

HIGH COURT OF CHHATTISGARH, BILASPUR

MA No. 92 of 2017

Vinay Kumar Sharma S/o Late Banshidhar Sharma, Aged About 65 Years R/o Bhaiyathan, Police Station And Post Office Bhaiyathan, District Surajpur Chhattisgarh

---- Appellant

Versus

1. Krishna Kumar Sharma S/o Late Banshidhar Sharma, Aged About 60 Years R/o Bhaiyathan, Police Station And Post Office Bhaiyathan, District Surajpur Chhattisgarh

2. State Of Chhattisgarh, Through Collector Surajpur, District Surajpur, Chhattisgarh.

---- Respondents

For appellant – Ms. Priyanka Mehta, Advocate.
For respondent No.1 -Shri Vikas Pandey, Advocate.
For State/respondent No.2-Shri Neeraj Sharma, Dy.G.A.

Hon'ble Shri Justice Goutam Bhaduri

Order

18/09/2018

Heard.

1. Instant appeal is against the order dated 11th September, 2017 wherein an application under Order 39 Rule 1 and 2 of CPC has been decided by the court whereby defendant has been enjoined to raise any construction over the land bearing khasra No. 460/2, 460/3 & 460/4. The present appeal is by the defendant.

2. Suit was filed by the plaintiff Krishna Kumar Sharma for declaration, partition and possession of the land claiming that suit property jointly belonged to them. Both plaintiff and defendant are brothers and have claimed the property through their father Banshidhar Sharma. The property is situated at village Bhaiyathan and particular of the property are shown in schedule A to E, F of the plaint. It was stated by the plaintiff that

land adjacent to the property described in schedule-A and specifically described in schedule-C bearing khasra No. 460/2, 460/3, 460/4 and is jointly recorded in the name of both the brothers. It was stated that presently the same being commercially sought to be used by defendant as such the defendant started raising construction to construct the shop and having been objected plaintiff was threatened. Initially plaintiff approached the Tehsildar and defendant was restrained to raise any construction. It is alleged subsequently by influencing different persons defendant obtained the report that construction is being made not over any scheduled property i.e. suit land. The trial court after evaluating the facts came to a conclusion and passed the restrain order and allowed the application under Order 39 Rule 1 and 2 of CPC by holding that prima facie case exist in favour of the plaintiff and balance of convenience also lies in favour of the plaintiff and if construction are being allowed to be carried out it would lead to irreparable injury. Consequently, granted injunction. The said order is under challenge before this court.

3. Learned counsel for the appellant would submit that there is serious inconsistency in the pleading and finding of the court below as plaintiff in his plaint has stated construction are being made over the schedule-A property whereas in application under Order 39 Rule 1 and 2 of CPC it has been stated that construction is made over the schedule-C property. Further it is contended that Collector came out with the report that construction were not made over the subject land of the schedule property but it was on the abadi land. It is contended that repair of the house were being carried out whereas it was projected by the plaintiff that construction of shop were being made. Learned counsel referred to certain photographs attached with this petition which shows that repair work of the house of the defendant were stopped.

4. Learned counsel for the respondent supported the order of the court below and would submit that it is well merited which do not call for any interference.

5. Perused the order of the court below. Learned court below has observed that property for which suit is filed described from schedule अ to क. The plaintiff is prima facie held to be the owner i.e. half share holder of property and is a joint owner as no partition was effected in respect of the suit property after death of father of plaintiff and defendant namely Banshidhar Sharma. Perusal of the plaint would show that at para 7 plaintiff stated that schedule-A property consist of the house and shown in the joint name and part of the property situates on the road which goes from Bhaiyathan Temple Chowk to village Pasal and it is stated that on the eastern side of the same, construction are being made. Subsequently, amendment has been made wherein schedule-C property has been shown as khasra No. 460/2, 460/3, 460/4 which is adjacent to the land of schedule-A. The court observed that though order of the Collector and the SDO have stated that construction were not made on the subject khasra number but the trial court has observed that prima facie from the perusal of the written statement it reflects that abadi land which is adjacent to the schedule suit property, construction are being made and without apportionment of the property and partition defendant cannot be allowed to raise the superstructure over the open land. It further observed that if construction are being made then in such case it may lead to deprivation of the right of the plaintiff and balance of convenience lies in favour of the plaintiff to grant injunction. The documents connected to this petition shows that there is serious discrepancy about the identity of the property which is yet to be affirmed during the course of evidence. Statement of the defendant cannot be accepted as gospel truth that the construction are

being made over the schedule property whereas the finding of the trial court is against it.

6. In view of this, I do not find any merit to interfere in the order of prima facie finding whereby defendant has been restrained to raise superstructure over the subject land adjacent to the suit property which also claimed to be part of the land of the plaintiff. The contentions of defendant appellant can be clarified after the evidence is led in this behalf by the respective parties and allowing the construction to be made where in plaintiff is also claiming right may jeopardize his interest and may lead to further multiplicity of proceedings. Accordingly, I am not inclined to interfere in the order passed by the court below. Appeal therefore has no merit. Accordingly same is dismissed.

Sd/-

(Goutam Bhaduri)

JUDGE