

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 330 of 2018**

- Kishore Ghore S/o Late Shri Horilal Ghore, Aged About 46 Years R/o Dayalband Main Road, Juna Bilaspur, District Bilaspur Chhattisgarh

---- Petitioner**Versus**

1. Smt. Dasoda Ghore W/o Late Chandra Prakash Ghore, Aged About 70 Years .
2. Smt. Sharda Ghore, W/o Late Anand Ghore, Aged About 48 Years .
3. Ramnarayan Ghore, S/o Late Anand Ghore, Aged About 27 Years .
4. Rajnarayan Ghore, S/o Late Anand Ghore, Aged About 27 Years .
5. Rishi Ghore, S/o Late Anand Ghore, Aged About 22 Years .

All are R/o Dayalband Chowk, Main Road, Juna Bilaspur, District Bilaspur Chhattisgarh

---- Respondents

For Petitioner	:	Shri Awadh Tripathi, Advocate
For Respondents	:	Shri Ravindra Agrawal, Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****25/04/2018**

1. Heard.
2. The present petition is against the order dated 19.03.2018 passed by the 4th Additional District Judge, Bilaspur in Miscellaneous Appeal No.59/2017. By such order learned Court below has affirmed the order passed by the 3rd Civil Judge Class-II, Bilaspur, District Bilaspur (C.G.) in Civil Suit No.755A/2014 dated 15.12.2017 allowing the application under Order 39 Rule 1 & 2 CPC.

3. Learned counsel for the petitioner/defendant submits that learned Court below while allowing the application under Order 39 Rule 1 & 2 CPC has directed the defendants to make arrangement for drainage of the filthy water which is accumulated inside the house of the plaintiff. It is submitted that the same cannot be done by the defendant as the place of accumulation of drainage water is inside the house and it can only be cleared by the plaintiff himself. It is stated that to clear the drain water, plaintiff has already made alternative arrangements. It is further submitted that earlier a civil suit was filed for permanent injunction, which was dismissed and proceedings under Section 133 CRPC also commenced at the behest of plaintiff. It is submitted that the civil suit was dismissed, an appeal was preferred and having been remanded an application under Order 39 Rule 1 & 2 CPC was again moved in the civil suit, wherein the order impugned is passed. It is submitted that under the circumstances, petitioner/defendant would not be able to carryout the order of the trial Court as the accumulated water is not within the premises of control of the defendant.
4. Learned counsel for the respondents vehemently opposed the arguments advanced by learned counsel for the petitioner and submits that initially a suit was filed for permanent injunction while the construction was raised by the defendant. The suit was dismissed for the reason that it was only for permanent injunction and subsequently in appeal, the appellate Court had given a liberty to move amendment and thereafter remanded the case with a liberty to move suitable amendment. It is stated that after the amendment for title and possession was filed an application under Order 39 Rule 1 & 2 CPC has been moved as drainage water is accumulated inside the house. He further submits that the entire issue is to be decided in the facts of this case that whether the order passed by both the Courts below requires

interference or not and the fact would suggest that no ground exists for interference.

5. Perused the order of both the Courts below. Perusal of the order would show that a civil suit is pending for permanent injunction, declaratory injunction, damages and possession. In such civil suit an application under Order 39 Rule 1 & 2 CPC was preferred by respondent, wherein it was stated that during the pendency of the suit over a disputed suit property, the defendant had demolished the drainage and raised superstructure, thereby the flow of drainage water has been blocked by such construction. In the application filed under Order 39 Rule 1 & 2 CPC, it is stated that because of the flow of water stopped, the entire drainage water is being accumulated in the courtyard and house of the plaintiff. An application was also filed under Section 133 & 114 CRPC before the Executive Magistrate, Bilaspur complaining the fact that it was causing health hazard due to filthy accumulation of water. The order would show that while such proceeding was pending, the Magistrate had ordered for enquiry to find out as to whether because of the superstructure so made over the drain, flow of the drainage water whether has been stopped or not? and a report was submitted. The history of the litigation would show that both the parties were litigating before different forum up to the High Court and eventually, the High Court adjudicated the four cases on 10.02.2017 and observed that the parties shall be at liberty to lead evidence to substantiate the fact that whether opening of drain was possible without demolition of part of structure or not, when the one party asserts that a concrete beam was placed in the middle of the drain. The Court further observed that it will remain open for both the parties to amend their respective pleadings to claim relief about drain and submit documents in support of their respective plea. It was

observed that the trial Court shall be at liberty to issue Commission for adjudication of the dispute.

6. Thereafter, it appears that the civil suit which was amended after restoration an application was filed under Order 39 Rule 1 & 2 CPC, wherein the impugned order has been passed.
7. The order of the trial Court while adjudicating the application under Order 39 Rule 1 & 2 CPC prima facie relied on a memo of Tehsildar dated 08.09.2015, which reveals that because of the superstructure raised drainage has been blocked. The document which is a Panchnama is on record, is perused. Perusal of such Panchnama by the Tehsildar shows that on inspection of the disputed land one drain was found in between two houses of 3 feet width and 15 feet length and further it was found that the construction has been made by Kishore Ghore, the petitioner herein, on the drain whereby the drainage of the water has been stopped to flow into main drain.
8. The said Panchnama has not been annulled by any Court till date, which prima facie depicts the state of affair as prevailing in the scene. Therefore, for adjudication of application under Order 39 Rule 1 & 2 CPC the trial Court as also the appellate Court after going through the contents of this Panchnama found that the drainage of the water into the main drain has been stopped by the construction made by the petitioner. Presently the civil suit is pending before the Court and the document which has been placed by the defendant i.e. the photograph shows that the entire drain water has accumulated inside the house of respondents. In the circumstances till the civil suit is pending the accumulation of the water cannot be allowed to be continued to aggravate the poor climate inside the house. Therefore, the

order of the Court below directing the defendants to make arrangement for drainage cannot be stated to be prima facie illegal. Since defendant has stated that he is not able to carry out the order as the accumulation of water is inside the house of the plaintiff, in the facts of the case, it is directed that the plaintiff shall be at liberty to make an opening for drainage of water by creating an appropriate size of hole in the part of obstruction as aforesaid, which has stopped the flow of drainage to cause flow of filthy water to flow into main drain. The said procedure to be carried out in the presence of an Commissioner appointed by the court below. In order to avoid any untoward incident to carry out the order, the necessary police help should also be provided to the Commissioner. The expenses for Commissioner to be borne by the petitioner quantified at Rs.3500/-.

9. In the circumstances, after perusal of both the order of the Court below, I do not find any reason to interfere with the same in exercise of powers under Article 227 of the Constitution of India to brand it as illegal or without jurisdiction. Consequently, the petition has no merit, it fails and is hereby dismissed with the aforesaid direction.

Sd/-
Goutam Bhaduri
Judge