

(2021) 02 CHH CK 0018
Chhattisgarh High Court
Case No: W.P.(227) No. 444 Of 2020

Rishabh Jain

APPELLANT

Vs

Sushila Dev

RESPONDENT

Date of Decision: Feb. 24, 2021

Acts Referred:

- Code Of Civil Procedure 1908 - Section 47, 115, 151, Order 21 Rule 19, Order 21 Rule 29, Order 21 Rule 101
- Constitution Of India, 1950 - Article 227

Hon'ble Judges: Rajendra Chandra Singh Samant, J

Bench: Single Bench

Advocate: Rajeev Shrivastava, Ravish Verma, Tarun Dansena, B.P. Gupta

Final Decision: Dismissed

Judgement

Rajendra Chandra Singh Samant, J

Heard.

1. The present petition has been brought by the petitioner under Article 227 of the Constitution of India, being aggrieved by the orders dated 11.9.2020

and 23.9.2020 passed by the Learned Third Additional District Judge, Bastar at Jagdalpur in Civil Execution Case No. 7 of 2016.

2. Respondents No.1 to 3 have a judgment and decree in their favour dated 31.1.1986 in Civil Suit No.11-A of 1982. The plaintiffs were declared as

titleholders of the suit land, property of plot No.106/1 measuring area 1903 sq.ft. and the construction standing on the same. The sale deed that was

executed by defendants No.1 to 6 in favour of defendant No.7 dated 17.2.1982 was declared void and delivery of possession was ordered in favour of

the plaintiff. This judgment was challenged in First Appeal No. 42 of 1986 before the Madhya Pradesh High Court, which was renumbered as First

Appeal No. 103 of 2010, has been dismissed for non-prosecution and M.C.C. No. 892 of 2014 filed for restoration has also been dismissed vide order

dated 4.12.2018. Subsequent to that, Civil Suit No.4-A of 2014 was instituted by Premlal Halwai against Smt. Leelawati Dandwani and this petitioner,

which has been decided by the judgment dated 21.1.2015, by which the sale deeds dated 18.1.2001 and 25.1.2001 executed by Smt. Leelawati

Dandwani in favour of this petitioner have been declared null and void and the order has been passed against the petitioner/ defendant No.2 to deliver

possession of the suit property to the heirs of Gendlal who are respondents No.1 to 3.

3. First Appeal No.142 of 2015 has been preferred against the aforesaid judgment and decree, which was dismissed by this Court vide order dated

21.6.2019. In the meanwhile, the execution proceeding that was initiated by respondents No.1 to 3 which is registered as Execution Case No. 7 of

2016 is pending. Respondents No. 1 to 3 have filed W.P. Â No. 199 of 2020, which has been disposed of by order dated 19.2.2020 with a direction to

the Executing Court to conclude the execution proceedings within a time-frame of six months.

4. It is submitted by counsel for the petitioner that the petitioner has filed a Civil Suit No.4-A of 2020, copy of plaint is Annexure-P/13 praying for

relief of declaration of his title over the suit property mentioned herein-above and permanent injunction. A declaration has also been sought that the

judgment and decree in Civil Suit No.4-A of 2014 dated 21.1.2015 is not executable. It is further submitted that respondents No.1 to 3 have obtained

an order in W.P.(227) No. 199 of 2020 from this Court by suppressing the fact, that there is a civil suit pending with respect to the suit property. The

petitioner then filed an application under Order XXI Rule 29 of the CPC praying for stay in the execution proceeding on the basis of the pendency of

the civil suit filed by him with respect to the same suit property which has been erroneously dismissed by the Execution Court. The petitioner then filed

an application under Section 47 read with Section 151 and Order XXI Rule 101 of the CPC, which has been decided and rejected by the impugned

order dated 23.9.2020. It is submitted by counsel for the petitioner that the order passed is erroneous and also submits that there is a question of executability of the decree present.

5. Reliance has been placed on the judgments of the Supreme Court in the case of Sabitri Dei and Others vs. Sarat Chandra Rout and Others, reported in 1996 SCC (3) 301 and Seth Hiralal Patni vs. Sri Kali Nath, reported in 1962 AIR 199. It is submitted that this Court has made observations in the order dated 15.10.2020 passed in this petition on the maintainability of the present writ petition, therefore, the petitioner is entitled for grant of relief as prayed.

