

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 595 of 2019

- Smt. Rangwati Patnayak W/o Lingraj Patnayak, Aged About 68 Years, R/o Kewatpara, Raigarh, Tahsil and District- Raigarh, Chhattisgarh., District : Raigarh, Chhattisgarh(Plaintiff)

---- Petitioner

Versus

- Shiv Narayan @ Raju Patnayak S/o Late Narsingh Patnayak, Aged About 52 Years, R/o Kewatpara, Raigarh, Tahsil and District- Raigarh, Chhattisgarh., District : Raigarh, Chhattisgarh ... (Defendant)

----Respondent

For Petitioner – Shri Roop Naik, Advocate.

For Respondent – Shri Rajendra Tripathi, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

03-12-2019

1. This petition has been brought challenging order dated 16-07-2019 passed in Misc. Civil Appeal No.14/2019 by which the order passed by the trial Court dated 11-07-2019 rejecting the application for grant of temporary injunction has been upheld.

2. It is submitted that the petitioner is title holder of the property of description as plot No.406/1 admeasuring 344 square feet. The respondent/defendant has encroached upon the land of the petitioner and has raised construction on about 55 square feet of the suit land, regarding which after filing a civil suit, an application was filed for grant of temporary injunction. The learned trial Court has decided the application under Order 39 Rule 1 and 2 read with Section 151 of the CPC on 11-07-2019 and held that there is no prima facie case in favour of the petitioner neither the balance of convenience and irreparable loss is in her favour and her application was rejected. The Misc. Civil Appeal filed by the petitioner has been decided by the Court of learned District Judge, Raigarh by which the order passed by the learned trial Court has been upheld.

It is submitted that the petitioner has made out prima facie case in her favour by filing documents of title and also the demarcation report which is part of the record, in which it is clearly held that on demarcation it was found that plot No.406/1 has been found only 289 square feet, whereas, plot No.406/2 which belongs to the respondent is excess in area by 55 square feet. Therefore, raising construction on the land encroached upon is clearly made out and irreparable loss is on the part of the petitioner and therefore the balance of convenience is also in favour of the petitioner. Therefore, she was entitled for grant of interim injunction. Hence, the petition be allowed.

3. Learned counsel for the respondent opposes the petition and the submission made. It is submitted that the trial Court and the appellate Court has correctly held that there is no prima facie case in favour of the petitioner. Apart from that, the construction that has been made on the disputed property is at a very advance stage, the appellate Court has rightly held that no temporary injunction can be granted at this stage because it will result in irreparable loss to the respondent. Hence, the petition is without substance which may be dismissed.

4. Heard learned counsel for the parties and perused the documents.

5. There is no dispute that plot No.406/1 is property of the petitioner, however, although there is dispute regarding area. The demarcation report by revenue inspector very clearly establishes that the area of plot No.406/1 is short by 55 square feet, whereas, the area of plot No.406/2 belonging to the respondent is excess by 55 square feet. This fact and documentary evidence has not been taken into consideration by the Courts below. Therefore, the claim of the petitioner is substantiated with the prima facie evidence and it appears that there is prima facie case in favour of the petitioner. On taking into consideration the balance of convenience, it is found that according to the demarcation report itself, the ground floor of the construction is going on in

disputed property since the year 2006 and at present it is only on the first floor the construction is going on, whereas, the suit has been currently filed in the year 2019. Therefore, it is a case where the petitioner/plaintiff has ground to pray for relief of possession after removal of construction from the disputed land. It is found according to demarcation report that the construction was already present in the disputed property and it is only additional construction which is being taken up in upper storey of the same house. Therefore, the construction is at advance stage and further that the construction which was already there before filing of the suit for that only final relief can be prayed for. Hence, the finding of the Courts below that there is no balance of convenience in favour of the petitioner is found to be correct and that needs no interference. Similarly, for the reason that the petitioner/plaintiff has option to claim the possession and damages as final relief, therefore, it cannot be said that irreparable injury is also in her favour. Hence, for these reasons, I do not find any reason to allow this petition which is dismissed at the motion stage.

Sd/-

(Rajendra Chandra Singh Samant)
Judge