

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (227) No.703 of 2017

Radheshyam Gupta, aged about 70 years, son of late Munni Lal Gupta, R/o Village Madhaura, Tahsil Sonhat, District Korea. Since died through Legal Heirs.

1. Smt. Saraswati Devi, widow of late Radheshyam Gupta, aged about 65 years.
2. Anil Kumar Gupta, aged about 42 years, son of late Radheshyam Gupta.
3. Kailash Chandra Gupta, aged about 36 years.
4. Vijay Kumar Gupta, aged about 36 years, son of late Radheshyam Gupta.
5. Sanjay Kumar Gupta, aged about 32 years, son of late Radheshyam Gupta.

All are resident of Village Madhaura, Tahsil Sonhat, District Korea (CG).

---- Petitioners

Versus

1. Vihshwanath Prasad Gupta, aged about 62 years, son of late Dhaneshwar Prasad Gupta, resident of village Sundarpur, Post Katgondi, Tahsil Sonhat, District Korea (CG).
2. Sudama Prasad Gupta, aged about 47 years, son of late Dhaneshwar Prasad Gupta, resident of Village Sundarpur, Post Katgondi, Tahsil Sonhat, District Korea (CG). Presently resided at Tongpal, District Korapur (Odisha).
3. State of Chhattisgarh, through the District Collector, Korea (CG), Head Quarter Baikunthpur, District Korea (CG).

--- Respondents

For Petitioners : Mr. Pushpendra Kumar Patel, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal
Order On Board

26/09/2017

(1) In a suit filed by the plaintiffs/petitioners against the

respondents/defendants for declaration of title, confirmation of possession and permanent injunction before the trial Court, they have filed an application under Order 39 Rule 1 & 2 of CPC for grant of temporary injunction. That application has been rejected by the trial Court by order dated 05.01.2016 on the ground that though the plaintiffs have prima-facie case, but held that injunction against co-sharer cannot be granted, which has been upheld by the first appellate court, against which this writ petition under Article 227 of the Constitution of India has been filed by the petitioners/plaintiffs herein.

(2) Learned counsel appearing for the petitioners/plaintiffs would submit that though the trial Court after having held that the petitioners/plaintiffs have prima-facie case, but dismissed the application for grant of temporary injunction, which has been upheld by the first appellate Court and as such, the finding recorded by both the courts below is perverse and contrary to law.

(3) After hearing learned counsel appearing for the petitioners/plaintiffs, I do not find any illegality in concurrent finding recorded by two courts below as the suit property is jointly recorded in the name of plaintiffs and defendant No.1 and therefore both the courts below are justified in not issuing temporary injunction in favour of plaintiffs/petitioners. However, considering the fact that the suit was instituted on 09.12.2011, the trial Court is directed to expedite the trial of the suit and conclude the same preferably within a period of six months from the date of receipt of certified copy of this order.

(4) With the aforesaid observation, the writ petition stands finally disposed of. No order as to cost(s).

(5) A copy of this order be sent to the trial Court for information and needful action.

Sd/-

(Sanjay K. Agrawal)
Judge

L/-