

HIGH COURT OF CHHATTISGARH, BILASPUR**W.P. (227) No. 808 of 2018**

Arjun Das Makhija, aged about 81 years, S/o Late Jumdamal Makhija, by
Caste Sindhi, R/o Village and Tahsil Bhanupratappur, Distt. U.B. Kaner (C.G.)
.... Plaintiff

---- Petitioner**Versus**

1. Smt. Rekha @ Savita Makhija, aged about 52 years, W/o Ramchand,
 2. Ramchand Makhija, aged about 58 years, S/o Late Kishanchand Makhija,
- Both by Caste Sindhi, R/o Baniyapara, Dhamtari at present Thana, Tahsil and
Distt. Dhamtari (C.G.)
3. Laxman Makhija, aged about 40 years, S/o Arjun Das Makhija,
 4. Bharat Makhija, aged about 39 years, S/o Arjun Das Makhija
 5. Shatrughan Makhija, aged about 37 years, S/o Arjun Das Makhija,
- Respondents No. 3 to 5 by Caste Sindhi, R/o. Village and Tahsil
Bhanupratappur, Distt. U.B. Kaner (C.G.)
6. The State of Chhattisgarh, through Collector, Kaner, Distt. U.B. Kaner
(C.G.)

---- Respondents

For Petitioner	:	Shri Parag Kotecha, Advocate.
For State	:	Shri Ashish Surana, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****19/09/2018**

(1) In a suit filed by the petitioner/plaintiff for declaration of title and permanent injunction, he also filed application under Order 39 Rules 1 & 2 of the CPC for

temporary injunction stating that Collector, Kanker be restrained from proceeding with the revenue case till the dismissal of the suit.

(2) The trial Court rejected the application finding no prima facie case, no balance of convenience in his favour and he will not suffer irreparable loss, if temporary injunction is not granted in his favour.

(3) The petitioner/plaintiff preferred appeal under Order 43 Rule 1 of the Code of Civil Procedure there-against. The Appellate Court has also affirmed the finding so recorded by trial Court and dismissed the appeal, against which, the instant writ petition has been filed under Article 227 of the Constitution of India.

(4) Learned counsel for the petitioner submits that the concurrent finding recorded by both the courts below are contrary to the record and based on no evidence and, therefore, the order impugned be set aside.

(5) I have heard learned counsel appearing for the petitioner and perused the impugned order with utmost circumspection.

(6) A careful perusal of the application for temporary injunction would show that the relief has been sought to restrain the Collector, Kanker from proceeding with the revenue case till the dismissal of the suit, which is clearly hit by Section 41(b) of the Specific Relief Act, 1963 as the Revenue Court is not subordinate to the civil court and no injunction can be granted against revenue court.

(See : **Cotton Corporation of India Limited v. United Industrial Bank Limited and others**¹)

(7) The concurrent findings recorded by both the courts below that plaintiff has

1 (1983) 4 SCC 625

failed to prove *prima facie* case, balance of convenience in his favour and that he will not suffer irreparable loss if injunction is not granted is a finding of fact based on material available on record and it is not contrary to the record, therefore, I do not find any illegality in the order impugned warranting interference by this Court in this petition..

(8) Accordingly, the writ petition filed under Article 227 of the Constitution of India deserves to be and is hereby dismissed.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-