

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M.A No.123 of 2017**

1. Bhagchand Lautre S/o Domaji Lautre, Aged About 55 Years R/o Shivanand Nagar, Near Akash Gas Godown, Gudhiyari, Tehsil And District Raipur, Chhattisgarh, Chhattisgarh
2. Smt. Lalita Lautre W/o Bhagchand Lautre, Aged About 48 Years R/o Shivanand Nagar, Near Akash Gas Godown, Gudhiyari, Tehsil And District Raipur, ChhattisgarhPlaintiffs, District : Raipur, Chhattisgarh

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1. A Madhawram S/o A Kamalnathan, Aged About 47 Years R/o Gudhiyari, Tehsil And District Raipur, Chhattisgarh, Office Address At Railway Canteen, Raipur, Tehsil And District Raipur, Chhattisgarh, Chhattisgarh
2. State Of Chhattisgarh, Through Collector Raipur, Distt. Raipur, ChhattisgarhDefendants, District : Raipur, Chhattisgarh

-----Respondents

For Appellants:	Shri Manoj Paranjpe and Shri Vikram Dixit, Advocates.
For Respondent No.1:	Ms. Aditi Singhvi, Advocate.
For Respondent No.2/State:	Shri Aditya Sharma, Panel Lawyer.

Single Bench: Hon'ble Shri Sanjay Agrawal, J
Order On Board

13.08.2018

1. This Miscellaneous Appeal has been preferred under Order 43 Rule 1(r) of the Code of Civil Procedure, 1908 (for short 'the CPC') questioning the order dated 05.12.2017 passed by the 1st Additional District Judge, Raipur in Civil Suit No.94-A/2016 by which the Plaintiffs' application for issuance of temporary injunction under order 39 Rules 1 & 2 of the CPC has been refused.
2. Shri Paranjpe, learned Counsel for the Appellants submits that

order impugned rejecting the application for issuance of temporary injunction without considering the materials available on record is apparently contrary to law. He submits that while relying upon the demarcation report, the Court below has committed an illegality in observing that no *prima facie* case lies in favour of the Plaintiffs.

3. On the other hand, Ms. Singhvi, learned Counsel for Respondent No.1, while supporting the order impugned, stated that the trial Court has rightly considered the said demarcation report which amply establishes the fact that the property purchased by the Plaintiffs by virtue of the registered deed of sale dated 28.04.2003 has already been constructed by him while a portion belonging to Defendant No.1, has been encroached by raising a boundary wall. As a consequence, the trial Court has rightly come to its *prima facie* conclusion that the three essential ingredients as required for issuance of temporary injunction are not in favour of the Plaintiffs.

4. I have heard learned Counsel for the parties and perused the entire relevant papers annexed with this Appeal carefully.

5. A suit for declaration of title and permanent injunction has been filed by the Plaintiffs/Appellants in respect of the land in question bearing Khasra No.74/7 admeasuring 900 sq.ft by submitting *inter alia* that by virtue of the registered deed of sale dated 28.04.2003, purported to have been executed by one Pushpa Kawle, he acquired valid right, title and interest upon it and after purchasing the same, constructed a house and boundary wall and started living peacefully. However, on 29.07.2006, Defendant No.1, with the help of 10-12 anti social elements, started demolishing the boundary wall and tried to dispossess him, therefore, he has been constrained to file a suit in the instant nature.

6. Along with the aforesaid claim, an application enumerated under Order 39 Rules 1 & 2 CPC while reiterating the aforesaid facts has been made. The said application has been contested by Defendant No.1 by alleging that Plaintiff himself has encroached his land by raising a boundary wall and in support of it, has submitted a demarcation report dated 14.07.2016 in order to establish the said facts. Perusal of the said demarcation report would show *prima facie* that the Plaintiffs have already raised a construction on his entire land i.e. 900 sq.ft as purchased from said Pushpa Kawle under the registered deed of sale dated 28.04.2003. The said demarcation report would show further that the Plaintiffs have raised the boundary wall in relation to the property which belongs to Defendant No.1. After considering this demarcation report and in absence of any cogent and reliable *prima facie* evidence produced by the Plaintiffs, the trial Court has rightly come to the conclusion that the Plaintiffs have failed to prove their *prima facie* case. Pertinently to be noted here further that while seeking the discretionary relief of injunction, the Plaintiff has suppressed the alleged demarcation report which was done in his presence. In such circumstances, the Plaintiff owing to suppression of alleged report is not entitled to get the interim relief of injunction.

7. In consequence, the Appeal being devoid of merits, is dismissed at admission stage itself. There shall be no order as to costs.

Sd/-
(Sanjay Agrawal)
JUDGE