

HIGH COURT OF CHHATTISGARH, BILASPUR**MA No. 46 of 2018**

1. Naresh S/o Shri Kishan Lal Dewangan Aged About 48 Years
2. Chandrabhan S/o Shri Sukalu Dewangan Aged About 58 Years
3. Krishna Murari S/o Shri Arjun Lal Dewangan Aged About 57 Years
4. Bodhi Ram S/o Shri Mathura Dewangan Aged About 66 Years
5. Lagan S/o Shri Narayan Dewangan Aged About 48 Years
6. Manharan S/o Shri Jait Ram Dewangan Aged About 58 Years

All R/o Village Balauda, Police Station And Tahsil Balauda Civil And Revenue District Janjgir-Champa, Chhattisgarh (Defendants)

---- Appellants

Versus

1. Ghanshyam Prasad Dewangan S/o Shri Dukalu Ram Dewangan Aged About 57 Years R/o Village Balauda, Police Station And Tahsil Balauda, Civil And Revenue District Janjgir-Champa, Chhattisgarh (Plaintiff),
2. President Nagar Panchayat Balauda, Smt. Jamuna Devi Ratre, Police Station And Tahsil Balauda, Civil And Revenue District Janjgir-Champa, Chhattisgarh (Defendant No.7),
3. Chief Municipal Officer Nagar Panchayat Balauda, Police Station And Tahsil Balauda, Civil And Revenue District Janjgir-Champa, Chhattisgarh (Defendant No.8),
4. State of Chhattisgarh Through The District Collector, Janjgir, Civil And Revenue District Janjgir-Champa, Chhattisgarh (Defendant No.9),

---- Respondents

For Appellants : Shri PM Shriwas, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

21/08/2018

1. Heard.
2. The present appeal is against the order dated 30.04.2018 passed in civil suit No.29-A/2017 whereby an application filed by the plaintiff/respondent No.1 under Order 39 Rule 1 & 2 of the CPC has been allowed and the defendants have been restrained to interfere into the subject suit property bearing Khasra No.3484/1 admeasuring 8.615 hectare. The suit of the plaintiff before the Court below was that the property was purchased through the ancestors of the respondent/plaintiff by a sale deed dated 11.12.1933, thereafter, the plaintiff is in possession. It was contended that in the year 2006, defendants/appellants No.1 to 6 tried to takeover the land through the panchayat so as to construct a stage, which was objected and the efforts to takeover the possession were diluted. Subsequently, the plaintiff was preparing his house which was in dilapidated condition which situates over the part of the land and brought the materials for construction, which was objected by the respondents and subsequently a false report was made to the Nagar Panchayat by saying that the land is a public land, wherein the plaintiff is trying to construct. It was the further case that again that defendants No.1 to 8 tried to takeover the possession of the land by construction of a stage. As against this, it is submitted that the property was belonging to one Gopal Dewangan in the year 1930 and in the year 1974, the land was given to Dewangan Society for public thoroughfare and the land belong to public. Therefore, the plaintiff/respondent No.1 was claiming the land as his ancestral property, whereas the defendants/appellants were raising their plea of ownership and that the property belong to the public thoroughfare.

3. The order would show that before the Court below sale deed of the year 1933 was placed, wherein the demarcation of the subject land is shown. Whereas as against this in support of the plea of the defendants/appellants herein, no document was placed on record. The trial Court also affirmed that the memo was asked from the Tehsildar, Baloda Bazar, which purports that the construction was being made over the land by repairing of the existing old house. Taking into the facts of this case, it appears that prima facie, no document was produced by the defendants/appellants before the Court to establish their claim, whereas the plaintiff has filed the document of sale deed as also the report of the Tehsildar in his favour, which shows that over the land old structure exists, which was subject to repair. In any case, prima facie, the observation made by the Court below cannot be faulted on the mere say of the appellants/defendants. It is for the trial Court to adjudicate the case on merits and at this stage, therefore, I am not inclined to interfere with such order of injunction passed by the court below.

4. This appeal has no merit. It is accordingly dismissed.

Sd/-

Goutam Bhaduri
Judge

Ashu