

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 239 of 2020

Vijay Kumar Dadriwal, S/o late Shrichand aged about 55 years, R/o. Village Lailunga, P.S. Lailunga, District Raigarh, Chhattisgarh.

---- Petitioner

Versus

State of Chhattisgarh, through the Collector, Raigarh, District Raigarh, Chhattisgarh.

---- Respondent

For Petitioner	: Shri Ravindra Agrawal, Advocate with Shri Neeraj Kumar Mehta, Advocate.
For Respondent/ State	: Shri Sudeep Verma, Dy. G.A.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

28-02-2020

1. Heard.
2. This petition has been brought being aggrieved by the order dated 7.2.2020 passed by the Learned Additional District Judge, Gharghoda in Misc. Civil Appeal No. 8 of 2019 dismissing the appeal filed against the order of the trial Court, in which the application under Order XXXIX Rule 1 and 2 of the CPC was rejected.
3. The petitioner has filed a civil suit before the Court of Civil Judge, Class-II, Gharghoda praying for relief of permanent injunction. He has pleaded that the suit property of area 0.019 hectares situated in village Lailunga is disputed property. A case of encroachment was registered against the petitioner before the Court of Sub-Divisional Officer, Lailunga and notice was issued to the petitioner to which the petitioner replied that he is in possession of the property since about 50 years and the proceedings against him is malicious. However, without giving the proper opportunity to the petitioner the case was decided and fine of

Rs.15,000/- also imposed upon the petitioner with an order to dispossess him from the suit property. The suit property is an abadi land and any proceeding under the M.P. or C.G. Land Revenue Code cannot be initiated, therefore, claiming that the petitioner has right to protect his possession on the suit property. After filing of suit, an application under Order XXXIX Rule 1 and 2 of the CPC read with Section 151 of the CPC was filed, which was decided by the trial Court on 13.11.2019 and it was held that the suit property is a government land, on which the petitioner has no title, therefore, it was held that there is no *prima facie* case in favour of the petitioner and the application was rejected.

4. The Appellate Court has mentioned in the impugned order, that at the stage of arguments the document was referred to by the petitioner's side, that according to the survey list the disputed property is proposed property to be given on lease to the petitioner. However, the said argument and document referred was not appreciated by the Appellate Court holding that it has not been brought in accordance with Order XLI Rule 27 of the CPC and concurring with the finding of the trial Court, has dismissed the appeal.
5. It is submitted by counsel for the petitioner, that according to the survey list prepared by Sub-Divisional Officer, Lailunga, the name of the petitioner finds mention at Serial No. 53, which shows the details of the suit property, area and also mentions the lease number. This is a document of title in favour of the petitioner which has not been appreciated by the Courts below. It is further submitted that earlier encroachment proceeding was drawn against the petitioner and then the Naib Tehsildar passed an order for removal of encroachment. That order was challenged before the Court of Sub-Divisional Officer,

Lailunga in Revenue Appeal No. 21/A-68/2018-19 and the order of Naib Tehsildar was set aside by order dated 25.10.2019.

6. As the proceedings against the petitioner is politically motivated, the Sub-Divisional Officer, Lailunga sought permission of the Collector to review the order dated 25.10.2019 and has reviewed the same by order dated 18.11.2019, by upholding the order of the Naib Tehsildar for removal of encroachment of the petitioner. Therefore, the civil suit has been brought, in which the prayer made for temporary injunction has not been entertained and disallowed by the Courts below. Hence, it is prayed that this Court may use the extra-ordinary jurisdiction under Article 227 of the Constitution of India to interfere with the impugned order and grant relief to the petitioner.
7. Learned State counsel appearing for the respondent submits that firstly, the suit filed by the petitioner itself is not maintainable being barred under Section 257 of the Chhattisgarh Land Revenue Code. Secondly, the order passed by the Sub-Divisional Officer was appealable before the Collector of the District and instead of filing such appeal, the civil suit has been filed. It is also submitted that the petitioner has no entitlement over the government land and he has not presented any document to show his entitlement as a lease holder of the same. Therefore, the possession of the petitioner is of an encroacher and any encroacher has no entitlement for grant of temporary injunction in any suit filed by him, therefore, the revision petition be dismissed.
8. Heard counsel for both the parties and perused the documents present on record.
9. On perusal of the documents filed alongwith the petition and the plaint, it is clear that nowhere it is mentioned as to on what basis the petitioner is holding possession over the suit land. The averment regarding proposal

of grant of lease to the petitioner or any such lease has been granted in his favour has been raised at the appellate stage. Therefore, neither this averment is a part of the pleading in the civil suit nor any such document was present before the trial Court at the time of passing of order on the application under Order XXXIX Rule 1 and 2 of the CPC.

10. Article 227 of the Constitution of India gives a supervisory jurisdiction to the High Court which is limited only to see whether the Courts below have considered and passed an order in any case in accordance with law within the parameters fixed for the same. For a *prima facie* case, to hold possession on a property, the person claiming has to show that he has either title, or shadow of title or any other legal entitlement for the same. This being absent in the pleading of the plaint, no fault can be found with the order passed by the trial Court itself which held that no *prima facie* case is made out. Similarly, no fault can be found with the order of the Appellate Court.

11. Hence, I do not find any merit in this petition to exercise the jurisdiction under Article 227 of the Constitution of India. Accordingly, the petition is disposed off. The petitioner is granted liberty to file an application for suitable amendment in his pleading in case, he is in a position to show his entitlement for possession over the suit property and subsequent to that amendment, he may pray again for grant of temporary injunction, if so advised by his counsel.

Sd/-

(Rajendra Chandra Singh Samant)
Judge