6. Learned counsel for respondents No.1 to 3 submits that there is clear judgment and decree in their favour granted in Civil Suit No. 4-A of 2014 which has been confirmed by the High Court in First Appeal No. 142 of 2015. The same grounds and the same issues have been agitated by the petitioner in Civil Suit No. 4-A of 2020 filed by him, therefore, the petitioner has remedy to pursue the litigation in appellate jurisdiction. Further, the petition under Article 227 of the Constitution of India is not maintainable, as civil revision is maintainable against the orders passed by the Executing Court. It is also submitted that the petitioner cannot make any claim on behalf of Smt. Leelawati Dandwani, as the sale deed that was executed in her favour has been declared null and void, hence, there is no lawful reason to stay the execution proceedings. It is further submitted that the petitioner is trying for further the litigation unlawfully and baselessly. Reliance has been placed on the judgment of Orissa High Court in the case of Judhistir Jena vs. Surendra Mohanty and Anr., reported in AIR 1969 Ori 233, in which it has been observed that the decree has been obtained by a party and he should not be deprived of the fruits of that decree except for good reasons. Until that decree is set aside, it stands good and it should not be lightly dealt with on the off-chance that another suit to set aside the decree might succeed and the present case is similar. The petitioner, after being unsuccessful in all the litigations, has come up to a new means by filing a frivolous civil suit only for the purpose of creating hurdle in the execution of decree, therefore, the petition be dismissed.

7. Learned counsel for respondent No.4 has raised objection on the maintainability of the present petition. It is submitted that there is no ground on the basis of which, the execution of decree can be stayed by the Executing Court.

8. In reply, it is submitted by counsel for the petitioner that it is a matter of cross-claims regarding which there is provision under Order XXI Rule 19 of the CPC. It is further submitted that there is no remedy available to the petitioner under Section 115 of the CPC, therefore, the present petition is maintainable.

9. Considered the submissions. There is no need to consider on the question of maintainability of this petition as it has been already decided by this

Court in the order dated 15.10.2020. The core question in the present petition is only that whether the execution of decree in Execution Case No. 7 of

2016 can be stayed on the ground that the Civil Suit No. 4-A of 2020 filed by the petitioner is yet to be decided. Under Order XXI Rule 29 of the

CPC, Executing Court is empowered to stay the execution proceedings on the ground of pendency of the civil suit between the decree holder and the

judgment debtor but the question is what shall be the requirement for issuance of such stay order.

10. On perusal of the plaint of Civil Suit No. 4-A of 2020, it is found that the petitioner has not disputed the judgment and decree which has been

passed in favour of respondents No.1 to 3 and all the judgments that have been passed with respect to the same suit property earlier which are against

him. The civil suit has been filed on the ground that the petitioner has acquired title on the suit property by adverse possession. There is no need to

comment that the litigation on the point of validity of the sale deed in favour of the petitioner has been decided in the judgments mentioned herein-

above and the judgment of the trial Court in Civil Suit No.4-A of 2014 dated 21.1.2015 has been confirmed by the First Appellate Court, therefore, it is

found that the result in favour of respondents No.1 to 3 cannot be obstructed or restrained without any basis. As it is the ratio laid down by the Orissa

High Court in the case of Judhistir Jena vs. Surendra Mohanty and Anr. (supra), a party should not be deprived of the fruits of that decree except for

good reasons. Until that decree is set aside, it stands good and it should not be lightly dealt with on the off-chance that another suit to set aside the

decree might succeed. In the present case, the petitioner has not filed any civil suit for setting aside the decree which is existing against him and he is

raising a new ground of adverse possession, which is yet to be examined. The litigation with respect to the suit property has continued from the year

1982, therefore, after the lapse of almost 38 years and the fruits of the litigation being in favour of respondents No.1 to 3, it appears to be certainly

unreasonable that any such prayer for stay of the proceedings or executability of the decree can be entertained or allowed. The decree in favour of

respondents No.1 to 3 are not under any challenge and the ground in the civil suit filed by the petitioner is altogether new and different, therefore, I am

of this view that the learned Executing Court has not committed any error in dismissing the applications filed by the petitioner and passing the

impugned orders.

11. Hence, this petition is devoid of any merits which is dismissed at motion stage.