also been contended that the objector was residing in her husband's house and she is in possession of the house. The objector is an uneducated, rustic villager and she is not aware of legal procedure, therefore, all the works relating to property were carried out by the step-son Ganesh Been. He has done the mutation proceeding wherein mala fidely he has recorded his name and name of her aunts' son- Patiram without knowledge of the appellant No. 1, as such he has made an attempt to deprive

her from her legal right to hold property belonging to her husband. It has also been contended that the objector is also entitled to get share in the property and she was not aware how the defendant No.2 has executed the sale deed with others and when the execution proceeding was initiated then only it was revealed to her about the factual matrix of the matter. It has also been contended that Ganesh Been and Patiram have already done partition and now in the revenue records only 1.030 hectare of land is available in the name of objector, Bishakha and Patiram whereas defendant- Ganesh Been has executed the sale of entire property whereas he has only right to execute sale-deed with regard to his share only, therefore, the step taken by the respondent No.2 is against the interest of the present objector and the whole transaction is bad-in-law and if execution proceeding is allowed then he will suffer irreparable loss which cannot be compensated in terms of money, therefore, it has been said that the objection raised by the appellant No. 1 be kindly allowed and the execution proceeding may kindly be quashed.

5. Appellant No.2 - Bishakha has also raised the same objection and also reiterated that the respondent has not claimed any right of possession in the original suit, still decree of possession has been passed which is ineffective and execution of such vague decree is not possible and would also pray for dismissing the execution proceeding and would also claim her share in the suit property.
6. Learned trial Court vide its order dated 5-1-2022 has rejected the said objection and issued warrant of possession against the petitioner. The petitioner being aggrieved with the order, has preferred WP227 No. 35 of 2022 which has been decided on 10-7-2023 (Annexure A/2) wherein this court has passed the following order:-

“5.Taking into consideration that without assigning any reason the learned Executing Court rejected the objections raised any the respective petitioners jointly, the order passed by the Executing Court is hereby set aside to the extent it relates to the objections raised by

the petitioners No. 3 and 4 and the matter is remitted back to the learned Court to decide the objections of petitioner Nos. 3 and 4 within a period of ten days from receipt of copy of this order".

7. Learned Executing Court in pursuance of the direction given by this court has considered the objections and has taken note of the fact which has been reiterated in the objection, considered the reply submitted by the decree holder and thereafter it has recorded its finding at paragraphs 11 and 12 which reads as under.

"11. कड़िका 7 में कथन किया है कि गणेश बीन ने खाते की लगभग सम्पूर्ण भूमि का विक्रय अनुबंध किया है' अर्थात् आपत्तिकर्ता लक्ष्मी बीन के शपथ पत्र के कथनों में ही आपस में विरोधाभास है, इसके अतिरिक्त अपने प्रतिपरीक्षण में यह स्वीकार किया है कि 'इसका विवाह ग्राम सरगंवा निवासी प्रेम बाईन से हुआ था जो कि आज भी जीवित है और इसका तलाक भी नहीं हुआ है' और प्रतिपरीक्षण के अंतिम कड़िका में यह भी स्वीकार किया है कि 'हमने वाद सम्पत्ति के भूमि स्वामी हक के पट्टे की कभी मांग नहीं की और न ही हमको कभी ऐसा पट्टा मिला। इस प्रकार इस आपत्तिकर्ता लक्ष्मी बीन के न्यायालय के समक्ष किये गये उपरोक्त कथनों के सूक्ष्म मूल्यांकन से वादग्रस्त सम्पत्ति के संबंध में इसकी स्थिति स्पष्ट हो जाती है और साथ ही नवीन सीमांकन प्रतिवेदन के आधार पर भी इसके द्वारा की गई आपत्ति औचित्यहीन प्रतीत होती है, अतः लक्ष्मी बीन द्वारा की गई आपत्ति/आपत्ति आवेदन आई0ए0 नं0 1/2019 निरस्त किया जाता है।

