

HIGH COURT OF CHHATTISGARH, BILASPURMisc. Appeal No.95 of 2015

M/s Didwaniya Builders, Proprietor, Didwaniya Axim Private Limited, through its Director Shri Ashish Didwaniya, S/o Shri Sitaram Didwaniya (earlier represented by Shri Sitaram Didwaniya), aged about 32 years, R/o Choubey Colony, Raipur, Tahsil and District Raipur (C.G.), Civil & Revenue District Raipur.

---- Appellant
(Plaintiff)

Versus

Pt. Ravishankar Shukla University, Raipur (C.G.) through its Vice Chancellor, Pt. Ravishankar Shukla University, Raipur, District Raipur (C.G.)

---- Respondent
(Defendant)

For Appellant: Mr. B.P. Sharma and Mr. Sameer Uraon, Advocates.
For Respondent: Mr. Neeraj Choubey, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

30/01/2017

1. By the impugned order, the plaintiff's application under Order 39 Rules 1 and 2 of the CPC has been rejected by the trial Court finding no prima facie case and balance of convenience in favour of the plaintiff and further that the respondent University had already demolished the wall of the plaintiff and it has been further held that there is a dispute of identity of land between the parties against which this miscellaneous appeal under Order 43 Rule 1(r) of the CPC has been filed.
2. Mr. B.P. Sharma, learned counsel appearing for the appellant/plaintiff, would vehemently submit that the order passed by the trial Court rejecting the application for temporary injunction is prima facie illegal and contrary to record and therefore it is liable to be set aside.

3. Mr. Neeraj Choubey, learned counsel appearing for the respondent/defendant, would submit that over the suit land, a B.Ed. College has already been constructed and therefore the appellant's remedy lies in seeking possession of the land in dispute and as such, no temporary injunction can be granted restraining construction and therefore the trial Court is absolutely justified in rejecting the application for temporary injunction.
4. I have heard learned counsel for the parties and also considered the rival submissions made therein.
5. The trial Court by its impugned order has rejected the application for temporary injunction holding that the defendant had already constructed B.Ed. College over the suit land and the plaintiff had already been dispossessed and remedy of the plaintiff lies in seeking possession of land and therefore the plaintiff has no prima facie case for grant of temporary injunction.
6. It is well settled law that court of appeal should not interfere with the discretion exercised by the trial Court, as miscellaneous appeal is an appeal on principle under Order 43 Rule 1(r) of the CPC, unless the order granted by the trial Court is exercised arbitrarily, or capriciously or perversely (see paragraph 14 of **Wander Ltd. and another v. Antox India P. Ltd.**¹).
7. A careful perusal of the order would show that the trial Court has recorded a clear finding that there is a dispute of identity of land between the parties and the defendant University had already constructed a B.Ed. College on the land in dispute as such, no injunction can be granted restraining the construction. The finding

1 1990 (Supp) SCC 727

recorded by the trial Court is neither perverse nor contrary to record and therefore the trial Court is absolutely justified in rejecting the application in which I do not find any jurisdictional error. However, the trial Court shall resolve the dispute strictly in accordance with law without being influenced by any of the observations made by this Court in this order or by the trial Court in its previous order. Since the suit was filed on 23-7-2015, the same shall be concluded within a period of six months from the date of receipt of a copy of this order.

8. With the aforesaid observations, the miscellaneous appeal stands finally disposed of. No order as to costs.

Sd/-
(Sanjay K. Agrawal)
Judge