

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M.A. No. 17 of 2020**

- Dr. Smt. Sudha Girish Pandey W/o Dr. Girish Pandey Aged About 65 Years R/o Rajendra Nagar Chowk, Bilaspur Tahsil And District Bilaspur Chhattisgarh. **---- Appellant**

Versus

1. Dhanku S/o Banshilal Yadav Aged About 55 Years R/o Village Mangla, Police Station Civil Lines, Tahsil And District Bilaspur Chhattisgarh.
2. State Of Chhattisgarh Through The Collector District Bilaspur Chhattisgarh.

---- Respondents

For Appellant:	Shri Shri Ashok Kumar Shukla, Advocate.
For Respondent No.1:	Shri Akhilesh Kumar, Advocate.
For State/Respondent No.2:	Shri Raghvendra Verma, G.A.

Single Bench:Hon'ble Shri Sanjay S. Agrawal, J**Order On Board****25.11.2020**

1. This miscellaneous appeal has been preferred by the Plaintiff under Order 43 Rule1(r) of Code of Civil Procedure (hereinafter referred to as the 'CPC') questioning the propriety of the order dated 03.02.2020 passed by First Additional District Judge, Bilaspur (C.G.) in Civil Appeal No.189-A/2019, whereby the learned appellate Court has refused to grant him injunction while rejecting the application filed under Order 39 Rule 1 & 2 read with Section 151 of CPC. The parties to this appeal shall be referred hereinafter as per their description in the trial Court.

2. Learned counsel for the Appellant/Plaintiff, while furnishing photographs of the suit land, submits that Defendant No.1 during pendency of the First Appeal is bent upon in raising the illegal boundary

wall and in the event of its construction would cause an irreparable injury to the Plaintiff. It is contended further that the Plaintiff had acquired his valid title over the property in question by virtue of the registered deed of sale dated 09.12.1985 said to have been executed by Anil Ghai and others, and therefore, the alleged illegal construction by the said Defendant without any authority would not only defeat the very purpose of filing of his said appeal but would be involved in multiplicity of the suit. It is contended further that without considering the said fact in its proper manner, the Court below has erred in rejecting the said application filed under Order 39 Rule 1 & 2 of CPC.

3. On the other hand, learned counsel for Defendant No.1 has supported the order impugned.

4. I have heard learned Counsel for the parties and perused the entire papers annexed with this appeal carefully as passed by the Court below.

5. Perusal of the record would reveal the fact that the Plaintiff's suit claiming declaration of title and possession with regard to the property in question admeasuring 1600 sq.ft. of land forming a part of Khasra No.967/1/क/22 area 0.036 hectares described in red color in plaint Schedule "A" based upon the registered deed of sale dated 09.12.1985 purported to have been executed by Anil Ghai and others in his favour, has been dismissed by the trial Court vide judgment and decree dated 21.10.2019 in Civil Suit No.430-A/2014. It was held by the trial Court that the Plaintiff's vendors had no alienable interest over the property in question and as such, the Plaintiff has not acquired any interest whatsoever over the suit land and in consequence dismissed the claim. According to the Plaintiff, Defendant No.1 has proceeded with the illegal

construction of boundary wall after passing of the said judgment and decree of the trial Court and would cause an irreparable injury to him if he has not been restrained from doing such an illegal act. It, however, appears from a bare perusal of the averments made in the plaint, particularly paragraph 5, that the said Defendant has not only constructed a hut (kaccha house) but has raised the boundary wall over there. In view thereof, it is difficult to hold, based upon those photographs, that the said Defendant has initiated the alleged construction work after passing of the said judgment and decree of the trial Court. In any case, the Plaintiff was not found either in possession over the suit land or the owner of it. As such, three essential ingredients as acquired for issuance of temporary injunctions are not in his favour and the Court below has, therefore, not committed any illegality in rejecting the same.

6. The appeal being devoid of merits is accordingly dismissed. No order as to costs.

Sd/-

(Sanjay S. Agrawal)
JUDGE