

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No. 932 of 2019

Heera Singh Sahu S/o Tulsi Ram Sahu Aged About 44 Years, R/o. Behind Sadhana Printers, Sanjay Colony, Baloda Bazar, District Baloda Bazar Bhatapara Chhattisgarh

---- Petitioner

Versus

1. Gopal Das Hablani, S/o. Late Sumermal Hablani, Aged About 58 Years, R/o. Gidiya Readymade, In Front Of Masjid, Sadar Road , Baloda Bazar, District Baloda Bazar Bhatapara Chhattisgarh
2. Rajani Hablani S/o Sanjay Hablani, Aged About 29 Years, R/o. Sindhi Colony, Near New Bus Stand, Baloda Bazar, District Baloda Bazar Bhatapara Chhattisgarh
3. Sobha Hablani, W/o. Sandeep Hablani, Aged About 25 Years, R/o. Sindhi Colony, Near New Bus Stand, Baloda Bazar, District Baloda Bazar Bhatapara Chhattisgarh.
4. Pushpa Hablani, W/o. Gopal Hablani, Aged About 55 Years, R/o. Sindhi Colony, Near New Bus Stand , Baloda Bazar, District Baloda Bazar Bhatapara Chhattisgarh
5. Director Town and Country Planning, R.D.A. Building Tahsil Office, Raipur, District Raipur Chhattisgarh.
6. Joint Director Phool Chowk Raipur, District Raipur Chhattisgarh.
7. Superintendent of Police, Baloda Bazar, District : Balodabazar-Bhathapara, Chhattisgarh.
8. Nagar Palika Parishad Baloda Bazar, Through Chief Municipal Officer, Baloda Bazar Nagar Palika Parishad, Baloda Bazar , District Baloda Bazar Bhatapara Chhattisgarh
9. Executive Engineer P.W.D. Department, Civil Line Baloda Bazar District Baloda Bazar Bhatapara Chhattisgarh.
10. State Of Chhattisgarh, Through : Collector , Raipur, District Raipur Chhattisgarh.

-----Respondents

For Petitioner : Ms. Laxmeen Kashyap, Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

10/12/2019

1. This petition has been brought being aggrieved by the order dated 21.10.2019, passed by the learned First Civil Judge, Class I, Baloda Bazar, District – Baloda Bazat – Bhatapara (C.G.) in Civil Suit No.88-A/2013 by dismissing the application brought by the petitioner under Order 26 Rule 9 of C.P.C.
2. It is submitted that the petitioner/plaintiff has pleaded in his plaint that 1392 sq.ft. of the suit property has been encroached upon by the private respondents and construction has been raised upon it. Private respondents have contested the pleadings in plaint. In the impugned order, the learned trial Court has held that construction is already completed, therefore, there is no requirement for spot inspection and the application was rejected. This order is arbitrary and illegal. Therefore, it is prayed that petition be admitted and the relief be granted in favour of the petitioner.
3. Trial Court has not considered that the plaintiff have pleaded regarding encroachment upon suit land by the private respondents. Respondents have made pleadings in written statement only by way of denial. This does lead to any inference that the dispute regarding the suit land encroached upon does not exist. In this particular case, the trial Court should have considered whether the spot inspection and the demarcation would have been essential for adjudication of the dispute between the parties, which has not been considered at all. Therefore, I am of this opinion that the impugned order has not been correctly passed. Hence, this petition is disposed off at motion stage. The impugned order dated 21.10.2019, passed by the learned First Civil Judge, Class I, Baloda Bazar, District – Baloda Bazat – Bhatapara

(C.G.) in Civil Suit No.88-A/2013 is set-aside and the application filed by the petitioner under Order 26 Rule 9 of C.P.C. is restored and the trial Court is directed to reconsider on the application after giving proper opportunity to both the parties.

4. Accordingly, this petition is disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Balram