12. इसने स्वीकार किया की वादभूमि से संबंधित राजस्व अभिलेखों में अपना नामांतरण कराने हेतु इसने आवेदन दिया था परंतु बाद में वापस ले लिया था, इस प्रकार आवेदन वापस लेने का कोई कारण इस साक्षी/आपत्तिकर्ता के कथनों में नहीं आया है जो कि वाद भूमि पर इसका अधिकार होने के तथ्य को संदिग्ध करता है। यह भी अवलोकनीय है कि प्रतिपरीक्षण की कड़िका 11 में इस साक्षी ने स्वीकार किया है कि भूमि स्वामी हक का पट्टा सर्वप्रथम गणेश, लखन, पतीराम एवं तेतरी के नाम से बना था और वर्ष 2004 में तेतरी और लखन की मृत्यु हो जाने के पश्चात् राजस्व अभिलेखों में केवल गणेश बीन एवं पतीराम का नाम शेष था। इस प्रकार इस आपत्तिकर्ता विशाखा उर्फ बेसोका के न्यायालय के समक्ष किये गये उपरोक्त कथनों के सूक्ष्म मूल्यांकन से वादग्रस्त सम्पत्ति के संबंध में इसका स्थिति स्पष्ट हो जाती है और साथ ही नवीन सीमांकन प्रतिवेदन के आधार पर भी इसके द्वारा की गई आपत्ति औचित्यहीन प्रतीत होती है, अतः विशाखा उर्फ बेसोका द्वारा की गई आपत्ति/आपत्ति आवेदन आई0ई0 नं0 2/2019 निरस्त किया जाता है।

8. This order is being assailed by the appellants in this appeal and they have also prayed for stay of the execution proceedings. Learned counsel for the appellants No. 3 & 4 would further submit that they are running the school in the suit property, therefore, if the possession is not granted to them, the future prospects of the students who are 150 in number will be adversely affected and the appellants will suffer irreparable loss, therefore, he would pray for stay of the proceedings and also prays for quashing of the judgment passed by the learned trial court. In support of their submissions, learned counsel for the appellants has relied upon the decisions of Hon'ble Supreme Court in the case of **Sirdar K.B. Ramachandra Raj Urs (dead) through legal representatives vs. Sarah C URS and otherws reported in (2019) 10 SCC 343, Maya Devi vs. Lalla Prasad, reported in (2015) 5 SCC 588 and Sarup Singh and another vs. Union of India and another, reported in (2011) 11 SCC 198.**
9. On the other hand, learned objector/respondent to demonstrate her submissions has filed reply to the application and also submitted voluminous documents. It has been contended that the suit was filed on 18-11-2010 and decree was passed on 10-12-2012 and more than ten years have been elapsed, but still she has not been granted the fruits of decree which will be frustrated the object of decree and would pray for rejection of the interim application filed by the appellants. It has also been contended that the learned Executing Court has considered the entire objection raised by the appellants and after examination in detail, considering the evidence led by the parties and after evaluating the evidence brought on record has passed the judgment. The judgment passed by the learned Executing Court is legal, justified and does not warrant any interference by this Court and would pray for dismissal of the appeal as well as application for stay. It has been further contended that learned trial court after considering each and every submission made by the parties has passed the well reasoned order which does not call for any interference by this court. She has also filed copy of

the evidence adduced before the trial court wherein the present appellants have categorically admitted the factual matrix of the case and the same has been taken into consideration while rejecting the objection. The respondent to substantiate her submission has relied upon the judgment of Hon'ble Supreme Court in the case of **Kaushalya vs. Jodha Ram, reported in (2019) 20 SCC 277**. It has been contended that the learned trial court after hearing the parties has rightly decided the objection which cannot be found faulty and prayed for rejection of the stay application.

