

HIGH COURT OF CHHATTISGARH, BILASPUR

FIRST APPEAL No. 137 of 2012

APPELLANT
Objector

Jagdish Prasad Tiwari

Versus

RESPONDENTS

Late Smt. Sheela Devi through legal
heirs Anil Sabbarwal and others.

JUDGMENT/ORDER

Post for pronouncement of Judgment/order 31-1-2013

Sd/-
N.K. Agarwal
Judge



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HIGH COURT OF CHHATTISGARH AT BILASPUR

F.A.No. 137 of 2012

APPELLANT
(Objector)

: Jagdish Prasad Tiwari, S/o Girijashankar Tiwari, aged about 59 years, R/o Tiwari Timber, Santrabadi, Police Station – Mohan Nagar, Durg, Tahsil & District Durg (CG)

Versus

RESPONDENTS

1. Late Smt. Sheela Devi, W/o Late Chamanlal
Her Legal Heirs

1(a) Anil Sabarwal, S/o Chamanlal Sabbarwal, aged about 55 years,

1(b) Smt. Anita Khatri, wife of Charanjeet Khatri, aged about 48 years,

1(c) Vijay Sabbarwal, S/o Chamanlal, aged about 43 years

All are residents of House No.111, Santrabdi, Behind Apsara Talkies, Durg, Tahsil & District Durg (CG)

FIRST CIVIL APPEAL U/S 96 OF CODE OF CIVIL PROCEDURE 1908

SB:- HON. SHRI N.K. AGARWAL, J.

PRESENT :-

Shri Ram Kumar Tiwari, counsel for the appellant
Smt.Fouzia Mirza, counsel for the respondents.

JUDGMENT/ORDER

(Passed on 31.01.2013)

This is objector's first appeal filed under Section 96 of the Code of Civil Procedure (for short 'the C.P.C.') against the order dated 22.08.2012 passed by the Second Additional District Judge, Durg in Execution Case No.8359/2012 whereby the appellant's objection preferred under Order 21 Rule 97 of the C.P.C. has been dismissed.

2. To appreciate the controversy raised in the appeal, a few relevant facts may be stated.



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- i. The appellant – Jagdish Prasad Tiwari is son of Girija Shankar Tiwari and grandson of Aditya Narayan Tiwari whereas the respondents/decreed holders are legal representatives of Smt. Sheela Devi.
- ii. Owner of the suit property was one Smt. Savita Devi and late Aditya Narayan Tiwari, i.e. grand father of the appellant, was running a Saw Mill over the suit property as her tenant on a monthly rent of Rs.100/-.
- iii. Late Smt. Sheela Devi purchased the suit property vide registered sale deed dated 11.03.1970 from Smt. Savita Devi.
- iv. However, the original tenant Aditya Narayan Tiwari did not pay the rent and filed a suit for specific performance of contract against Smt.Savita Devi and Smt. Sheela Devi The suit was ultimately dismissed by the Hon'ble High Court of M.P. vide judgment and decree dated 24.11.1981 passed in Second Appeal No.361/1974.
- v. Special leave petition (civil) No.1946/82 filed by late Aditya Narayan Tiwari before the Hon'ble Supreme Court was also dismissed vide order dated 28.11.1991.
- vi. Smt. Sheela Devi filed a suit for eviction on the ground of bona fide need against Girija Shankar Tiwari, i.e. son of original tenant – Aditya Narayan Tiwari and father of present appellant – Jagdish Prasad Tiwari.
- vii. During the pendency of the suit, Smt. Sheela Devi has died on 6.11.1997 and her legal representatives, i.e., decree holders were brought on record in her place on 19.03.1998.



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- viii. During the pendency of the suit, the objector – Jagdish Prasad Tiwari applied for impleading him as a party under Order 1 Rule 10 of the C.P.C. Indisputably, the above application filed by the objector was dismissed by the High Court of M.P. It is also not in dispute that the objector – Jagdish Prasad Tiwari was examined as tenant's witness (D.W.2) in the suit .
- ix. The trial Court considering every aspect of the matter, has decreed the suit and granted decree in favour of respondents herein, i.e., decree holders.
- x. The First Appeal No. 43/2004 preferred by the tenant – Girija Shankar was also dismissed by this Court vide judgment dated 12.06.2012.
- xi. The Hon'ble Supreme Court in Special Leave to appeal (Civil) No. 26572 of 2012 preferred by judgment-debtor – Girija Shankar, while disposing of the Special Leave Petition, has passed the following order:

"We see no reason to interfere with the impugned order.

However, learned counsel for the petitioner submits that the petitioner will vacate the premises by 30th June, 2013 and prays for time till that date to vacate.

We, accordingly, grant time for vacating the premises by 30th June, 2013, subject to the petitioner's filing of usual undertaking within two weeks from today.

If no such undertaking is filed by the petitioner, this order granting time till 30th June, 2013, shall automatically stand vacated without any reference to Court.

The special leave petition is disposed of accordingly."



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xii. It appears, during execution proceedings, the objection has been raised by the son of the tenant – Girija Shankar, which has been dismissed by the Executing Court vide order impugned. Hence, this appeal.

3. I have heard learned counsel for the parties and perused the record.

4. The seekers of justice many a time has to take a long circuitous routes, both on account of hierarchy of Courts and the procedural law. Such persons are and can be dragged till the last ladder of the said hierarchy for receiving justice but even here he only breaths fearness of receiving the fruits of that justice for which he has been aspiring to receive. To reach this stage is in itself an achievement and satisfaction as he, by then has passed through a long arduous journey of the procedural law with many hurdles replica of mountain terrain with ridges and furrows. When he is ready to take the bite of that fruit, he has to pass through the same terrain of the procedural law in the execution proceedings the morose is writ large on his face. What looked inevitable to him to receive it at his hands distance is deluded back into the horizon. The creation of hierarchy of Courts was for a reasonable objective for conferring greater satisfaction to the parties that errors, if any, by any of the lower Courts under the scrutiny of a higher Court be rectified and long procedural laws also with good intention to exclude and filter out all unwanted who may be the cause of obstruction to such seekers in his journey to justice. But this obviously is one of the causes of delay in justice. Of course, under this pattern the party wrongfully gaining within



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permissible limits also stretches the litigation as much as possible. Thus, this has been the cause of anxiety and concern of various authorities, Legislators and Courts. How to eliminate such a long consuming justice? We must confess that we have still to go long way before true satisfaction in this regard is received. Even after one reaches the stage of final decree, he has to undergo a long distance by passing through the ordained procedure in the execution proceedings before he receives the bowl of justice. (please see ***Shreenath and another v. Rajesh and others***, AIR 1998 SC 1827)

5. Indisputably, the dispute has been pending between the parties since 1971 and twice the same had travelled upto the Supreme Court. It is also not in dispute, after death of original tenant – Aditya Narayan Tiwari, Girija Shankar, i.e., son of Aditya Narayan Tiwari, became tenant as legal representative of Aditya Narayan Tiwari.

6. The Hon'ble Supreme Court has granted time to vacate the suit premises to the judgment-debtor subject to filing his undertaking. In the objection preferred by Jagdish Prasad Tiwari, he has not disclosed under what right he claims to be in possession of the suit property. Indisputably, he is neither a tenant of the suit premises nor is in possession as a trespasser. His impleadment in the suit was dismissed by the Court. He supported the case of the tenant – Girija Shankar, i.e. his father, by adducing evidence in his support. The trial Court, after consideration, has passed the eviction decree, which was confirmed upto the Supreme Court.



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7. In the above facts situation, the objection preferred by the appellant, on the face, is vexatious and frivolous and has been made in collusion with his father i.e., tenant to save him from eviction by hook or crook and to deprive the landlord to reap the fruits of the decree, which is not permissible in law, and therefore, the order impugned does not suffer from any illegality warranting interference of this Court in the instant appeal.

8. For the reasons mentioned herein above, the appeal, being devoid of merit, is liable to be and is hereby dismissed.

9. No order as to costs.

Sd/-
N.K. Agarwal
Judge