

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 1094 of 2015

1. Ranjeeta Devi D/o Balkishun, aged about 52 years, R/o Village Kunjnagar, Tahsil and District Surajpur (Chhattisgarh).....Defendant No.2
2. Manita Devi D/o Late Balkishun, aged about 56 years, R/o Village Bojha, Tahsil Pratappur, District Surajpur (Chhattisgarh).....Defendant No. 3
3. Deepak Kumar S/o Ganga, aged about 28 years, R/o Village Nareshpur, Tahsil and District Surajpur (Chhattisgarh), Civil and Revenue District Surajpur, Chhattisgarh.....Defendant No.4

---- Petitioners

Versus

1. Khiru @ Chandroday S/o Late Balkishun, aged about 58 years, R/o Village Bojha, Tahsil Pratappur District Surajpur (Chhattisgarh).....(Plaintiff)
2. Pappu @ Hospital S/o Late Balkishun, aged about 40 years, R/o Village Bojha, Tahsil Pratappur, District Surajpur (Chhattisgarh).....(Plaintiff)
3. Laxmia Wd/o Late Balkishun, aged about 81 years, R/o Village Bojha, Tahsil Pratappur, District Surajpur (Chhattisgarh).....(Plaintiff)
4. Lalita Devi D/o Late Balkishun, aged about 60 years, R/o Village Bojha, Tahsil Pratappur District Surajpur (Chhattisgarh).....(Defendant No. 1)
5. Satyadev S/o Late Balkishun, aged about 59 years, Tahsil Paratappur District Surajpur (Chhattisgarh)
6. The State of Chhattisgarh through Collector Surajpur, District Surajpur (Chhattisgarh)

---- Respondents

For Petitioners – Shri A.K.Prasad, Advocate.

For Respondents 1 and 5 – Shri Pushpendra Kumar Patel, Advocate.

For Respondent No.6 – Shri S.C.Khakhariya, Deputy Advocate General.

For Respondents 2, 3 and 4 – None, though served.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order on Board

05/04/2016

1. With the consent of the parties, heard the matter finally at the motion stage itself.

2. Brief facts required for disposal of the instant WP(227) are that before the Civil Judge Class-I, Pratappur, District Surajpur, C.G. Civil Suit No.19-A/2013 is pending. In the said Civil Suit plaintiffs/present respondents 1, 2, 3 and 5 had filed an application under Order 39 Rule 1 and 2 of the Code of Civil Procedure, 1908 (in short 'the Code') to stay the proceeding before the revenue court for partition of holding and also to restrain by temporary injunction the present petitioners and respondent No.4 to sell out the property of Annexure D by which the description of land submitted by the plaintiffs. The trial Court vide order dated 08-12-2014 dismissed the said application filed. Against the said order the appellants/plaintiffs 2, 3 and 4 had preferred a miscellaneous civil appeal under the provision of Order 43 Rule 1 of the Code. The appellate Court set aside the order passed by the trial Court and directed that till disposal of the civil suit, the suit land mentioned in Annexure-D shall not be divided, i.e., status quo be maintained. Against the said order, the present petitioners/defendants 2 to 4 have preferred the instant WP(227) for quashment of the said order passed by the appellate Court in Misc. Civil Appeal No.04A/2015.

3. Heard learned counsel for the petitioners, perused both the impugned orders, application for temporary injunction and copy of the civil suit filed before the trial Court.

4. From perusal of Section 178, 44(1)(a) and other relevant provisions of C.G. Land Revenue Code, 1959 attracted for partition of holding, other facts involved in the said civil suit, the facts regarding no any final order passed by the revenue court for the partition of holding, without commenting anything on its merit, it appears from the face of the order that the learned appellate Court while deciding the said miscellaneous civil appeal not considered the entire law and facts applicable for proper adjudication of the said miscellaneous civil appeal, it would be appropriate to direct the appellate court to pass an order

afresh in the said miscellaneous civil appeal after hearing the parties and considering entire provisions of law and facts applicable without being influenced with any of the appreciation observed in this order and also with the order dated 24-11-2015 of the appellate Court.

5. Consequently, by invoking the power of superintendence over the subordinate courts, impugned order dated 24-11-2015 passed in Misc. Civil Appeal No.04A/2015 is hereby quashed. The appellate Court is directed to re-hear the said miscellaneous civil appeal again after affording opportunity of hearing to both the parties and to pass an order afresh without being influenced by any of the observations by this Court and the order itself dated 24-11-2015 of the appellate Court.

6. The parties present before this Court today are directed to appear in person or through their respective counsel before the appellate Court for further hearing in the matter on **12th of May, 2016**. The appellate Court is further directed to issue notice to other parties not present before this Court today as per issuance of summons for hearing in the matter.

7. Misc. Civil Appeal No.04A/2015 is restored to its original number.

8. Parties may file copy of this order before the said appellate Court for compliance.

9. Registrar (Judicial) is also directed to transmit copy of the order to the appellate Court through usual mode and fax mode immediately for compliance.

10. The petition disposed of.

11. No order as to cost.

12. Certified copy as per rules.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE