

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 755 of 2018

- Ramniwas S/o Sagunchanda Agarwal, Aged About 50 Years, R/o Gandhinagar, Ratanpur, Tahsil - Kota, District - Bilaspur. (Defendant No.1), District : Bilaspur, Chhattisgarh

---- Petitioner

Versus

1. Manidas S/o Kripal Das, Aged About 56 Years, R/o - Silli, Tehsil - Pali, District - Korba Chhattisgarh (Plaintiff), District : Korba, Chhattisgarh
2. State of Chhattisgarh Through Collector of Korba, District - Korba Chhattisgarh. (Defendant No. 2), District : Korba, Chhattisgarh

----Respondents

For Petitioner – Shri Pallav Mishra, Advocate.

For Respondent No.1 – Shri Sunil Sahu, Advocate.

For State/respondent No.2 – Shri Jitendra Shukla, Panel Lawyer.

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 09-03-2018 passed by the Court of Additional District Judge Katghora in Misc. Civil Appeal No.1/2018 by allowing the appeal and the application of respondent No.1 under Order 39 Rule 1 and 2 read with Section 151 of the CPC and passing the order of temporary injunction against the petitioner.

2. It is submitted that the learned appellate Court has erroneously held that the respondent No.1 is in possession of the suit property, whereas, the possession itself is subject of dispute between the parties and this dispute cannot be resolved without there being proper demarcation of the suit property and identification of the suit property. Hence, on this basis the order impugned is liable to be set aside.

3. Learned counsel for respondent No.1 opposes the petition and submits that there had been material present in the record on the basis of which the learned appellate Court has come to the conclusion that respondent No.1 is in possession. Further, the proceeding in the suit itself is continuing and the trial is likely to conclude very soon, thereafter, all the dispute present will be

resolved itself. Therefore, it is prayed that the petition may be dismissed.

4. Learned counsel for respondent No.2/State makes formal objection.

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

6. After perusing the impugned order and the other material present in the petition, I am of this opinion that no error can be found in the order passed by the learned appellate Court. Therefore, I do not feel inclined to interfere with the order passed by the learned appellate Court by exercise of power under Article 227 of the Constitution of India. Hence, this petition is dismissed and disposed off.

7. However, on the request of learned counsel for the petitioner, it is ordered that the petitioner shall have liberty to file application for demarcation and identification of the suit property by appointment of Commissioner under the provisions of order 26 Rule 9 of the CPC and the trial Court is directed to consider and decide the same in accordance with law.

Sd/-

(Rajendra Chandra Singh Samant)
Judge