

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 748 of 2019

- Ganesh Prasad Soni S/o Late Bilas Soni, Aged About 84 Years, Through Power Of Attorney Holder Rajendra Kumar Soni, S/o Ganesh Prasad Soni, R/o Kududand, Bilaspur, Tahsil And District- Bilaspur, Chhattisgarh.....(Plaintiff), District : Bilaspur, Chhattisgarh

---- Petitioner

Versus

1. Hemant Kumar Gupta S/o Purushottam Gupta, Aged About 43 Years, R/o G-403, Sai Parisar, Shrikant Verma Marg, Bilaspur, Tahsil And District- Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh
2. Aman Gupta S/o Pradeep Gupta, Aged About 27 Years, R/o G-403, Sai Parisar, Shrikant Verma Marg, Bilaspur, Tahsil And District- Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh
3. Bharti Gupta D/o Pradeep Gupta, Aged About 54 Years, R/o G-403, Sai Parisar, Shrikant Verma Marg, Bilaspur, Tahsil And District- Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh
4. Sonali Gupta D/o Pradeep Gupta, Aged About 28 Years, R/o G-403, Sai Parisar, Shrikant Verma Marg, Bilaspur, Tahsil And District- Bilaspur, Chhattisgarh.....(Defendants No. 1 To 4), District : Bilaspur, Chhattisgarh
5. Surendra Kumar Yadav S/o Chandel Ram Yadav, Aged About 28 Years, R/o Raja Bada, Yadav Mohalla, Mangla, Tahsil And District- Bilaspur, Chhattisgarh.....(Defendant No.8), District : Bilaspur, Chhattisgarh
6. Smt. Kusum Shukla W/o Jai Prakash Shukla, Aged About 62 Years, R/o Sarseewa, District- Balodabazar, Chhattisgarh, Presently R/o R. K. Boot House Gali, Teli Para, Bilaspur, Tahsil And District- Bilaspur, Chhattisgarh.....(Defendant No.9), District : Bilaspur, Chhattisgarh
7. Manish Kumar Yadav S/o K. L. Yadav Aged About 42 Years, R/o Tikra Para, Bilaspur, Tahsil And District- Bilaspur, Chhattisgarh.....(Defendant No.10), District : Bilaspur, Chhattisgarh
8. Neelesh Mandewar S/o Manohar Rao Mandewar, Aged About 48 Years, R/o Hotel Manohar, Juna Bilaspur, Tahsil And District- Bilaspur, Chhattisgarh.....(Defendant No. 11), District : Bilaspur, Chhattisgarh
9. Amopal Pillewar S/o Prabhakar Rao, Aged About 32 Years, R/o Dewangan Mohalla, Juna Bilaspur, Tahsil And District- Bilaspur, Chhattisgarh.....(Defendant No.12), District : Bilaspur, Chhattisgarh
10. Smt. Shaivya Singh W/o Nrendra Rao Jadhav, Aged About 58 Years, R/o Gandhi Nagar, Nehru Nagar, Bilaspur, Tahsil And District- Bilaspur, Chhattisgarh.....(Defendant No.13), District : Bilaspur, Chhattisgarh
11. Smt. Alka Singh W/o Sachin Singh, Aged About 31 Years, R/o Jabbal Gali, Nehru Nagar, Bilaspur, Tahsil And District- Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh
12. Dr. Maya Dubey W/o Dr. S. S. Dubey (wrongly mentioned in the impugned order as "Dauthor of" Aged About 62 Years, R/o SBI Bank Building, Subhash Nagar, Gond Para, Bilaspur, Tahsil And District- Bilaspur, Chhattisgarh.....(Defendant No.06), District : Bilaspur, Chhattisgarh

13. Smt. Nirmala Shrivastava W/o A. K. Shrivastava, Aged About 64 Years, R/o Qtr. No. AS-82, Agyaya Nagar Colony, Bilaspur, Tahsil And District- Bilaspur, Chhattisgarh.....(Defendant No.7), District : Bilaspur, Chhattisgarh
14. State of Chhattisgarh Through The Collector, Bilaspur, Tahsil And District- Bilaspur, Chhattisgarh.....(Defendant No.5), District : Bilaspur, Chhattisgarh

----Respondent/Non-applicant

For Petitioner – Shri Ravindra Agrawal, Advocate.
For Respondents 1 to 11 – Shri B.P. Gupta, Advocate.
For Respondent No.12 – Shri Anand Kumar Gupta, Advocate.
For State/respondent No.14 – Shri Sudeep Verma, Deputy Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

