

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (Art. 227) No.591 of 2018

1. Rikesh Kumar Sahu, S/o Shri Ishwar Chand Sahu, aged about 40 years.
2. Himanchal Kumar, S/o Shri Ishwar Chand Sahu, aged about 43 years.

Both R/o Village Paraswani, PH No.38, Tahsil Kurud, District Dhamtari (C.G.)

(Plaintiffs)
---- Petitioner

Versus

1. Ishwar Chand Sahu, S/o Shri Maksudan Sahu, aged about 64 years, R/o Village Paraswani, Tahsil Kurud, District Dhamtari.
2. Mohanlal Sahu, S/o Shri Maksudan Sahu, aged about 60 years, Teacher, R/o Village Bhadeli, Tahsil Kurud, District Dhamtari.
3. Vipin Kumar, S/o Late Somnath Sahu, aged about 28 years.
4. Aish Kumar, S/o Late Somnath Sahu, aged about 24 years.
5. Kumari Dileshwari, D/o late Somnath Sahu, aged about 25 years.
6. Smt. Annapurna, Wd/o Late Somnath Sahu, aged about 50 years.

Nos. 3 to 6 are R/o Village Paraswani, Tahsil Kurud, District Dhamtari.

7. Smt. Mohani, D/o late Maksudan Sahu, W/o Lomsingh Sahu, aged about 60 years, R/o Village Chingrod, Tahsil & District Mahasamund.
8. Eklavya, S/o Late Pokhan Sahu, aged about 23 years, R/o Village Kharra, Tahsil Kurud, District Dhamtari.
9. State of Chhattisgarh, through the Collector, District Dhamtari.

(Defendants)
---- Respondents

For Petitioners: Mr. Sameer Oraon, Advocate.

For Respondent No.1: Mr. S.S. Baghel, Advocate.

For Respondents No.2 to 8: -

Mr. R.S. Patel, Advocate.

For Respondent No.9 / State: -

Mr. Vimlesh Bajpai, Govt. Advocate.

Mr. Chakresh Tiwari, Advocate, is permitted to withdraw his Vakalatnama from the case on behalf of respondent No.1.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board11/01/2019

1. The petitioners are plaintiffs before the trial Court. They have filed suit for declaration of title, partition and possession against the respondents / defendants. In the pending suit, they have filed application under Section 151 of the CPC for restraining the revenue court from proceeding with the partition proceeding under Section 178 of the Chhattisgarh Land Revenue Code, 1959, pending before the Tahsildar stating inter alia that the proceeding was stayed for three months by the order of the Additional Collector and thereafter, further time was not granted. The said application was resisted by the other side and finally, the trial Court rejected the same finding no merit holding that in view of the express provision under Order 39 Rules 1 and 2 of the CPC, inherent power cannot be exercised against which this writ petition has been preferred by the plaintiffs.
2. Learned counsel for the petitioners / plaintiffs submits that the order impugned is unsustainable and bad in law.
3. On the other hand, learned counsel appearing for the defendants, support the impugned order.
4. I have heard learned counsel for the parties.
5. The revenue court had earlier adjourned the matter for three months enabling the parties to approach the civil court and now, the plaintiffs have approached the civil court. The trial Court has clearly held by the impugned order that power under Section 151 of the CPC cannot be exercised to circumvent the statutory provisions i.e. order of injunction which is grantable under Order 39 Rules 1 and 2 of the CPC which cannot be found fault with as it has rightly been held when there

is express provision in the Code and inherent power cannot be exercised. I do not find any illegality in the order impugned. The writ petition is liable to be dismissed and is accordingly dismissed, in limine. However, the plaintiffs are at liberty to proceed in accordance with law. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Soma