

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 162 of 2017

1. Shiv Kumar Sahu S/o Late M. L. Sahu, Aged About 48 Years Ekta Nagar, Pahari Chowk, Gudiyari, Distt. Raipur Mobile & Email- NA

---- **Petitioner**
plaintiff

Versus

1. Smt. Hanshaben W/o Chagan Lal Patel, Vishranti Tower, Fafadih, Raipur (Chhattisgarh)
2. State Of Chhattisgarh, Through Collector, Raipur (Chhattisgarh)
3. Tahsildar, Raipur (Chhattisgarh)
4. Smt. Hema Bai Wd/o Harilal, Aged About 70 Years
5. Parvati D/o Bhaklu Aged About 64 Years
6. Mukesh Janghel, Aged About 24 Years
7. Yogesh Janghel, Aged About 25 Years
6 and 7 are S/o Ghanshyam Janghel,
8. Ku. Sujata Janghel, Aged About 25 Years
9. Bharti Janghel Aged About 23 Years
8 and 9 are D/o Ghanshyam Janghel,
10. Sumitra Wd/o. Ghanshyam Janghel, Aged About 48 Years
4 to 10 are R/o Lodhipara, Raipur Chhattisgarh.

---- **Respondent**
defendants

For Petitioner : Shri Raja Sharma, Advocate.
For Respondent/State : Shri Y.S. Thakur, Addl. A.G.

Hon'ble The Acting Chief Justice

Order On Board

06/03/2017

With the consent of the parties, the matter is heard finally.

02. The petitioner/plaintiff Shiv Kumar Sahu filed a suit for declaration and permanent injunction, *inter alia*, stating that he is in possession of the land in question which was purchased by him vide sale deed dated 21.9.2004 from Smt. Hemabai. In revenue proceedings initiated by the

plaintiff, an order was passed by the Tehsildar/respondent No.3 for recording his name, however, compliance of the said order was not allegedly made by the Halka Patwari. Further case of the plaintiff is that defendant No.1 filed an application in respect of the same land for demarcation, to which an objection was filed by the plaintiff. According to the plaintiff, the subsequent sale deed in favour of defendant No.1 is illegal and not binding on the plaintiff. Along with the plaint, the plaintiff has also filed an application under Order 39 Rule 1 & 2 of CPC praying that illegal demarcation proceedings be stayed.

03. The above application was duly contested by the defendants and vide order dated 4.5.2016 the trial Court rejected the said application holding that the land which is being demarcated by defendant No.1 was in fact purchased by her and appears to be quite different from the suit land. As such, all the three elements governing the law of temporary injunction i.e. prima facie case, balance of convenience and causing of irreparable loss are not in favour of the plaintiff entitling him for grant of temporary injunction. The said order was challenged by the plaintiff before the appellate Court, however, the appeal also came to be dismissed affirming the findings recorded by the trial Court vide impugned order dated 3.1.2017.

04. Heard learned counsel for the parties and perused the material on record.

05. From perusal of the order of the trial Court, it appears that after considering all the relevant aspects of the case the trial Court has recorded a finding that there is neither any prima facie case nor balance of convenience in favour of the plaintiff and also no irreparable

loss is going to be caused to him if the demarcation proceedings are not stayed. The appellate Court while dismissing the appeal of the plaintiff has also observed that mere initiation of demarcation proceedings does not affect the right of the party as the aggrieved party can very well take part in those proceedings, which are independent in nature, and put forth his case. It has further been observed by the appellate Court that the plaintiff has failed to establish that if the proceedings are not stayed, he is likely to suffer such a loss which could not be compensated in terms of money. This Court finds no illegality or perversity in the concurrent findings recorded by the Courts below warranting interference by this Court in exercise of jurisdiction under Article 227 of the Constitution of India. Such power is to be exercised sparingly and only in appropriate cases where the judicial conscience of the Court dictates it to act lest a gross failure of justice or grave injustice should occasion. However, in the present case no prejudice is going to be caused to the petitioner/plaintiff or miscarriage of justice would be caused by refusing to grant temporary injunction to him.

06. In the result, the petition being bereft of any substance is liable to be dismissed *in limine* and is, accordingly, dismissed. However, the trial Court is directed to make all endeavour for early disposal of the suit.

Sd/

(Pritinker Diwaker)
Ag. Chief Justice