

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (Art. 227) No.268 of 2016

G. Rajan, S/o Late Shri Gopalan Nair, aged about 55 years, R/o G
Pocket - 43 / D, Maroda Sector, Bhilai, Tah. and Distt. Durg (C.G.)
(Defendant No.1)
---- Petitioner

Versus

1. M.S. Rajkumar. S/o Shri S. Menual Raj, aged about 45 years, R/o
M.I.G. 2 / 179, Hudco Amdi Nagar, Bhilai, Distt. Durg (C.G.)
(Plaintiff)
2. State of Chhattisgarh, Through the Collector, Durg, District Office
Durg (C.G.)
(Defendant No.2)
---- Respondents

For Petitioner:	Mr. Vipin Tiwari, Advocate.
For Respondent No.1:	Mr. Uttam Pandey, Advocate.
For Respondent No.2/State: -	Mr. Avinash Singh, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Order On Board

12/01/2017

1. Heard.
2. Present petition under Article 227 of the Constitution of India has
been filed assailing the order dated 22-1-2015 passed by the 1st
Additional District Judge, Durg in Misc. Civil Appeal No.4/2013.
The said miscellaneous appeal was preferred against the order
dated 2-5-2013 passed by the 1st Civil Judge Class-I, Durg in Civil
Suit No.44-A/2013, whereby the trial Court has rejected the
application under Order 39 Rules 1 and 2 read with Section 151 of
the CPC filed along with the said suit which was instituted seeking
a relief of declaration of title as well as grant of permanent
injunction.

3. Learned counsel for the petitioner assailing the order of the lower appellate Court submits that the order of the lower appellate Court is bad in law and the Court below has failed to appreciate the fact that the suit itself of the plaintiff was not maintainable before the Court below. According to learned counsel for the petitioner, the plaintiff in the instant case i.e. respondent No.1 had instituted a suit for declaration purely on the ground of adverse possession. This, according to learned counsel for the petitioner, is not sustainable. According to learned counsel for the petitioner plea of adverse possession can be taken by respondent No.1 / plaintiff in defence but cannot be a ground for the plaintiff to seek a relief of declaration. Learned counsel further submits that it is a case where there are material suppression of facts made at the behest of respondent No.1 / plaintiff while obtaining the order passed by the lower appellate Court on 22-1-2015. He also submits that there was only an agreement to sale between the petitioner, the seller of the suit property, and respondent No.1, the purchaser, and that the sale was not finalized and the sale deed was not registered in the name of respondent No.1 and the property still lies in the name of the petitioner and therefore in the given facts, the Court below could not have passed such an interim order. Learned counsel also submits that even if the contention of counsel for respondent No.1 is accepted, the agreement to sale was agreed in respect of a suit property of 600 sq.ft. over which the restaurant namely Surya Restaurant situates, but the claim of the plaintiff by way of suit is for an area of 1,624 sq.ft. which is totally without any basis and authority and therefore also the Court below could not have passed the interim order.

4. Opposing the petition, Mr. Uttam Pandey, learned counsel for respondent No.1/plaintiff, submits that, it is a case where in fact it is the present petitioner who has suppressed material facts from this Court. According to Mr. Pandey, in respect of the same suit property, the petitioner herein had earlier filed a civil suit before the Court below seeking possession over the suit property which was registered as Civil Suit No.65-A/2007 and the said suit has been finally dismissed on 25-6-2010. It is also contended by Mr. Pandey that the said rejection of the suit is already under challenge before the High Court way of first appeal i.e. F.A. No.101/2010. He further submits that in case if any relief ought to have been sought, the petitioner should have moved an appropriate application in the said appeal. It was further submitted by Mr. Pandey that on the ground of the first appeal being pending before the High Court, the petitioner herein is avoiding filing of written statement before the trial Court till date though the suit was instituted in the year 2013. He also submits that it is a case where the plaintiff had given the entire sale consideration to the present petitioner, but because of the fact that the petitioner had initially taken loan for the purpose of purchasing the suit property, the original documents of the suit property is with the bank and it is for this reason that the registration of the property could not be done. Meanwhile, it is also submitted that there is also some dispute in respect of the petitioner's not disclosing in respect of the pending loan against the suit property against the present petitioner and when it came to the notice of the plaintiff/respondent No.1, he has also cleared the entire amount outstanding at the bank level and it is only

thereafter that the suit was filed by the plaintiff. Learned counsel for respondent No.1 thus, prayed for rejection of the present petition on the ground that the order passed by the Court below is a well speaking order giving reasons for passing of the injunction order.

5. Having heard the rival contentions put forth by either side and on perusal of the record what clearly comes out from the pleadings of the parties is that undoubtedly, respondent No.1, in the instant case, is in possession of the suit property. It is also admitted that there was an agreement to sale entered into between the petitioner / defendant No.1 and the plaintiff / respondent No.1 and that the petitioner has also received admittedly, some sale consideration, though according to the plaintiff, the entire sale consideration has been paid to the petitioner. Secondly, it is also reflected from the proceedings drawn that the order of the lower appellate Court was passed on 22-1-2015 and the present writ petition has been filed after more than one year and four months i.e. in April, 2016. No proper explanation or justification has been given by the petitioner for not filing the petition in time for challenging the impugned order. Further, it is also reflected that the lower appellate Court had taken into consideration the entire factual matrix of the case and have only ordered for maintaining of the status quo in respect of the suit property so far as the possession of respondent No.1 is concerned, over the suit property and have restrained the petitioner from interfering with the possession of respondent No.1 over the suit property.

6. This Court having considered the contentions of either side and

on perusal of the record does not find any illegality or infirmity on the part of the lower appellate Court while passing the same order. The matter is yet to be adjudicated upon on its merits and thereafter, the contentions that are being raised by the petitioner would be thrashed out on the basis of the pleadings being placed before the court and the evidence being brought on record during the course of the proceedings and thereafter, it would be finally decided so far as whether the suit would be maintainable and whether respondent No.1 / plaintiff is entitled for any relief or not. At this juncture, when admittedly, the possession is with respondent No.1 and the agreement to sale and part consideration of the sale deed is not in dispute, this Court is of the opinion that the order passed by the Court below does not warrant any interference and petition thus, suffers from merit and accordingly, it is dismissed.

7. At this stage, learned counsel for the petitioner makes a request for expeditious disposal of the suit. It has been informed by learned counsel for respondent No.1 that the petitioner himself has not filed written statement till date. It is directed that the petitioner shall promptly file written statement and shall render full cooperation in the final disposal of the matter and as prayed by the petitioner, the Court shall make all efforts for an expeditious trial.

8. No order as to costs.

Sd/-
(P. Sam Koshy)
Judge