

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP (227) No. 435 of 2020

Reserved On : 09.11.2020

Delivered On : 27.11.2020

1. Manharan, S/o Anand Ram Gond, Aged About 59 Years.
2. Smt. Shyama Bai Gond, W/o Anand Ram Gond, Aged About 72 Years.

Both are R/o Behind Nature City, Village Uslapur, Tahsil-Takhatpur, District- Bilaspur (C.G.)

--- Petitioners

Versus

1. Smt Aylin Khalkho, W/o Sandeep Khalkho, Aged About 31 Years, Caste Uroan, Occupation- