

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 744 of 2014

Ganesh Prasad Soni, S/o Late Shri Rambishal aged 80 years, R/o Kududand, Bilaspur

---- Petitioner

Versus

1. Hemant Kumar Gupta S/o Shri Purshottam Dev Gupta Aged About 37 Years
2. Aman Gupta S/o Pradeep Aged About 21 Years
3. Bharti Gupta S/o Shri Pradeep Aged About 47 Years
4. Kumari Sonali Gupta D/o Pradeep Aged About 22 Years

All R/o Sai Parisar Qtr No. G/403 Shrikant Varma Marg Vyapar Vihar Bilaspur C.G.

5. The State Of Chhattisgarh Through Collector Bilaspur C.G.

---- Respondents

For Petitioner	:	Shri Kishore Bharat, Advocate
For Respondent No.1 to 4	:	Shri B.P. Gupta, Advocate
For Respondent No.5/State	:	Shri Vinod Tekam, Panel Lawyer

Order On Board

09/09/2015

Heard.

1. This petition under Article 227 of the Constitution of India is preferred against order dated 13th August, 2014 passed by 6th Additional District, Judge, Bilaspur by which petitioner/plaintiff appeal against rejection of injunction application has also been dismissed.
2. Learned counsel for the petitioner argues that the petitioner had made out a very strong prima facie case for grant of injunction inasmuch as it was clearly pleaded and borne out from sale deed that the defendant had purchased the land admeasuring 0.62 acres only. The defendant, later on, encroached upon a part of plaintiff's land by wrongly showing a pathway which never existed. This clearly indicated that there was, in fact, an encroachment on petitioner's land by the defendant. Despite a clear case having been made out, both the Courts below did not appreciate the affidavit and documents in its proper perspective and giving undue weightage and importance to a demarcation report filed by defendant which itself is highly doubtful and in all probability appears to be fake document, rejected prayer for grant of injunction.

3. The order passed by learned lower Appellate Court shows that after considering the material on record, it rejected the appeal mainly taking into consideration that while the petitioner and defendants are raising their respective claims, there is no demarcation report filed by the petitioner, whereas defendants have placed on record a demarcation report to support their case. In the considered opinion of this Court, the finding which have been arrived at by the Courts below while deciding the application for temporary injunction, can neither be said to be frivolous nor contrary to any settled principles of law much less an error of jurisdiction warranting interference under Article 227 of the Constitution.
4. In the case of **Munendra Kumar Dwivedi and Ors. Vs. Ramji Tiwari and Ors.**, 1992 *JLJ* 293, Division Bench of High Court of Madhya Pradesh held that it is too well settled principles that in exercise of jurisdiction under Article 227 of the Constitution, this Court neither corrects an error of fact nor even an error of law unless it is demonstrated that the orders suffers from patent jurisdictional illegality. Where more than one view is possible and out of that, one view has been taken by the Court below, this Court would not assume to itself the role of a fact finding inquiry as an Appellate Authority.
5. After going through the impugned order, it is found that the Court below has exercised its discretion to reject injunction application finding prima facie that while petitioner does not have any demarcation report in his favour, defendant has placed on record a demarcation report. Whether that demarcation report is to be accepted or not is a matter of appreciation in the course of trial.
6. Therefore, no case for interference is made out. The petition is dismissed.

Sd/-
(Manindra Mohan Shrivastava)
Judge