

HIGH COURT OF CHHATTISGARH, BILASPUR**CONT No. 398 of 2015**

- Rajnarayan Ghore S/o Late Anand Ghore Aged About 30 Years R/o Dayalband Chowk, Main Road, Juna Bilaspur, P. S. City Kotwali, Civil And Revenue District Bilaspur, Chhattisgarh (Respondent No. 6)

----- Petitioner**Versus**

1. S. P. Vaidya, Sub Divisional Magistrate (City), Bilaspur, District Bilaspur, Chhattisgarh
2. Prakash Kori, Tahsildar, Bilaspur, District Bilaspur, Chhattisgarh
3. Narendra Banjare, Naib Tahsildar, Bilaspur, District Bilaspur, Chhattisgarh
4. Ishaq Xalxo, Station House Officer, Police Station City Kotwali, Bilaspur, District Bilaspur, Chhattisgarh (Contemnors)

----- Respondent**And****MA No. 24 Of 2016**

- Kishore Ghore S/o Horilal Ghore, Aged About 50 Years R/o Dayalband Chowk, Main Road, Juna Bilaspur, Distt. Bilaspur, Chhattisgarh(Defendant)

----- Petitioner**Vs**

1. Smt. Dashoda Bai W/o Late Shri Chandraprakash Ghore, Aged About 73 Years R/o Dayalband Chowk, Main Road, Juna Bilaspur, Distt. Bilaspur, Chhattisgarh
2. Smt. Sharda Ghore W/o Late Shri Anand Ghore, Aged About 51 Years R/o Dayalband Chowk, Main Road, Juna Bilaspur, Distt. Bilaspur, Chhattisgarh
3. Ramnarayan Ghore S/o Late Shri Anand Ghore, Aged About 33 Years R/o Dayalband Chowk, Main Road, Juna Bilaspur, Distt. Bilaspur, Chhattisgarh

4. Rajnarayan Ghore S/o Late Shri Anand Ghore, Aged About 30 Years R/o Dayalband Chowk, Main Road, Juna Bilaspur, Distt. Bilaspur, Chhattisgarh
5. Rishi Ghore S/o Late Shri Anand Ghore, Aged About 25 Years R/o Dayalband Chowk, Main Road, Juna Bilaspur, Distt. Bilaspur, Chhattisgarh(Plaintiffs)

---- Respondent

And

WPC No. 1303 Of 2015

- Smt. Padmini Ghore W/o Kishore Ghore Aged About 40 Years R/o. Dayalband, Main Road, Juna Bilaspur, P.S. City Kotwali, Bilaspur, Civil And Revenue District Bilaspur (Chhattisgarh)

---- Petitioner

Vs

1. State Of Chhattisgarh Through The District Magistrate, Bilaspur, District Bilaspur (Chhattisgarh)
2. Sub Divisional Magistrate (City), Bilaspur, District Bilaspur (Chhattisgarh)
3. Tahsildar, Bilaspur, District Bilaspur (Chhattisgarh)
4. Narendra Banjare Naib- Tahsildar, Bilaspur, District- Bilaspur (Chhattisgarh)
5. Station House Officer, Police, Station- City Kotwali, Bilaspur, District Bilaspur (Chhattisgarh)
6. Rajnarayan Ghore S/o Late Shri Anand Ghore Aged About 30 Years R/o. Dayalband Chowk, Main Road, Juna Bilaspur, P.S. City Kotwali, Civil And Revenue District Bilaspur (Chhattisgarh)

---- Respondent

And

CRMP No. 1208 Of 2015

- Rajnarayan Ghore S/o Late Anand Ghore Aged About 40 Years R/o Dayalband Chowk, Main Road, Juna Bilaspur, I D B I Bank A T M, Juna Bilaspur, Tahsil And Distt. Bilaspur Chhattisgarh.

---- Petitioner

Vs

- Kishor Ghore S/o Late Hori Lal Ghore Aged About 51 Years R/o Dayalband Chowk, Main Road, Juna Bilaspur, Tahsil And Distt. Bilaspur Chhattisgarh.

----- Respondent

For Pet. in WP & MA : Shri Awadh Tripathi with Shri H.K. Sharma, Adv.
For Petitioner in CONT : Shri Parag Kotecha, Advocate.
For App. in CRMP & Respondents in MA : Shri Ravindra Agrawal, Adv.
For Respondent/State : Shri Ramakant Mishra, Deputy AG.
For Respondent No.4 in WP : Shri Soumya Rai, Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

