

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 856 of 2015

1. Nehru Ram Bari S/o. Laxman Bari, Aged About 55 Years R/o. Joda Peepal, Ambikapur, Police Station And Post Ambikapur, Civil And Revenue District Surguja, (Chhattisgarh).....Appellant/ Plaintiff
2. Nitesh Bari S/o. Vijay Bari, Aged About 30 Years R/o. Joda Peepal, Ambikapur, Police Station And Post Ambikapur, Civil And Revenue District Surguja, (Chhattisgarh).....Appellant/ Plaintiff

---- Petitioners

Versus

1. Premlata Bari W/o. Krishna Prasad, Aged About 45 Years R/o. Joda Peepal, Ambikapur, Police Station And Post Ambikapur, Civil And Revenue District Surguja, (Chhattisgarh).....Defendant
2. Pushplata Bari W/o. Kanhai Prasad, Aged About 43 Years R/o. Joda Peepal, Ambikapur, Police Station And Post Ambikapur, Civil And Revenue District Surguja, (Chhattisgarh).....Defendant

---- Respondents

Shri Manoj Paranjpe and Shri Prasoon Agrawal, counsel for the petitioner/s.

SB: Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

15/10/2015

Heard on admission.

This petition, under Article 227 of the Constitution of India, is directed against order dated 22/07/15 passed in appeal whereby order of rejection of application for grant of temporary injunction has been affirmed and appeal dismissed.

2. Submission of learned counsel for the petitioner is that while rejecting application for grant of temporary injunction, the Court below has exceeded its jurisdiction in ignoring that if construction is allowed to continue, it will adversely affect the right of the petitioner and bring about material change in the disputed property. It is next contended that though a specific plea of partition having taken

place, is there, reference to so called will deed is unwarranted. The petitioner has sought a decree of declaration that the so called registered will deed is null and void.

3. In order to come to the conclusion that the petitioner does not have a case for grant of temporary injunction, both the Courts below have taken into consideration that there exists a registered will deed in favour of the respondents. The parties are members of one and the same family. There is no document evidencing either partition nor is there any document in the form of memorandum of partition. Moreover, the Courts below have taken into consideration the affidavit of defendants that the construction is already complete.

4. In the considered opinion of this Court, the reasons assigned by the Courts below for rejection of grant of temporary injunction can neither be said to be extraneous nor suffers from any perversity.

5. Grant or refusal of injunction is essentially a matter of discretionary exercise. As long as the Court takes into consideration relevant material and reach upon a conclusion, no interference is permissible under Article 227 of the Constitution of India unless a clear case of jurisdictional illegality or perversity is made out.

The arguments of learned counsel for the petitioner perhaps could be another possible view. But that by itself does not make out a ground so as to call for interference by this Court in exercise of supervisory jurisdiction under Article 227 of the Constitution of India. The petition is therefore dismissed.

Sd/-

(Manindra Mohan Shrivastava)
J u d g e