

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 663 of 2015

- Rajendra Singh Airen S/o Late Ranjeet Singh Ji Aged About 71 Years R/o. 42/ 8, Nahrunagar (West), Bhilai, Tahsil And District Durg (Chhattisgarh),

---- Petitioner

Versus

1. Narendra Singh Airen S/o Late Ranjeet Singh Airen Aged About 68 Years
2. Smt. Alka Airen, W/o Narendra Singh Airen, Aged About 20 Years

Both Permanent R/o. Through ; Anshul Airen, 2211, Kestrel Court Prinston - Junction N. J. At Present E- 362, Mayur Vihar, Phase- 2, Delhi (110091), Through : Power Of Attorney Smt. Rekha Bajpai, Wife Of C. R. Bajpai, R/o. Saket Colony, Katulbord, Durg, Tahsil And District Durg (Chhattisgarh),

3. Nagar Palik Nigam, Bhilai Nagar, Through : Commissioner, Nagar Palika Nigam, Bhilai, Supela, Tahsil And District Durg (Chhattisgarh),
4. Estate Officer, Nagar Palika Nigam, Bhilai, Supela, Tahsil And District Durg (Chhattisgarh),

---- Respondent

For Petitioner
For Respondent Nos.3 & 4

Shri Raghvendra Pradhan, Advocate
Shri H. B. Agrawal, Senior Advocate with
Ms. Meera Jaiswal, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

12/07/2016

1. The petitioner is aggrieved by the concurrent order passed by the trial Court as well as the Appellate Court rejecting his application under Order 39 Rule 1 & 2 CPC for issuance of temporary injunction to

restrain the defendants from alienating the suit property. Admittedly, the suit property is registered in the municipal records in the name of defendant Nos.1 & 2 as the lease deed of the suit property has been executed by the Municipal Corporation in their name.

2. It is argued by Shri Pradhan that the courts below have not properly construed the effect and impact of the document executed by the defendant No.1 on 15.07.1998 admitting the fact that the suit property was purchased in their name, however, the entire fund for purchase of the property was arranged by the petitioner. He would further argue that in view of the admission, the plaintiff has strong prima facie and balance of convenience, therefore, if temporary injunction is not granted, he shall suffer irreparable loss.
3. Jurisdiction under Order 39 Rule 1 & 2 CPC is discretionary in nature. It is to be exercised judiciously keeping in view the material available on the record. When such judicial discretion is exercised, the Appellate Court or the High Court under Article 227 of the Constitution of India is entitled to interfere only when the courts below have failed to consider any important piece of evidence resulting in perverse reasoning or approach.
4. The present is not such a case where the trial Court or the Appellate Court has ignored any such material evidence. The document dated 15.07.1998 allegedly executed by the defendant No.1 in petitioner's favour has been considered by the Appellate Court in para 15 of the impugned order. It has been observed that since the defendants have denied to execute any such document in favour of plaintiff, the same is to be decided after recording evidence. Since the property is entered in the record of the Municipal Corporation in the name of defendant

Nos.1 & 2, the courts below have not committed any such illegality or irregularity while rejecting the petitioner's application under Order 39 Rule 1 & 2 CPC so as to warrant interference by this Court under Article 227 of the Constitution of India.

5. Accordingly, the writ petition is dismissed.

Sd/-

JUDGE

PRASHANT KUMAR MISHRA

Nirala