10/02/2017

1. WPC No. 1303 of 2015 is the main petition amongst the present batch of cases wherein Smt. Padmini Ghore, wife of Kishore Ghore would pray for a direction to respondent No.2 Sub Divisional Magistrate (City) Bilaspur to stop further demolition of duly constructed house of the petitioner with further direction to respondents 2 to 5 to restore the said house in the condition in which it was situate prior to demolition.
2. Contempt Petition No. 398 of 2015 has been preferred alleging violation of the interim order passed in WPC No.1303/2015. MA No. 24 of 2016 has been preferred by Kishore Ghore challenging the order of remand passed by the Additional District Judge remitting the suit preferred by Chandra Prakash Ghore, now represented by his legal heirs, for fresh decision, upon allowing the application under Order 41 Rule 27 CPC and by permitting

the parties to amend the plaint. In the said suit, the plaintiff had prayed for issuance of permanent and mandatory injunction as also damages. When the suit was dismissed by the civil Court on 16.1.2015 but before First Appeal was allowed on 6.2.2016 Rajnarayan Ghore moved before the Sub Divisional Magistrate under Section 133 CrPC for removal of public nuisance which Kishore Ghore had created by obstructing the drain flowing in front of the house of Rajnarayan Ghore. The said application was allowed on 22.6.2015 whereagainst the revision application was preferred by Kishore Ghore before the Sessions Court which has been allowed on 28.11.2015 by the Court of 4th ASJ, Bilaspur. Against the said order of ASJ, Rajnarayan Ghore has preferred CrMP No.1208/2015.

3. All the 4 proceedings relate to dispute with regard to patch of land ad measuring 3x15 feet. Rajnarayan Ghore claims that the drain water goes out through this patch of land whereas Kishore Ghore would claim that earlier drain water was flowing from the back side through the drain situated on the land of Krishna Bihari Ghore. Kishore Ghore has taken a stand that in the guise of order under Section 133 of the CrPC a part of his building has been demolished.
4. I have heard learned counsel for the parties at length and perused the papers.
5. A routine dispute between the neighbours as has been happening in our country since time immemorial concerning common wall or

drain has brought the parties before this Court wherein the disputed questions of fact are involved. Indisputably, the suit preferred by Rajnarayan Ghore is still pending consideration after the remand order passed by the ADJ on 6.2.2016. The writ petition was preferred when despite dismissal of the suit the SDM passed an order under Section 133 of the CrPC and like a bolt from blue the petitioner found JCB machine in front of her house after the application under Section 133 CrPC preferred by Rajnarayan Ghore was allowed.

6. Be that as it may, at present the said order under Section 133 CrPC has already been set aside by the Sessions Court and the suit is pending consideration. On the one hand, Kishore Ghore is raising a plea of non-maintainability of the suit and other proceedings initiated by Rajnarayan Ghore on the ground that the earlier suit preferred either by Krishna Bihari Ghore or the present suit of Rajnarayan Ghore has already been dismissed but on the other hand Rajnarayan Ghore and Krishna Bihari Ghore have come up with a plea that the building erected by Kishore Ghore is contrary to the municipal bylaws and the drain situated on the land belonging to Rajnarayan Ghore has been blocked causing public nuisance. These are not the matters to be seen by the writ Court. They involve such questions which can only be adjudicated after trial wherein the parties would adduce oral evidence and the trial Court itself would be able to ascertain the exact position on the spot by appointing Commissioner.

7. In **Shalini Shyam Shetty and Another Vs. Rajendra Shankar Patil** {(2010) 8 SCC 329}, the Supreme Court has held thus in paras-58 to 63 & 65:-

“58. In the instant case none of the above features are present, even then a writ petition was filed in a pure dispute between landlord and tenant and where the only respondent is the plaintiff landlord. Therefore, the High Court erred by entertaining the writ petition. However, the petition was dismissed on merits by a rather cryptic order.

59. It has repeatedly been held by this Court that a proceeding under Article 226 of the Constitution is not the appropriate forum for adjudication of property disputes or disputes relating to title. In **Mohd. Hanif Vs. State of Assam** {(1969) 2 SCC 782} a three-Judge Bench of this Court, explaining the general principles governing writ jurisdiction under Article 226, held that this jurisdiction is extraordinary in nature and is not meant for declaring the private rights of the parties. (See SCC p.786, para 5 of the Report.) In coming to the aforesaid conclusion in **Hanif** (Supra), this Court referred to the Constitution Bench decision in **T.C. Basappa Vs. T. Nagappa** {AIR 1954 SC 440}.

60. Following the aforesaid principles in **Hanif** (Supra), this Court in **Hindustan Steel Ltd. Vs. Kalyani Banerjee** {(1973) 1 SCC 273} held that serious questions about title and possession of land cannot be dealt with by writ court. In formulating these principles in **Kalyani Banerjee** (Supra), this Court relied on the Constitution Bench decision in **Sohan Lal Vs. Union of India** {AIR 1957 SC 529} (see SCC p.282, para 16 of the Report).

