

HIGH COURT OF CHHATTISGARH, BILASPUR**W.P. (227) No. 133 of 2019**

Smt. Beni Bai Sinha, W/o Late Trilochan Sinha, aged about 80 years, R/o Village -Arjuni, Tahsil & District – Dhamtari (C.G.)

---- Petitioner/plaintiff

Versus

Rajendra Kumar Sinha, S/o Sri Shyam Lal Sinha, aged about 44 years, R/o Village – Arjuni, Tahsil & District – Dhamtari (C.G.)

---- Respondent/defendant

For Petitioner	:	Shri Akhand Pratap, Advocate.
For Respondent	:	Shri Dinesh R.K. Tiwari, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

19/02/2019

(1) In a suit filed by the petitioner/plaintiff for permanent injunction restraining construction over the suit land, she also filed application under Order 39 Rules 1 & 2 of the CPC for temporary injunction.

(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) Counsel for the petitioner/plaintiff submits that both the courts below have concurrently erred in holding that plaintiff has no *prima facie* case for grant of temporary injunction and, therefore, the impugned order be set aside.

(5) The concurrent findings recorded by both the courts below that plaintiff has failed to prove *prima facie* case, balance of convenience in his favour and that he will suffer irreparable loss if injunction is not granted; and grant of temporary injunction would amount to grant of final relief 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.

(6) Accordingly, the writ petition filed under Article 227 of the Constitution of India deserves to be and is hereby dismissed. However, since the suit is pending since 27.10.2017, the trial Court is directed to decide the suit expeditiously preferably within a period of three months from the date of receipt of certified copy of this order.

Sd/-
(Sanjay K. Agrawal)
Judge

D/-