

HIGH COURT OF CHHATTISGARH, BILASPUR**CR No. 78 of 2019**

Yogesh Kumar Nahata S/o Pukhraj Nahata Aged About 55 Years By
Caste Jain, R/o Nahata Chowk, Nagri, Tahsil Nagri, District Dhamtari,
Chhattisgarh.

---- Applicant

Versus

1. Sanjay S/o Sampatlal Jain Aged About 44 Years R/o Linepara, Nagri,
Tahsil Nagri, District Dhamtari, Chhattisgarh.
2. Anil S/o Fattechand Jain Aged About 52 Years R/o Linepara, Nagri,
Tahsil Nagri, District Dhamtari, Chhattisgarh.
3. State Of Chhattisgarh Through Collector, District Dhamtari,
Chhattisgarh.

---- Non-Applicants

For Applicant:	: Shri Parag Kotecha, Advocate.
For the State/Non-Applicant No. 3:	: Shri Vimlesh Bajpai, G.A.

Single Bench: Hon'ble Shri Sanjay Agrawal, J

Order On Board

26.08.2019

1. This Revision Petition has been preferred by Defendant No. 1, Yogesh Kumar Nahata under Section 115 of Code of Civil Procedure, 1908 (hereinafter referred to as the 'C.P.C.') questioning the legality and propriety of the order dated 31.07.2019 passed by the Civil Judge Class II Nagri, District Dhamtari in Civil Suit No. 3A/19, whereby, the application preferred by him under Order 7 Rule 11 (d) of C.P.C. has been rejected.
2. Learned Counsel for the Applicant submits that the order impugned as passed by the Court below holding that the suit as framed is not barred by jurisdiction under Section 257 of Chhattisgarh Land Revenue Code,

1959 (hereinafter referred to as the 'Code, 1959') is apparently contrary to law. It is contended by him that the application made by Defendant No. 1 under Section 250 of the Code, 1959 before the Tahsildar Nagri for obtaining the possession of land admeasuring 0.04 hectares of Khasra No. 1085 of village Churiyara was allowed. It is submitted further that though it was reversed by the Sub Divisional Officer, but the said order was again maintained by the Additional Collector in an appeal preferred by the said defendant and the order as passed by the Additional Collector is under challenge before the Board of Revenue. He, therefore, submits that the exclusive jurisdiction is vested upon the Revenue Authorities and the civil suit is therefore, barred by the said provision. However, without considering the said fact in its proper manner, the Court below has committed an illegality in rejecting the application filed by him under Order 7 Rule 11 (d) of C.P.C.

3. I have heard learned counsel for the applicant and perused the entire relevant papers annexed with this Revision Petition carefully.
4. From perusal of the plaint averments, it appears that the Civil Suit was filed by plaintiffs claiming injunction in relation to the property in question bearing Khasra No. 56 admeasuring 0.19 hectares situated at Village Nagri, District Dhamtari. According to the plaintiffs, Defendant No. 1, Yogesh Kumar Nahata had filed an application under Section 250 of Code, 1959, before the Tahsildar Nagri seeking possession of the land admeasuring 0.04 hectares of Khasra No. 1085 situated at Village Churiyara which was registered as Revenue Case No. 04/A-70/2012-2013 and after considering the submission of the parties, it was allowed vide order dated 31.10.2015 (Annexure A-2). Being

aggrieved with the said order, an appeal was preferred by the plaintiffs before Sub-Divisional-Officer (Revenue), Nagri, where it was allowed by the said authority vide its order dated 28.09.2016 (Annexure A-3) in Appeal Revenue Case No. 15/A-70/2015-2016.

5. It appears further from the perusal of record that the order passed by the Sub Divisional Officer was reversed by the Additional Commissioner, Raipur vide its order dated 03.04.2019 (Annexure A-4) passed in Revenue Appeal Case No. 24/A-70/2016-2017 in an appeal preferred by Defendant no. 1 Yogesh Kumar Nahata, while maintaining the order passed by the Tahsildar Nagri. The said order has been questioned by the plaintiffs before the Board of Revenue in Revision under Section 50 of the Code, 1959 and the same is still pending.
6. Perusal of the plaint averments would show further that after obtaining the orders as such, the Defendant No. 1 is trying to dispossess the Plaintiffs, therefore, they have been constrained to file the suit in the instant nature.
7. It is true that the aforesaid orders have been passed by the Revenue Authorities in exercise of the powers under Section 250 of the Code, 1959, however, a bare perusal of it would show that it was only in relation to the property bearing Khasra No. 1085 of Village Churiyara, which is distinct from the suit land. It, therefore, appears prima-facie that both the properties are distinct with each other and the court below has, therefore, rightly observed that the suit as framed claiming injunction with regard to the property in question bearing Khasra No. 56 is not barred by jurisdiction as provided under Section 257 of Code, 1959. That apart, the relief as claimed by the plaintiffs is only with

regard to the injunction and the order passed by the Revenue Authorities referred herein above was not the subject matter of the suit. Thus, from stretch of any imagination, it cannot be held that the suit as framed is barred by jurisdiction under Section 257 of the Code, 1959, as contended by the learned counsel for the Applicant.

8. Consequently, I do not find any infirmity in the order impugned passed by the Court below rejecting the application under Order 7 Rule 11 of C.P.C. The Revision Petition being devoid of merit is accordingly dismissed at admission stage itself. No order as to costs.

Sd/-
(Sanjay Agrawal)
JUDGE

vivek