

HIGH COURT OF CHHATTISGARH, BILASPURWP227 No.929 of 2018

Shree Mahaprabhuji Pragatya Baithakji Champaran Trust having its registration number 158/1981, Tehsil Abhanpur, District Raipur (CG) through its Managing Trustee Shri Kumandas K Adhia, Dwarkesh Bhavan, Champaran, Tehsil Abhanpur, District Raipur (CG)

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Versus

Shree Champeshwar Mahadev Mandir Trust, Champaran through its Chairman/Trustee Shri Nanhuram Sahu, Son of late Ram Singh Sahu, aged about 60 years, Champeshwar Mahadev Trust, Office Champaran, Tehsil Abhanpur, District Raipur (CG)

Respondent

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For Petitioner: Mr.Amrito Das, Advocate

For Respondent: Mr.Manoj Paranjape, Advocate

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Hon'ble Shri Justice Sanjay K. AgrawalOrder on Board**30.11.2018**

1. In a suit filed by the petitioner/plaintiff, the petitioner/plaintiff has also filed an application under Order 39 Rule 1 & 2 of the CPC for temporary injunction. That application was granted by the trial Court finding prima-facie case in its favour, which was vacated by the Misc. Appeal Court in appeal preferred by the respondent/defendant under Order 43 (1) (r) of the CPC. Feeling aggrieved against the order passed by the Misc. Appeal Court, this writ petition has been preferred.
2. Mr.Amrito Das, learned counsel for the petitioner/plaintiff, would submit that the Misc. Appeal Court is absolutely unjustified in vacating temporary injunction granted in favour of the petitioner/plaintiff under Order 39 Rule 1 & 2 of the CPC by the trial Court, as such, the order passed by the Misc. Appeal Court deserves to be set aside and that of the trial Court be restored.
3. Mr.Manoj Paranjape, learned counsel for the respondent/defendant, would support the impugned order and would invite his attention to the statement

made by the respondent/defendant in para 6 of its return, which states as under:-

“6.....The defendant has not even touch the temple, in fact the defendant trust has constructed the 12 shops over their own land and just to have access in their own complex/shops, they were trying to demolish its own boundary wall. The defendant is also ready to give an undertaking that if at the final conclusion of the trial if the plaintiff trust would be found the owner of the property in question or if the plaintiff trust would be found the owner of the property in question or if the findings would have been recorded by the learned trial Court that the construction was raised over the land owned by the plaintiff, the defendant will remove the said construction on their own cost. The defendant is also ready to give an undertaking that the defendant will not touch the temple of the plaintiff trust which is recorded in their own trust deed. The allegations of demolition of temple is not correct and is denied herewith.”

4. Mr.Amrito Das, learned counsel for the petitioner/plaintiff, would submit that the respondent/defendant be directed to furnish an undertaking on the basis of para 6 of the return.
5. In view of statement made, the respondent/defendant is directed to furnish an undertaking in those lines on or before 7<sup>th</sup> December, 2018 before the trial Court in the shape of affidavit, which will be taken on record by the trial Court and the suit will be decided expeditiously taking into consideration the pleadings of the parties.
6. With the aforesaid observation, the writ petition finally stands disposed of. No cost(s).

Certified copy as per rules.

Sd/-

(Sanjay K. Agrawal)  
Judge

B/-