

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**WP227 No.764 of 2015**

1. Sukarobai Wd/o Budhram Sahu, aged about 55 years, R/o Village Penda, Tehsil Kurud, District Dhamtari, Chhattisgarh
2. Fagnibai, D/o Late Sukhram Sahu, aged about 45 years, R/o Village Penda, Tehsil Kurud, District Dhamtari, Chhattisgarh
3. Trivanibai, D/o Late Sukhram Sahu, aged about 40 years, R/o Village Penda, Tehsil Kurud, District Dhamtari, Chhattisgarh
4. Tilakram (wrongly mentioned as Tiharuram), S/o Late Sukhram Sahu, aged about 38 years, R/o Village Penda, Tehsil Kurud, District Dhamtari, Chhattisgarh
5. Rajuram, S/o Late Sukhram Sahu, aged about 35 years, R/o Village Penda, Tehsil Kurud, District Dhamtari, Chhattisgarh

**---- Petitioners**

**Versus**

1. Smt. Dhaneshwari, W/o Rangilal Sahu, aged about 55 years, R/o Village Kamroud, Tehsil Kurud, District Dhamtari, Chhattisgarh
2. Rangilal, S/o Late Rambharosa, R/o Village Kamroud, Tehsil Kurud, District Dhamtari, Chhattisgarh
3. Maniram, S/o Nankuram Sahu, R/o Village Penda, Tehsil Kurud, District Dhamtari, Chhattisgarh
4. The State of Chhattisgarh, Through Collector, District Dhamtari, Chhattisgarh

**---- Respondents**

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For Petitioners – Shri P.P. Sahu, Advocate.

For Respondents 1 and 2 – Shri D.N.Prajapati, Advocate.

For Respondent No.3 – None, notice not returned served or unserved.

For Respondent No. 4 – Shri Lav Sharma, Panel Lawyer.

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**Hon'ble Shri Justice Chandra Bhushan Bajpai**

**Order on Board**

**15/01/2016**

1. Learned counsel for respondents 1 and 2 prayed for an opportunity to file written response/objection to the petition. He further added that the Misc. Appeal against the order passed by the trial Court in an interim application under Order 151 of the CPC was not maintainable, hence the Additional District Judge rightly dismissed the appeal as not maintainable.

2. It is submitted on behalf of the petitioners that the trial Court on interim application filed under Section 151 of the CPC by respondents 1 and 2, after hearing the said application, allowed the same and plaintiffs/petitioners were restrained for making any interference in the suit land. Against the order passed by the trial Court under Section 151 of the CPC, they preferred Misc. Appeal and the same was dismissed as not maintainable as there is no any provision under Order 43 Rule 1 and 2 of the CPC that the appeal is maintainable in order passed by the subordinate courts under Section 151 of the CPC. Learned counsel submits that the order passed by the trial Court is apparently illegal, improper and without jurisdiction of law as the respondents 1 and 2 not filed any cross-suit in the matter and they not filed any application under Order 39 Rule 1 and 2 for any prayer of injunction or inter alia they not filed any independent suit and prayed for temporary injunction for interference in the suit land. Hence, the matter may be taken up and disposed of. As respondent No.3 is not a necessary party, he had not filed that application before the Court below.

3. Learned counsel for respondents 1 and 2 resubmitted the prayer to file reply to the petition and also resubmitted that the appellate Court was lawful to dismiss the appeal as the appeal is not maintainable.

4. Looking to the entire matter, it would be appropriate to hear the matter finally at the motion stage.

5. Consequently, the petition is heard finally at the motion stage itself.

6. On behalf of the petitioners, learned counsel has supported the facts and arguments advanced by them in the petition and would submit that the order passed by the trial Court is patently illegal, improper and without authority of law and also it is in violation of the procedure of law.

7. On behalf of the respondents 1 and 2, leaned counsel appearing for them has supported the order passed by the appellate Court and argued that

the order passed by the appellate Court is proper, hence, the petition may be dismissed.

8. Under the authority of Article 227 of the Constitution of India, High Court is given power of superintendence over all the courts; it is well settled if any law, order passed by any court subordinate to the High Court is patently illegal, improper, without any authority of law and in violation of the procedural laws, High Court shall be duty bound to interfere and pass appropriate order as to correct the said illegality.

9. As the admitted facts, defendants 1 and 2/respondents 1 and 2 have not filed any cross-suit in Civil Suit No.343A/12 (Sukhram Vs. Smt. Dhaneshwari and others). If they wish, nobody prevented them to file a cross-suit in the suit itself for any prayer regarding the suit land. It is settled law that Order 39 Rule 1 and 2 of the CPC operates for the prayer of temporary injunction in a suit pending before any court of law. It is also undisputed that no any application has been filed on behalf of defendants 1 and 2/respondents 1 and 2 under relevant provisions of Order 39 Rule 1 and 2 of the CPC. It is also not disputed that the defendants 1 and 2/respondents 1 and 2 have not filed any other suit for the same suit land praying for any temporary injunction, in spite, they preferred to file the application under Section 151 of the CPC. As per settled law, when remedy is available, inherent powers of the Court are not attracted.

10. After perusal of the entire order dated 18-09-2012, it goes to show that the said application was about the suit land i.e. the property which was under challenge by filing civil suit by Sukhram. The present petitioners are LR's. of Sukhram. As no cross-suit has been filed, no any application has been preferred under Order 39 Rule 1 and 2 of the CPC or no any instant suit has been preferred by respondents 1 and 2 for the same suit land, simply filing application under Section 151 of the CPC is a gross violation of procedural laws of the CPC; the respondents 1 and 2 are required to file a cross-suit or

independent suit and application under Order 39 Rule 1 and 2 in either of the litigation. By not considering the above settled provisions of law, in the considered view of this Court, the trial Court has committed gross negligence and violated the procedural laws and thus the order passed by the trial Court is not within proper authority. Section 151 of the CPC is not applicable for the relief. As the power of superintendence is vested with this Court, upon perusal of the entire facts, I am inclined to dispose of the instant WP(227) and hereby set aside the order dated 16-06-2015 passed in Misc. Civil Appeal No.33/2014 and also set aside the order dated 18-09-2012 passed by the trial Court in Civil Suit No.343/12. However, respondents 1 and 2 may raise issues before the appropriate forum in appropriate proceeding under the appropriate provisions of law. With this, the petition succeeds and the same is hereby allowed.

11. No order as to cost.

Sd/-  
(Chandra Bhushan Bajpai)  
JUDGE