61. Again in **State of Rajasthan Vs. Bhawani Singh** {1993 Supp (1) SCC 306} this Court held that a writ petition is not the appropriate forum to declare a person's title to property. (See SCC p.309, para 7 of the Report.)

62. Subsequently, again in **Mohan Pandey Vs. Usha Rani Rajgaria** {(1992) 4 SCC 61}, this Court held that a regular suit is the appropriate remedy for deciding property disputes between private

persons and remedy under Article 226 is not available to decide such disputes unless there is violation of some statutory duty on the part of a statutory authority. (See p.63, para 6 of the Report.)

63. Following the aforesaid ratio in **Mohan Pandey** (Supra), this Court again in **Prasanna Kumar Roy Karmakar Vs. State of W.B.** {(1996) 3 SCC 403}, held that in a dispute between the landlord and tenant, a tenant cannot be evicted from his possession by a writ court. Again in **P.R. Murlidharan Vs. Swami Dharmananda Theertha Padar** {(2006) 4 SCC 501}, this Court held that it would be an abuse of process to approach a writ court in connection with dispute on questions of title for deciding which the civil court is the appropriate forum.

65. We would like to make it clear that in view of the law referred to above in cases of property rights and in disputes between private individuals writ court should not interfere unless there is any infraction of statute or it can be shown that a private individual is acting in collusion with a statutory authority.”

8. Although this Court has earlier passed an order on 15.9.2015 in WPC No.1303/2015 prima facie observing that the attempt has been made to open the drainage and in the name of opening drainage, the demolition has taken place which requires proper enquiry. The petitioner was also permitted to get the assessment of damages done through a Registered Engineer with regard to loss caused to the petitioner in demolition proceedings and the same may be submitted before the Court within four weeks. The said report has been submitted by the petitioner, however, that was only a prima facie finding without fastening liability on any of the respondents that they have taken law unto their own hands to demolish the building. Since Rajnarayan Ghore has come forward with a plea that apart from drain issue, the building itself

is constructed contrary to the municipal bylaws, it cannot be presumed at this stage that demolition was wholly improper or illegal. It is required to be adjudicated on the basis of evidence as to whether opening of drain was possible without demolition of part of structure, more-so when the other party asserts that a concrete beam was placed in the middle of the drain.

MA No. 24 Of 2016

9. This appeal has been preferred by Kishore Ghore challenging the order passed by the appellate Court to remand the matter for fresh consideration by the trial Court. This has occasioned on account of the first Appellate Court allowing the application under Order 41 Rule 27 CPC preferred by both the parties and the application under Order 6 Rule 17 preferred by Rajnarayan Ghore/plaintiff. It is to be seen that the trial Court, in its judgment and decree dated 16.1.2015, has declared that the plaintiff is the title holder of the subject land and the suit is not barred by limitation, however, the suit was dismissed for other reasons. In the meanwhile, the Writ Petition was preferred. While deciding the Writ Petition, this Court has already taken a view that jurisdiction under Article 226 of the Constitution of India is not appropriate remedy for deciding the dispute of this nature. Therefore, considering the entire fact situation of the case, the order of remand passed by the first Appellate Court in exercise of powers under Order 41 Rule 23 CPC appears to be just and proper. This Court is also of the opinion that to accord finality to

the litigation and taking benefit of the fact that the matter is still pending consideration before the Civil Court, it is necessary that all the issues pertaining to the present dispute should be decided by the civil Court in one go rather than leaving the parties to move 'N' number of applications before every other authority and keep on litigating for years together. However, it will remain open for both the parties to amend their respective pleadings to claim relief about drain and submit documents in support of their respective plea. The trial Court would be at liberty to issue Commission for adjudication of the dispute.

CRMP No. 1208 Of 2015

10.This petition has been preferred by Rajnarayan Ghore to challenge the order passed by the Sessions Court allowing the revision application of Kishore Ghore to hold that the present being a private dispute between the parties it does not amount to creation of public nuisance and jurisdiction under Section 133 of the CrPC is not available.

11.In view of the order in the preceding paragraphs while deciding WPC No.1303/2015 and MA No.24/2016, this Court would not take a different view of the matter than the one which has been taken by the Sessions Court. Therefore, this petition also deserves to be dismissed.

CONT No. 398 of 2015

12.Shri Kotecha, learned counsel appearing for the petitioner

Rajnarayan Ghore in this petition would submit that this petition was preferred when the interim order was passed at the first instance, however, the situation has changed after the original interim order has been modified by this Court on 15.9.2015.

13. In view of the statement made, the Contempt Petition stands disposed of.

14. *Ex-consequenti*: WPC No.1303/2015 is disposed of. MA No. 24 of 2016 and CrMP No.1208/2015 are dismissed. Contempt Petition No. 398 of 2015 is disposed of.

Sd/-
Judge
(Prashant Kumar Mishra)

Barve