NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (227) No. 284 of 2014

Smt. Dashodiya Bai, aged about 60 years, W/o Rikhiram Sahu, D/o Gadha Sahu, R/o Village Dhanora, Post Hanoda, Tahsil and Distt. Durg (C.G.)

----Petitioner/Plaintiff

Versus

1. Smt. Budhkuwar, aged about 55 years, W/o Late Gadhu Sahu,

2. Deepak Sahu, aged about 21 years, S/o Late Gadha Sahu,

3. Tukeshwar Sahu, aged about 15 years, S/o Late Gadha Sahu, Being minor through Natural Guardian, Smt. Budhkuwar, aged about 55 year, W/o Late Gadha Sahu,

4. Ku. Sarita Sahu, aged about 18 years, D/o Late Gadha Sahu,

   All R/o Village Dhanora, Post Hanoda, Tahsl and Distt. Durg.

5. State of Chhattisgarh through Collector, Durg.

---- Respondents.

For Petitioner : Mr. Parag Kotecha & Mr. Salvik Tiwari, Advocate.
For Respondents No. 1 to 4 : Mr. Praveen Dhurandhar, Advocate.
For Respondent No. 5 : Mr. Rahul Tamaskar, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

08/10/2018

1. With the consent of the parties, the matter is heard finally.

2. In a suit for partition and possession filed the plaintiff, petitioner herein, he also filed an application under Order 39 Rule 1 & 2 of the Code of Civil Procedure (for short “C.P.C.”) claiming temporary injunction with regard to suit property shown in Scheduled A & B of the plaint.

3. The trial Court, by its order dated 2.5.2012, granted temporary inunction with respect to the property shown in Schedule 'A' of the plaint but declined to grant temporary injunction with respect to the property shown in Schedule B of the plaint. Part of the order declining the

temporary injunction was allowed to become final as it was not challenged by the plaintiff by filing miscellaneous appeal. Thereafter, the petitioner/plaintiff filed an application under Section 151 of the Code of Civil Procedure for grant of temporary injunction with respect to the property shown in Schedule B of the plaint on 26.03.2014, which has been rejected by the trial Court by the impugned order, against which instant writ petition has been filed questioning the same.

4. I have heard learned counsel appearing for the parties and perused the order impugned with utmost circumspection.

5. Admittedly and undisputedly, the trial Court has granted temporary injunction with respect to the property shown in Schedule A of the plaint but declined to grant temporary injunction with respect to the property shown in Scheduled B of the plaint and it has become final as the plaintiff has not subjected to that order by way of filing miscellaneous appeal. Even otherwise, second application under Section 151 of the CPC cannot be entertained for more than one reason as the remedy of the petitioner was to challenge the order dated 2.5.2012 and principle of *res judicata* would also apply also as between two stages in the same proceedings to that extent that a court whether the trial Court or higher court hearing the litigation at an earlier stage decided a matter in one way will not allow the parties to re-agitate the matter again at a subsequent stage of the same proceeding {See : **Satyadhan Ghosal and others Vs. Smt. Deorajin Debi and another**[1]**}**

6. In view of above, the trial Court is absolutely justified in rejecting the petitioner's application under Section 151 of the CPC filed by the plaintiff, in which, I do not find any illegality warranting interference by this Court in the instant writ petition.

7. Accordingly, the writ petition, being devoid of merit, is liable to be and is hereby dismissed.

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1 AIR 1960 SC 941

8. Copy of this order be sent to the trial Court through District Judge, Durg by FAX or E-mail.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-