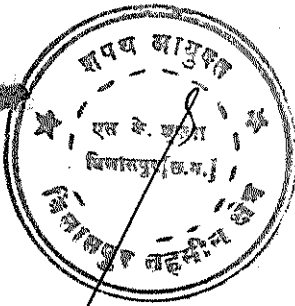


IN THE HON'BLE HIGH COURT OF CHHATTISGARH
AT BILASPUR

W.P. (227) NO. 534 / 2013 **Single Bench**

PETITIONERS
Judgment debtors

R No. 534/13
Presented by Shri. Amil Pandey
Dated 26/07/13



1. Smt. Rahmat Bi Wd/o Late Ahmad Khan, aged about 62 years, R/o Purani Basti, Katghora, Police Station and Tahsil Katghora, Civil and Revenue District - Korba (C.G.)
2. Sharifa Begam W/o Ahmad Hasan, aged about 55 years, R/o Talapara, Bilaspur, Police Station- Civil Line, Tahsil, Civil and Revenue District - Bilaspur (C.G.)
3. Ajmeri Begam W/o Ahmad Ali, aged about 60 years, R/o Jarhabhata Bilaspur, Police Station -Civil Line, Tahsil, Civil and Revenue District - Bilaspur (C.G.).
4. Hanifa Begam W/o Haji Mohammad Iftekhhar Khan, aged about 58 years.
5. Rahima Begam W/o Haji Saiyyed Abdul Salim Khan, aged about 51 years.
6. Julekha Begam W/o Haji Abdul Sharif Khan, aged about 53 years.
7. Abdul Rahim Khan S/o Late Haji Mohammad Khan, aged about 48 years.

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No. 4 to 7 are R/o Talapara, Police Station Civil Line, Tahsil, Civil and Revenue District - Bilaspur (C.G.).

8. Hajjan Najma Begam W/o Sheikh Hakimul Rahman, aged about 45 years, R/o Adarsh Nagar Colony, Qtr. No. B/203, S.E.C.L. Kusmunda Project, Korba, Tahsil, Civil and Revenue District - Korba (C.G.).

VERSUS

RESPONDENTS
Decree Holder

- :1. Budhram S/o Ghushu, aged about 35 years (now died)
2. Sudharu @ Sudhram S/o Ghushu, aged about 30 years.
- Both are R/o Talapara, Bilaspur, Police Station, Civil Line, Tahsil, Civil and Revenue District - Bilaspur (C.G.).

WRIT PETITION UNDER ARTICLE 227 OF THE
CONSTITUTION OF INDIA



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HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION (227) No. 534 of 2013

PETITIONERS

Judgment Debtors

- 1 Smt. Rahmat Bi
- 2 Sharifa Begam
- 3 Ajmeri Begam
- 4 Hanifa Begam
- 5 Rahima Begam
- 6 Julekha Begam
- 7 Abdul Rahim Khan
- 8 Hajjan Najma Begam

Versus

RESPONDENTS

Decree Holder

- 1 Budhram
- 2 Sudharu @ Sudhram

[Writ Petition under Article 227 of the Constitution of India]

Present:-

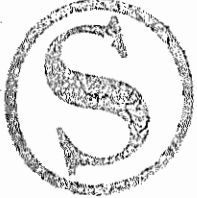
Mr. Anil Kumar Pandey, Advocate for the petitioners.
Respondents not noticed.

(SB : Hon'ble Mr. T.P. Sharma, J.)

ORDER

(Passed on 31/07/2013)

1. By this petition, the petitioners seek to invoke supervisory jurisdiction under Article 227 of the Constitution of India and has prayed for quashment of order dated 15.07.2013 passed by the 10th Civil Judge, Class-II, Bilaspur in Execution Case No. 166A/82, whereby the Executing Court has dismissed the application filed on behalf of legal representatives of deceased decree holder Budhram for execution of decree in their favour along with co-decree holder Sudharu and has also dismissed the application filed on behalf of the LR's of deceased judgment debtor Smt. Bafat Bi.
2. I have heard learned counsel for the petitioners and perused the order impugned.
3. As per order impugned, property in question has been sold to one Girdhari Singh by the decree holders during pendency of execution. Decree holder No.1 Budhram died and judgment decree holder Sudharu also died. Legal



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representatives of decree holder Budhram and legal representatives of judgment debtor Smt. Bafat Bi has filed an application for impleading them as party in the proceeding. Finally, Court below has dismissed the execution on full satisfaction vide order impugned, but on 15.07.2013 one of the decree holder and sole judgment debtor were not been alive. The order has been passed for and against dead persons which by itself is a nullity. As per order impugned, decree holder No.2 and legal representatives of decree holder No.1 had lost their interest after alienation of the property to Girdhari Singh.

4. The decree would have been satisfied by the judgment debtor Smt. Bafat Bi and after her death, it would have been satisfied by the legal representatives of deceased judgment debtor. Court below was required to act in accordance with Order 22 Rule 16 and Section 49 & 50 of the Code of Civil Procedure, 1908 (for short 'the Code'), but Court has not acted under aforesaid provisions of the Code. Even in case, the decree holder have lost the interest over the property after alienating the same to Girdhari Singh, the execution would have been dismissed.
5. Consequently, by passing the order for and against dead person, the Executing Court has committed an illegality although execution has been dismissed on the ground of full satisfaction, but illegality is required to be corrected.
6. Consequently, the order impugned which is order in a nullity is hereby quashed. Case remitted back to the Execution Court. Execution Court may dismiss the executing proceeding on the ground that decree holder had lost their interest or dismiss the execution proceeding, in absence of any execution filed on behalf of the legal representatives of decree holder against the legal representatives of judgment debtor or to implead their legal representatives and pass the order of dismissal of execution as fully satisfied. Present petitioners shall remain in attendance before the Executing Court on 21.08.2013 for further proceedings.
7. No order as to costs.

Sd/-
T. P. Sharma
Judge