

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Misc. Appeal No.70 of 2019**

- Shyamla Rao Nuka S/o Krishnamurti Nuka Aged About 37 Years
R/o Bhartiya Nagar, Ward No. 09, Bilaspur, Tahsil And District-
Bilaspur, Chhattisgarh

---- Appellant**Versus**

1. Dhannu Lal Adil S/o Shri Dayaldas Adil Aged About 61 Years
R/o Near Kabir Chabutra, Jhopdapara (Sirgitti) P.S. Sirgitti,
Bilaspur, Tahsil And District- Bilaspur, Chhattisgarh
2. State Of Chhattisgarh Through Collector, Bilaspur, Tahsil And
District- Bilaspur, Chhattisgarh

---- Respondents

For the Appellant : Shri Shashi Kumar Kushwaha,
Advocate
For Respondent No.2/State: Shri AN Bhakta, Dy, Advocate
General

Hon'ble Shri Justice Ram Prasanna Sharma**Order On Board****16.7.2019.**

1. This miscellaneous appeal is directed against Order dated 27.6.2019 passed by Fifth Additional District Judge, Bilaspur in Civil Suit No.13A/2019 wherein the said Court dismissed the application filed by the appellant under Order 39 Rule 1 & 2 of the Code of Civil Procedure, 1908.
2. As per the version of the appellant, he purchased land bearing Survey No.690/36 and 690/37 area 2275 sq.ft. situated at village Tifra, Bhartiyanagar, Bilaspur through registered sale deed from one Dev Charan on 28.11.2016 in which respondent No.1 interfered on 21.01.2019.

3. As per the version of respondent No.1, he purchased land bearing survey No.690/3 area 0.04 acre and area 690/2 area 0.01 and half acres on 13.3.1990 and 18.01.1992 from Bahura Bai and Shyamlal, Sanjay Kumar and Manoj Kumar and he is in possession of the said land. The appellant admitted before the trial Court that respondent No.1 is making construction on the land which is the subject matter of the dispute. The appellant also submitted that an application under Section 250 of Chhattisgarh Land Revenue Code, 1959 is pending before the Tahsildar for removal of the possession of respondent No.1.

4. From the facts and circumstances of the case, it appears that there is dispute regarding demarcation between the parties and the matter is still pending before the revenue Court for deciding the issues. As per Section 129 of the Chhattisgarh Land Revenue Code, 1959, demarcation is done by the competent authority and that is final subject to redemarcation by the higher authority. Therefore, the matter can be settled only after demarcation. From the pleadings of the appellant, it is clear that respondent No.1 is in possession of the some part of the land which is in dispute, therefore, without recording evidence and without going for demarcation the issue cannot be decided at preliminary stage. The trial Court opined that prima facie, case is not in favour of the appellant and respondent No.1 is in possession of the land, therefore, no interlocutory order can be passed in favour of the appellant. Finding of the trial Court is based on material placed before it and this Court has no reason to interfere with the finding recorded by the trial Court.

5. Accordingly, the appeal is dismissed at the motion stage itself.

**Sd/-
(Ram Prasanna Sharma)
JUDGE**

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