

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No. 643 of 2013

1. Khorbahara Singh Meshram S/o Bisahu Ram, Aged About 55 Years Caste Maithil Chhatri

2. Budhelal, S/o Bisahu Ram Meshram, Aged about 53 years, Caste Maithil Chhatri

R/o Village Beltikari, Post Surgi, PS Lalbagh, Tahsil and District Rajnandgaon (C.G.)

---- Petitioners

Versus

1. Dulaurin Bai W/o Late Bisahu Ram Aged About 50 Years Caste Maithil Chhatri, R/o Village Beltikari, Post Surgi, Tahsil And District Rajnandgaon (C.G.)

2. Deputy Registrar, Office of the Deputy Registrar, Near Tahsil Office Rajnandgaon, Chhattisgarh

3. State of Chhattisgarh, Through The Collector, District Rajnandgaon, Chhattisgarh

---- Respondents

For petitioners - Shri Basant Dewangan, Advocate.

For State- Shri Sangarsh Pandey, Dy.G.A.

For respondent No.1-Shri Aman Upadhyay, Advocate appears on behalf of Shri B.N. Nande, Advocate.

Hon'ble Shri Justice Goutam Bhaduri

Order

19/07/2018

Heard.

1. Instant petition is against the order dated 17/07/2013 passed in Misc. Civil Appeal No.06/2012 by the Additional Sessions Judge, Rajnandgaon under Order 43 Rule 1 of the CPC. By such order the Additional District Judge has affirmed the order passed by the Civil Judge Class-II whereby application for temporary injunction under Order 39 Rule 1 and 2 of CPC was dismissed.

2. Perusal of the order shows that a suit was filed by petitioners/plaintiffs Khorbahara Singh Meshram and Budhelal both son of Bisahu Ram against their mother Dulaurin Bai wife of late Bisahu Ram on

the ground that the suit land in question was owned by Bisahu Ram and during the ailment of Bisahu Ram by exerting pressure WILL was executed in favour of the wife but actually the land was demarcated and divided by metes and bounds in between the family members of the Bisahu Ram. It is further stated that since the respondent is ready to sell out the property as such injunction was prayed. Trial court as also the appellate court dismissed the application for injunction on the ground that no document have been shown to the fact that whether any efforts have made to sell the land or not in any case.

3. Learned counsel for the petitioner is unable to submit as to what is the fate of the actual civil suit whether has been actually decided or not till date. Perusal of the document would show that the order impugned was initially rejecting application under order 39 Rule 1 and 2 CPC was dismissed on 16/08/2012 in Civil Suit No.13-A/2012. Same was subject of appeal before the Additional District, Judge that too was dismissed on 17/07/2013. Both the court observed that the suit property devolved on the respondent by virtue of registered WILL. Therefore, at this stage this court is not inclined to enter into such finding of fact about authenticity of the WILL which would be subject to the final adjudication of the civil suit. It is not a case where the court should interfere in exercise of power under Article 227 of the Constitution of India.

4. Accordingly, the petition is dismissed. Parties shall be at liberty to raise their defence if suit is not already decided before the concerned court.

Sd/-

(Goutam Bhaduri)

JUDGE

