

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MA No. 43 of 2017**

1. Smt. Chameli Bai W/o Deen Bandhu Nishad, Aged About 30 Years Sarpanch, Village Panchayat Sipkonha, Tahsil Patan, District Durg, Chhattisgarh(Defendant No.6)
2. Ishwar Chand Banjare S/o Puranik Lal Banjare, Aged About 30 Years Upsarpanch, Village Panchayat Sipkonha, Tahsil Patan, District Durg, Chhattisgarh(Defendant No.8)

---- Appellants**Versus**

1. Dharam @ Suklal Banjare S/o Late Bisouha Banjare, Aged About 70 Years R/o Village Sipkonha, Tahsil Patan, District Durg, Chhattisgarh
2. Ganendra S/o Suklal Banjare, Aged About 45 Years R/o Village Sipkonha, Tahsil Patan, District Durg, Chhattisgarh
3. State Of Chhattisgarh, Through: Collector, Durg, District Durg, Chhattisgarh
4. Pritam Singh Chouhan, Nayab Tahsildar, Patan, District Durg, Chhattisgarh
5. Sadhu Ram Thakur, Halka Patwari, Village Sipkonha, Tahsil Patan, District Durg, Chhattisgarh
6. Revenue Inspector, Tahsil Patan, District Durg, Chhattisgarh
7. Shankar Tiwari, Revenue Inspector, East Bhilai-03, Tahsil Patan, District Durg, Chhattisgarh, At Present Revenue Inspector Durg, District Durg, Chhattisgarh
8. Panchayat Secretary, Village Sipkonha, Tahsil Patan, District Durg, Chhattisgarh
9. Heerachand Banjare, Kotwar, Village Sipkonha, Tahsil Patan, District Durg, Chhattisgarh(Plaintiffs)

---- Respondents

For Appellants : Shri N.K.Chatterjee appears under the authority of Shri Ajay Shrivastava, Advocate.

Hon'ble Shri Justice Sanjay Agrawal**Order On Board**

13/04/2017

1. Heard on admission.
2. By way of present miscellaneous appeal preferred under Order 43 Rule 1(r) of the Code of Civil Procedure, 1908 (hereinafter referred to as the Code of 1908 in short), the appellants are assailing the order dated 06.02.2017 passed by the 6th Additional District Judge, Durg, in Civil Suit No.120-A/2016, by which, the application for grant of temporary injunction filed by plaintiffs/respondents No. 1 & 2 has been allowed.
3. The undisputed facts of the case are that the plaintiffs/respondents No. 1 & 2 have instituted a suit for declaration of title, permanent injunction and for damages by submitting, inter alia, that they are in peaceful possession and cultivating the land in question for the last 60 to 70 years. It is pleaded in the plaint that the defendants are disturbing their peaceful possession, therefore, an application for issuance of temporary injunction has also been made, as required under Order 39 Rules 1 & 2 of the Code of 1908.
4. The, the defendants have contested the suit and have submitted their reply with regard to the aforesaid application for temporary injunction.
5. The trial Court, after considering the rival submissions of the parties, has come to the conclusion by considering the revenue papers that the plaintiffs are in possession and have been cultivating the land in question for the last 60 to 70 years. In consequence, the trial Court has found prima facie case in favour of the plaintiffs. By holding so, it observed further that balance of convenience also lies in favour of the plaintiff and if the temporary injunction has not been granted, then it would cause an irreparable loss to the plaintiffs. Accordingly, it was found by the trial Court that three essentials required for issuance of temporary injunction are thus satisfied. Consequently, the defendants have been restrained from interfering with the peaceful possession of the plaintiffs.
6. Being aggrieved by the aforesaid order, the instant miscellaneous appeal has been preferred only by defendant No. 6 & 8.
7. Mr. N.K. Chatterjee, the learned counsel for the appellants submits that the trial Court has erred in granting the temporary injunction in favour of the plaintiffs without proper considering their submissions.
8. I have considered the submission of the learned counsel for the appellants

and perused the order impugned along with annexures annexed with the appeal carefully.

9. From perusal of the order impugned, it is evident that the trial Court has considered all the documentary evidence, such as, revenue papers and then only came to its prima facie conclusion that the plaintiffs are in possession and have been cultivating the land in question continuously for the last 60 to 70 year. Since the plaintiffs are in continuous possession for over more than 60 to 70 years, therefore, balance of convenience and irreparable loss, as required for issuance of temporary injunction are also in their favour. I do not find that there is any infirmity in the order impugned passed by the trial Court in arriving at such a prima facie conclusion. Therefore, the order deserves to be and is hereby affirmed.

10. Consequently, this appeal, being devoid of merit, is liable to be and is hereby dismissed at the admission stage itself.

11. No order as to costs.

Sd/-

(Sanjay Agrawal)
Judge