

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 153 of 2019

- K. Raju S/o K. Guruwaiya, Aged About 56 Years, R/o Shastri Nagar, Camp -I, Bhilai Nagar, Police Station Chhawani, Tahsil and District Durg Chhattigarh. District : Durg, Chhattisgarh(Plaintiff)

---- Petitioner

Versus

1. Smt. Meera Ingle W/o Late Ashok Kumar Ingle, Aged About 58 Years, R/o House No. 88/2, Nehru Nagar East, Bhilai, Police Station Supela, Tahsil and District Durg Chhattisgarh., District : Durg, Chhattisgarh
2. Smt. Rakhi D/o Late Ashok Kumar Ingle, Aged About 25 Years, C/o Smt. Meera Ingle, W/o Late Ashok Kumar Ingle, R/o House No.88/2, Nehru Nagar East, Bhilai, Police Station Supela, Tahsil and District Durg Chhattisgarh. District : Durg, Chhattisgarh

Ashok Kumar (Since died)(Defendants)

----Non-applicant

For Petitioner – Shri Manoj Paranjpe, Advocate.

For Respondents – Shri Akhil Kumar Agrawal, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

26-11-2019

1. This petition has been brought being aggrieved by the order dated 29-01-2019 passed in Civil Suit No.64A/2013 pending before the Court of 8th Additional District Judge Durg.

2. The petitioner/plaintiff has filed a civil suit for eviction of respondents from the suit property on this basis that the petitioner is landlord and the respondents are tenants. The respondents have contested this suit admitting that initially the respondents were tenants, but an agreement was executed on 05-02-2004 for sale of the tenanted premises to the respondents, after which the status of the respondents has changed and they themselves are now landlords.

3. The respondents side had earlier filed civil suit No.1A/2011 before the Court of Second Additional District Judge Durg praying for specific performance of agreement dated 05-02-2004 in which the subject matter of the

suit was the same property which is subject matter of the present suit.

4. The learned trial Court by judgment dated 10-05-2013 has dismissed the suit. That judgment and decree is under challenge before this Court in First Appeal No.127/2013. It is submitted by learned counsel for the petition that there is no relief granted by the High Court in the first appeal regarding stay of proceeding of other matter pending before the parties. Under no provision of law a land lord can be asked to wait till the decision of the first appeal when he has ground available to prosecute the civil proceeding for eviction under the law.

5. Referring to judgment of this Court in WP227 No.78/2014 decided on 30-06-2017 it is submitted that it has been specifically held in this judgment that the inherent power under Section 151 of the CPC cannot be exercised to bypass the provisions under Section 10 of the CPC. Therefore, the order passed by the learned Court below staying the proceeding of the civil suit under Section 151 of the CPC is illegal and liable to be set aside.

Reliance has also been placed on the judgment of Hon'ble the Supreme Court in the matter of **D.S. Parvathamma Vs. A. Srinivasan**, (2003) 4 SCC 705.

6. Learned counsel for respondents submits that this is specific case in which the tenancy of the respondents was converted into their title on the basis of the agreement to sale that was executed between the parties. After execution of the agreement for sale, it were the respondents who have repaid the loan of said suit house. Any procedure of eviction will harm the rights of the respondents, therefore, they have right to maintain possession. Hence, for this reason, the stay of suit ordered under the inherent powers by the trial Court cannot be said to be illegal specifically looking to this admitted fact, that another civil proceeding as first appeal is pending before this Court between the same parties and with respect to the same subject matter of the suit.

Hence, the respondents are entitled for such protection. Therefore, this petition be dismissed.

7. On perusal of the copy of the order sheets of the civil suit filed along with the petition, it is found that earlier application was moved before the trial Court under Section 10 of the CPC which was dismissed by order dated 09-12-2014. Subsequent to that, an application was filed under Section 151 of the CPC before the same Court praying for staying of proceeding in the suit, which was again rejected on 04-02-2016. Subsequent to which, the impugned order has been passed in which a reference has been made of First Appeal No.127/2013, that the High Court has passed interim order that status quo with regard to the subject property shall be maintained, and the application has been allowed for staying the proceeding in the suit till pendency of the first appeal before this Court.

8. This Court has in WP(227) No. 78/2017 decided on 30-06-2017 held in paragraph 10 that:-

“10. In the aforesaid case (supra) the Supreme Court further held that Section 151 cannot be exercised to bypass Section 10 CPC. It was observed as under:-

“12. In the case of Manohar Lal Chopra v. Rai Bahadur Rao Raja Seth Hiralal, it has been held that inherent jurisdiction of the Court to make orders ex debito justitiae is undoubtedly affirmed by Section 151 CPC, but that jurisdiction cannot be exercised so as to nullify the provisions of the Code. Where the Code deals expressly with a particular matter, the provision should normally be regarded as exhaustive. In the present case, as stated above, Section 10 CPC has no application and consequently, it was not open to the High Court to by-pass Section 10 CPC by invoking Section 151 CPC.”

And further held that in at the time of the particular case one suit was ejection, whereas, subsequent suit was filed for declaration of title, therefore, Section 10 of the CPC would not be attracted.

9. On the basis of the facts expressed by the Courts mentioned herinabove it is found that facts in this case are also similar. The earlier suit that was filed and the first appeal that is pending was for specific performance of contract. Whereas, the present suit is purely for eviction from the suit property under the provisions of tenancy law. It may be so that the parties are same and the subject matter is same, but the cause of action in both the suits are different, therefore, the provisions under Section 10 of the CPC is very clearly not applicable. Looking to the specific bar for exercise of Section 151 of the CPC in such cases, it is observed that when the law itself does not have such intention to stay the proceeding of trial Court in cases of different causes of action and different issues to be determined, therefore, it was improper and illegal for the Court below to have exercised the jurisdiction under Section 151 of the CPC to defeat the intention of law. Hence, I am of this view that impugned order is liable to be set aside. The petition is disposed off at the motion stage. The impugned order dated 29-01-2019 passed by the Court below in Civil Suit No. 64A/2013 is hereby set aside.

Sd/-

(Rajendra Chandra Singh Samant)
Judge