

HIGH COURT OF CHHATTISGARH, BILASPUR

M.A. No. 54 of 2017

1. Laxmin Bai, D/o. Ranchhor Dewangan, Aged About 50 Years, R/o. Nayapara Ward Dhamtari, Tahsil & District Dhamtari, Chhattisgarh
2. Bhura Gouli, D/o. Shri Kandanna Gouli, Aged About 65 Years, R/o. Hotel Ratnabaandha Chowk, Dhamtari, Tahsil Dhamtari, District Dhamtari, Chhattisgarh

.....(Defendants)

---- Appellants

Versus

Firdaus Jahan Khan, S/o. Late Samad Khan Musalman, Aged About 40 Years, Occupation Teacher, R/o. Dhobi Chowk, Risaipara Ward Dhamtari, Tahsil & District Dhamtari, Chhattisgarh

.....(Plaintiff)

---- Respondent

For Appellants :- Mr. P.P.Sahu with Mr. Rajkumar Pali, Advocates

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

09.05.2017

Heard

1. The appeal is against the order dated 22.03.2017 whereby an application under Section 114 of C.P.C. filed by the appellants is dismissed.
2. Perusal of the order would show that one Firdous Jahan Khan has filed a Civil Suit for declaration and permanent injunction before the trial Court, which was numbered as Civil Suit No.8A/2015. In such Civil Suit, an application was filed under Order 39 Rule 1 & 2 read with Section 151 of C.P.C. The said application was adjudicated on 06.09.2016 and interim injunction was passed in favour of the plaintiff/respondent herein by holding that *prima facie* case, balance of convenience and irreparable loss exists in favour of the plaintiff. It was also held that the plaintiff is in possession of

the suit property i.e. Plot No.229 recorded in sheet No.21-C of the Nazul of Ramsagar Para Ward, Dhamtari. After passing of such order on 06.09.2016 instead of filing appeal, an application for review was filed under Section 114 of C.P.C. It was stated that the defendants against whom the injunction was filed is in possession of the said land, which was dismissed.

3. Learned counsel for the appellants would submit that as per the order passed by the Court of Additional District Judge, Dhamtari, in Civil Appeal No.10/2002 filed as Annexure A-7, the respondents were held to be in possession of the suit property on which the injunction has been passed. Therefore, since such document could not be placed before the Court earlier, as such, the review application was filed, which was dismissed in summarily without considering the same, therefore, the same is illegal.
4. Perused the order dated 22.03.2017 whereby an application under Section 114 of C.P.C. has been dismissed and also perused the order dated 11.02.2003 passed in Civil Appeal No.10/2002. Perusal of the order of civil appeal would show that the property *prima facie* appears to be different from that of the property which is the subject matter in the Civil Suit bearing No.8A/2015, which is pending. *Prima facie*, it appears that the earlier appeal pertains to an ejectment suit of a shop whereas the recent filed suit shows that the suit property is a Nazul land, which was purchased by the respondent from Shyama Bai Dewangan by a registered sale deed on 23.11.2013 and permission was obtained to raise superstructure on that. Therefore, the property which was subject matter of earlier suit cannot be held to be one & same in the subsequent suit and it can be ascertained when the parties lead evidence in the subject. The appellants would be at liberty to

demonstrate the fact that the appellants are in possession of the suit property on the basis of their evidence. Presently, *prima facie* facts appears to be otherwise.

5. In view of the above, I do not find any illegality or irregularity in the order passed by the learned Court below and accordingly, the appeal is dismissed at the admission stage itself.

Ashok

Sd/-
(Goutam Bhaduri)
Judge