

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 173 of 2018**

1. Anish Jaicob S/o K. C. Jacob Aged About 41 Years
2. Anju Jacob D/o K. C. Jacob Aged About 42 Years
3. Aji Jacob S/o K. C. Jacob Aged About 35 Years

All three are by Caste - Christian R/o Near Balaji Temple , I T I Rampur
Korba District Korba Chhattisgarh

---- **Petitioners****Versus**

1. B.K. Shukla S/o D. K. Shukla Aged About 63 Years
2. Smt. Sarita Shukla W/o B . K. Shukla , Aged About 52 Years

Both are by Caste - Brahmin R/o Sidhdhi Vinayak , L I G - 82 Dr. Rajendra
Prasad Nagar Korba District Korba Chhattisgarh., District : Korba,
Chhattisgarh

3. State Of Chhattisgarh Through Collector , Korba District Korba
Chhattisgarh., District : Korba, Chhattisgarh
4. Rakesh Kumar S/o Krishna Dev Singh Aged About 40 Years Caste
Bhumihaar , R/o Housing Board Colony Rampur Korba District Korba
Chhattisgarh

---- **Respondents**

For Petitioners	:	Shri Sanjay Patel, Advocate
For Respondent No.3	:	Shri S.K. Mishra, PL for the State
For Respondent-Caveator :		Shri Ashutosh Shukla, Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****28/02/2018**

1. Heard.
2. The present petition is against the order dated 29.01.2018, whereby an
appeal preferred by the respondent was allowed by the Second Additional

District Judge, Korba, District Korba against the order of injunction passed by the Court of Civil Judge Class-II, Korba dated 19.05.2017.

3. Learned counsel for the petitioners would submit that the approach road to the plot of the petitioner passes through a land wherein the plaintiffs have tried to encroach upon and are closing the approach road to the land of the petitioner. He would further submit that initially the trial Court has granted injunction in favour of the petitioners, however, in the appeal the same was set aside without any sufficient reason.
4. The respondent counsel vehemently opposed the same and submits that survey/settlement was conducted in respect of the land, wherein it was not held to the land of the petitioners. He would further submit that the facts as has been recorded by the appellate Court would show that it has been found that the plaintiffs have tried to encroach upon the land held by the defendants and therefore, the order of the appellate Court is well merited which do not call for any interference.
5. I have perused the record and the order of the appellate Court. The appellate Court has recorded that according to the survey/settlement no road has been shown, instead it was found that the plaintiffs are trying to encroach upon the land of the defendants and have constructed over same part, therefore, subsequently demarcation report was carried out and it was found that the plaintiffs in fact have constructed the road over the land owned by the defendants.
6. Considering the primary finding of the appellate Court, at this stage, it would not be proper for this Court to interfere with the impugned order being a finding of fact and such finding prima facie are required to be established by evidence before the Court below. Taking into the nature of the finding which

has been recorded by the appellate Court, at this stage I am not inclined to interfere with such order by invoking powers vested under Article 227 of the Constitution of India.

7. Accordingly, the petition is dismissed. However, the trial Court is requested to expedite the trial as early as possible.

Sd/-

Goutam Bhaduri

Judge

Ashu