10. I have heard learned counsel for the parties and perused the record of the case.
11. The record of the case would demonstrate that the learned Executing Court has recorded the evidence and has given its finding that names of Ganesh Been and Patiram were recorded in the revenue records but nowhere the name of Narayan Been was recorded. Learned trial court while rejecting the application has also taken note of demarcation report which was done in pursuance of the direction given by the trial court wherein factual matrix was clarified. Thus, it has rejected the objection. The witness Bisakha has also admitted that one Sitendra Soni who is appellant No.3 is running school in the said land, but learned counsel for the appellants has nowhere stated that what objector Sitendra Soni has raised any objection before the Executing Court regarding execution proceeding only appellants No. 1 & 2 have taken objection.
12. Learned trial court while deciding the objection has considered the evidence adduced by the appellants No. 1 and 2 after appreciating the evidence. The learned trial court has rejected their objection with regard to objection raised by the appellant No.1. Laxmi Been as she has stated that the appellant has admitted in the cross examination that his marriage was solemnized with Prem Been who is still surviving and no divorce has been taken place and also admitted that she has never claimed any Patta of ownership lease and never received any

lease then only the Executing Court has rejected the objection. It is well settled position of law that unless and until the objectors have legal right over the suit land then only the objection can be considered, but in the present case, it is not in dispute that the lease was given to grand-father of Narayan Been and thereafter the property was recorded in the name of respondent No.3- Ganesh Been in the lease document, but no document was filed by the Objector No.1 & 2 that their names were also recorded in the lease. The record of the case would further demonstrate that the appellant No. 1 in the cross-examination has admitted that she has not applied for lease.

13. The trial court while deciding the objection raised by appellant No. 2- Bishakha, has recorded its finding that the name of Ganesh Been and Patiram were remained and Objector Bishakha in the cross examination has admitted that the lease of ownership was recorded in the name of Ganesh, Lakhan, and Nazri and it is stated that Lakhan was issue-less and she has also admitted that Tetri has one son and she has also admitted that in the year 2004 after death of Tetri and Lakhan, in the revenue record only the names of Ganesh Been and Patiram were recorded. She has also admitted that she has not moved an application for regarding inclusion of her name in the lease. She has also admitted that she moved an application for mutation, but subsequently she has withdrawn the same.
14. The judgment cited by learned counsel for the appellants in **Sirdar K.B. Ramachandra Raj URS (supra)** deals with property inherited after death of female Hindu dying intestate, the agreement to sell restricted only to share inherited by executant and plea of estoppel not applicable in absence of specific pleadings. Maya Devi (supra) deals with attachment of property to satisfy decree: (1) against judgment-debtor who had no title therein or (2) against judgment-debtor transferor after property stood transferred by such genuine registered GPA sale/conveyance to transferee and held that such property cannot be attached as it was not/is no longer property of transferor judgment-debtor and the Hon'ble Supreme Court

further considered the objection petition against attachment order by person claiming that property concerned did not belong to judgment-debtor at all, but was property of objector – duty of court to decide objections on merits and has also held that the executing court is required to decide the objections filed against enforcement of decree with complete care and circumspection to avoid any injustice, especially if an objection is raised to attachment of property concerned on grounds that property concerned does not belong to judgment-debtor, and belongs to objector. Similar view has been taken in case of Sarup Singh and another (supra). On the basis of this legal proposition, learned counsel for the appellants would submit that the trial court has committed illegality in not deciding the objection and prayed for stay of the execution proceedings before the trial court.

15. So far as legal proposition in **Maya Devi** (supra) is concerned, it is not in dispute that the executing court has to decide the objection raised by the person claiming over the property and he has stated that the entire property does not belong to the judgment debtor and they have also share in the property.
16. Hon'ble Supreme Court in Civil Appeal Nos... of 2023 (arising out of SLP © Nos, 12601-12602 of 2017 in case of Smt. Ved Kumari (death through her legal representative) Dr. Vijay Agarwal vs. Municipal Corporation of Delhi through its Commissioner (decided on 24-8-2023) has held in para11, 15 and 16 which reads as under.