05-12-2019

1. This revision petition has been brought challenging the order dated 13-08-2019 passed by the 5th Additional District Judge, Bilaspur in Misc. Civil Appeal No.14/2019 by setting aside the order of the trial Court granting temporary injunction in favour of the petitioner.
2. The petitioner is plaintiff in Civil Suit No. 23A/14. He has pleaded that he is owner of suit property bearing kharsra No.1272 measuring 1 acre. Respondents No.6 and 7 who have purchased the neighboring land have erroneously shown imaginary road on the suit property. On this basis relief of declaration of title on the suit property that is imaginary road and relief of permanent injunction has been prayed for. The private respondents have denied the pleading in the plaint. The petitioner then filed application under Order 39 Rule 1 and 2 read with Section 151 of the CPC before the trial Court which was allowed by the order 21-12-2018 granting temporary injunction for a temporary period in favour of the petitioner uptill the application under Order 26 Rule 9 of the CPC filed by the petitioner is decided or a period of six months expires whichever occurs earlier. This order was challenged in the Misc. Appeal and the learned appellate Court has held that the order of the trial Court is erroneous and the order of the temporary injunction granted by the

trial Court was set aside.

3. It is submitted by learned counsel for the petitioner that by sale deed dated 18-11-1967 the petitioner has become title holder and possessor of Khasra No1272 measuring 1 acre. In the subsequent sale deed executed in favour of the private respondents the land of the petitioner is shown on the eastern side of the plots sold to the respondents. The respondents are making construction on the imaginary road which is upon the land of the petitioner, therefore, in this case demarcation is necessary and for the purposes of demarcation it is necessary that the temporary injunction is granted in favour of the petitioner. Hence, it is prayed that the impugned order is erroneous and arbitrary which may be set aside and relief may be granted to the petitioner.

4. Learned counsel for respondents 1 to 11 submits that since the last 6 years construction is going on. On the other hand, the sale documents show the situation of the road on the west where the property of the petitioner is not in existence. The petitioner had earlier filed WP227 No.744/2018 which has been decided by the coordinate Bench of this Court on 09-09-2015 deciding the same issue holding that without demarcation report no finding can be arrived at by the Courts below for deciding the application for temporary injunction. Apart from that, it is also submitted that temporary injunction granted by the trial Court for the period of 6 months only which has expired and the petitioner has not filed any application for extension of the same.

Placing reliance on the judgment of Hon'ble the Supreme Court in the matter of **Surya Dev Rai v. Ram Chander Rai**, (2003) 6 SCC 675 : **2003 AIR SCW 3872**, it is submitted that the petition is liable to be dismissed.

5. Learned counsel for the respondent No.12 makes formal objection and so as the objection of State/respondent No.14.

6. In reply it is submitted that the petitioner had made efforts for

demarcation of the suit property and a demarcation report was also given by the Revenue Inspector, but, the petitioner has challenged the same before the Court of Additional Collector Bilaspur and the same has been set aside with a direction to re-demarcate the suit property taking assistance of a team of Revenue Inspectors and a team has been constituted vide Annexure -R/5 filed by the respondent side. The petitioner has raised objection on the procedure adopted for the demarcation. It is also submitted that record of the trial Court was not available to file application for extension of the order of temporary injunction granted by the trial Court, before it was set aside by the appellate Court. Therefore, it is prayed that the petition may be allowed.

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

8. Whole dispute has been raised by the petitioner only on the basis of the statement made by him, there is no documentary evidence to establish that his statement has prima facie force. The purpose of granting temporary injunction is to maintain the status quo over the situation of the property as it is. What is the status quo of the property is further a question of fact and that has to be determined on the basis of the evidence, oral as well documentary. As it has been held by this Court in WP227 No. 744 of 2014 courts are not in a position to hold in either way as to what is prima facie case without the demarcation report and further that the demarcation proceeding of the suit property is not complete, therefore, it cannot be assumed that the petitioner has prima facie case in his favour. Only by raising a dispute nobody is entitled for grant of temporary injunction. I do not find any substance in this petition, therefore, the same is dismissed at the motion stage. However, the petitioner has liberty to file repeat application in case the procedure of demarcation is complete and it is so advised by his counsel.

Sd/-
(Rajendra Chandra Singh Samant)
Judge