

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 612 of 2016

1. Rajesh Battra S/o Late Nand Lal Battra, Aged About 40 Years R/o Behind Of Yellow Building, Kumhar Para Road, Fafadeh, Raipur, Tahsil And District Raipur (Chhattisgarh)

---- Petitioner

Versus

1. Swaran Pal Singh Chawla S/o Mangat Singh Chawla, R/o M. N. D./ 103,/c/o M. R. Verma, Sector 4, Near Planet Jim, Behind Of Yashoda Children Hospital, Devener Nagar, Raipur, Tahsil And District Raipur (Chhattisgarh)
2. State Of Chhattisgarh, Through Collector, Raipur Tahsil And District Raipur (Chhattisgarh)

---- Respondent

For Petitioner:

Shri Neeraj Choubey, Advocate

For Respondent No.2:

Shri Vivek Sharma, Govt. Advocate.

Hon'ble Shri Justice Pritinker Diwaker

Order On Board By

24/10/2016

1. Challenge in this petition is to the order dated 31.8.2016 passed by the 3rd Additional District Judge, Raipur in Misc. Civil Appeal No.5/2016 affirming the order dated 12.1.2016 passed by the 12th Civil Judge Class-II, Raipur in Civil Suit No.163A/15 dismissing the application filed by the petitioner herein under Order 39 Rules 1 & 2 of the Code of Civil Procedure, 1908 (for short 'CPC').
2. Facts of the case, in brief, are that the plaintiff/petitioner filed a suit for possession and permanent injunction against the defendant stating therein that the plaintiff is the owner and in possession of land bearing Khasra No.249/7, area 0.101 acres, situate at P.H. No.110/40, village Aamaseoni,

Raipur. It has been further stated that the defendant has encroached upon the ownership land of plaintiff and started raising construction of a road/boundary wall over it. Along with this application, the plaintiff/petitioner has also filed an application under Order 39 Rule 1 & 2 CPC seeking an ad-interim injunction restraining the defendant from raising further construction over the plaintiff's land and interfering with his peaceful possession and enjoyment. The trial court after hearing the parties in the matter rejected the said application on the ground that the plaintiff failed to show prima facie case for the grant of temporary injunction and as such the question of balance of convenience and irreparable loss did not arise for consideration. Appeal preferred against the said order has also met the same fate of dismissal vide order impugned.

3. Learned counsel for the petitioner submits that though all the three ingredients for grant of temporary injunction i.e. prima facie case, balance of inconvenience and irreparable loss, lies in favour of the plaintiff but both the Courts below have denied temporary injunction to the petitioner on unsustainable grounds.
4. On the other hand, supporting the impugned order it has been argued by counsel for the respondent that the order impugned is in accordance with law.
5. I have heard learned counsel for the parties and perused the impugned orders and other documents.
6. The trial Court after hearing the parties in the matter, appreciating the evidence brought on record and discussing the ingredients of Order 39 Rule 1 & 2 CPC, vide order dated 12.1.2016 came to the conclusion that there is no prima facie case in favour of the plaintiff because the relief as claimed by the plaintiff has already been granted to him by the revenue court vide order dated 25.4.2015 passed in Revenue Case No.2/A-

70/2014-15. The trial Court has further held that the question of balance of convenience was also not in favour of the plaintiff, nor it could be said that the plaintiff would be put to irreparable injury on account of not granting the injunction. Accordingly, the injunction application was rejected. It is, however, made clear by the trial Court that any observation made while rejecting the application for grant of a temporary injunction shall not affect the merits of the case itself.

The lower appellate Court considering the materials placed on record on behalf of the parties and placing reliance on various judgments of the Hon'ble Supreme Court, also came to hold that the balance of convenience is not in favour of the plaintiff and if the temporary injunction is not granted irreparable injury will not be caused to the plaintiff. He consequently affirmed the order of the trial Court and dismissed the appeal. It has also been held by the appellate Court that if the plaintiff has a good case and finally the suit is decreed in his favour, any structure raised in the property in question would automatically be subjected to demolition etc.

7. Thus, considering the fact that the equally efficacious relief has already been obtained by plaintiff/petitioner in a revenue proceedings instituted by the plaintiff/petitioner himself, this Court is of the view that the trial Court has not committed any error in rejecting the application of the plaintiff/petitioner under Order 39 Rules 1 & 2 CPC, subsequently affirmed by the lower appellate Court vide order impugned, requiring interference by this Court in exercise of supervisory jurisdiction under Article 227 of the Constitution.
8. In the result, the petition being devoid of any substance is liable to be dismissed and it is dismissed as such.

Sd/-
(Pritinker Diwaker)
Judge