

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No. 250 of 2018

1. Ramesh Lal Bhagat S/o Hirji Bhai, Aged About 52 Years, Occupation Business, R/o Narayanpur, Tahsil Narayanpur District : Narayanpur, Chhattisgarh
 - 2(a) Abladas Wd/o Late Hardas, Aged About 65 Years.
 - 2(b) Shanker Das S/o Late Hardas, aged about 45 years.
 3. Ramesh Chandra S/o Musdiram, Caste Bramhan, Aged About 50 Years.
 4. Meena W/o Shanker Lal, Aged About 62 Years.
 5. Shashikala W/o Rameshwar, Aged About 40 Years.
 6. Mahesh Ram S/o Asharam Halba, Aged About 40 Years.
 7. Satai Bai W/o Sarju Ram, Caste Kalar, Aged About 60 Years.
 8. Sukhdev S/o Sarju Ram, Caste Kalar, Aged About 40 Years.
 9. Ravi Kumar S/o Shambhulal Gond, Aged About 40 Years.
- All are R/o Narayanpur, District Narayanpur Chhattisgarh.

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Versus

1. Manohar S/o Laxman Singh, Aged About 50 Years, R/o Narayanpur, Tahsil Narayanpur, District Narayanpur (C.G.)
2. State Of Chhattisgarh, Through Collector, Narayanpur, District Narayanpur (C.G.)

--Respondents

For petitioners- Shri T.K. Jha, Advocate.
For State- Smt. Astha Shukla, PL.

Hon'ble Shri Justice Goutam Bhaduri

Order

22/03/2018

Heard.

1. Instant petition is against the order dated 12/01/2018 against dismissal of an application filed under Order 41 Rule 5 of CPC in first appeal filed against the judgement and decree dated 29/03/2017.
2. Learned counsel for the petitioners would submit when judgement for declaration, possession and permanent injunction was passed, said judgement and decree was subject of challenge before the Additional District

Judge wherein an application for stay for delivery of the possession was moved under Order 41 Rule 5 of CPC which was rejected on the ground that execution proceeding has not been filed. Subsequently when the execution proceeding was filed application under Order 41 Rule 5 of CPC was repeated but the same was dismissed on the ground that judgement debtor has failed to prove that how he came in possession of the suit land. Therefore, he submits that if possession of decree has not been stayed substantial loss would be caused to the judgement debtor and finding of the court below of the Civil Judge, Class-I Narayanpur which is subject of challenge in first appeal will automatically be defeated.

3. Perused the order of the appellate court dated 25/07/2017, 7/11/2017 and 12/01/2018 also perused the record. Record would reveal that initially judgement and decree for declaration, possession and permanent injunction was passed by the Civil Judge Class-I, Narayanpur in Civil Suit No.1-A/2010 on 29/03/2017. Subsequently, when said judgement and decree was subject of appeal initially when application was filed under Order 41 Rule 5 of CPC to stay the operation of the judgement and decree same was dismissed on the ground that no execution is filed and is pending. Subsequently, when execution notice was received by the judgement debtor again application under Order 41 Rule 5 of CPC was repeated in the appeal, but the same was dismissed on the ground that judgement debtor has not shown how he is in possession. After perusal of the entire record, this court is of the opinion that order is completely misdirected. The trial court failed to appreciate the judgement and decree is under challenge wherein possession decree was passed the question of going back to appreciate the legality of possession in facts of this case do not arise. Learned court of Civil Judge has appreciated the fact about possession, therefore there was no occasion for the appellate court to go into interim finding of fact to brand the possession as illegal. The ratio as laid down in **AIR 2010 SC 296** in between **Kashi Math Samsthan & Anr. Vs. Srimad Sudhindra Thirtha Swamy & Anr.** in the instant case the

first appeal wherein appreciation of evidence and facts are also under challenge and the entire appeal if is ultimately decided in favour of the judgement debtor then in the circumstances during such intervening period if possession is not protected then entire filing of the first appeal will become infructuous. Consequently, order dated 12/01/2018 is set aside. It is directed that the petitioner judgement debtor shall not be dispossessed of the suit property in question till first appeal is finally decided on merit. Petitioner shall be obliged to furnish surety for a sum of Rs.25,000/-.

4. With such observation, the petition stands disposed off.

Sd/-

(Goutam Bhaduri)
JUDGE