

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 120 of 2017

Loknath S/o Late Ramadhin Sahu, Aged About 50 Years R/o Near Shiv Mandir,
Kelabadi Durg, Tahsil And District Durg (Chhattisgarh)

---- Petitioner

Versus

Smt. Chandrakanta W/o Suresh Banchor, Aged About 49 Years R/o Qtr. No. 07/ A
C, Pocket Maroda Sector, Bhilai, Tahsil And District Durg (Chhattisgarh)

---- Respondent

Shri A.K. Prasad, counsel for the petitioner/s.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

14/02/2017

Heard.

This petition, under Article 227 of the Constitution of India, is preferred against order dated 30/11/2016 by which, the petitioner's appeal against grant of injunction in favour of the plaintiff has been dismissed and order of injunction has been affirmed.

2. Learned counsel for the petitioner argued that the Court below, while granting injunction has transgressed the jurisdictional limits inasmuch as the injunction has been granted on mere asking ignoring that there is a demarcation report which favours the defendant. It is further submitted that even while granting injunction restraining the defendants in interfering with the possession and construction, appropriate conditions ought to be imposed on the plaintiff so that in the event, plaintiff loses claim, defendant's right over the land may not be adversely affected.

3. I have gone through the order passed by the Court below. In order to hold in favour of the plaintiff, the Court below examined the pleadings, sale deeds, details therein and various documents filed. The Court below granted injunction in

favour of the plaintiff after going through the records that there appears to be dispute with regard to allegations of encroachment on plaintiff's land by the defendant. This is essentially an issue of fact. The Court below having examined the records, I do not find that there is any jurisdictional illegality committed in granting injunction to the plaintiff particularly in view of the decision of the High Court of Madhya Pradesh in the case of **Munendra Kumar Dwivedi and others v. Ramji Tiwari and others, 1992 JLJ 293.**

4. At this stage, learned counsel for the petitioner submits that appropriate orders may be passed to save defendant's interest.

5. It would be open for the defendant to seek imposition of appropriate conditions like undertaking by the plaintiff that in the event of losing the claim, the plaintiff may be under obligation to remove the construction.

Except the liberty as aforesaid, I am not inclined to interfere with the impugned order. The petition is accordingly dismissed.

Sd/-
(Manindra Mohan Shrivastava)
Judge