“11. In “Brahmdeo Chaudhary vs. Rishikesh Prasad Jaiswal & Anr.” (1997) 3 SCC 694, this Court has observed that Order XXI of the CPC lays down a complete code for resolving all disputes pertaining to execution of the decree for possession obtained by a decree-holder and whose attempts at executing the said decree meet with rough weather. Referring to its earlier judgment in the matter of “Bhanwar Lal vs. Satyanarain” (1995) 1 SCC 6 this Court concluded thus:

‘11. In view of the aforesaid settled legal position, therefore, and in the light of the statutory scheme discussed by us earlier it must be held that Respondent 1 decree-holder's application dated 6-5-1991 praying for issuance of warrant for delivery of possession with the

aid of armed force, was in substance for removal of obstruction offered by the appellant and others under Order 21, Rule 97 CPC and had to be adjudicated upon as enjoined by Order 21, Rule 97, sub-rule (2) read with Order 21, Rule 101 and Order 21, Rule 98. In this connection the Court had also to follow the procedure laid down by Order 21, Rule 105 which enjoins the executing court to which an application is made under any of the foregoing rules of the order to fix a date of hearing of the application. As the executing court refused to adjudicate upon the obstruction and the claim of the appellant who obstructed to the execution proceedings it had clearly failed to exercise jurisdiction vested in it by law. The High Court in revision also committed the same error by taking the view that such an application was not maintainable. It is of course true as submitted by learned counsel for the decree-holder that in para 4 of the judgment under appeal the High Court has noted that there was some discrepancy about the khasra number. But these are passing observations. On the contrary in the subsequent paragraphs of the judgment the High Court has clearly held that such an application by the objector was not maintainable and his only remedy was to move an application under Order 21, Rule 99 after handing over possession and consideration of objection to delivery of possession by a stranger to the decree at any earlier stage was premature. It must, therefore, be held that neither the executing court nor the High Court in revision had considered the objection of the appellant against execution on merits. Consequently the impugned judgment of the High Court as well as the order of the of 1990 dated 15-2-1996 are quashed and set aside and proceedings are remanded to the Court of Munsif II, Munger to re-decide the application of Respondent 1 decree-holder dated 6-5-1991 by treating it to be one under Order 21, Rule 97 for removal of obstruction of the appellant and after hearing the decree- holder as well as the appellant to adjudicate the claim of the appellant and to pass appropriate orders under Order 21, Rule 97, sub-rule (2) CPC read with Order 21, Rule 98 CPC as indicated in the earlier part of this judgment.'

15. In view of the settled legal position, as noted (supra), it was the duty of the Executing Court to issue warrant of possession for effecting physical delivery of the suit land to the decree-holder in terms of suit schedule property and if any resistance is offered by any stranger to the decree, the same be adjudicated upon in accordance with Rules 97 to 101 of Order XXI of the CPC. The Executing Court could not have dismissed the execution petition by treating the decree to be inexecutable merely on the basis that the decree-holder has lost possession to a third party/encroacher. If this is allowed to happen, every judgment-debtor who is in possession of the

immovable property till the decree is passed, shall hand over possession to a third party to defeat the decree-holder's right and entitlement to enjoy the fruits of litigation and this may continue indefinitely and no decree for immovable property can be executed.

16. In the result, the appeals succeed and are allowed. Accordingly, the judgment and orders dated 07.04.2016 and 04.11.2016 passed in C.R.P No. 152 of 2012 and R.P No. 487 of 2016 respectively by the High Court of Delhi and the order of the Executing Court dated 11.09.2012 are set aside and the Executing Court is directed to execute the decree by effecting delivery of physical vacant possession to the appellant/decreed-holder in accordance with the provisions contained in Order XXI CPC. The parties shall bear their own costs".

17. In the light of the aforesaid legal position of law and also considering the fact that the learned Executing Court has assigned reason while rejecting the objection raised by the appellants, particularly the evidence by the appellants No. 1 and 2 and has rightly rejected the objection which is well reasoned and therefore, prayer for staying the execution proceedings deserves to be dismissed.
18. Accordingly, I.A.No.1 which an application for grant of interim relief is rejected.
19. List this case on **3rd November, 2023** for final disposal in motion hearing list.

Sd/-

(Narendra Kumar Vyas)
Judge

Raju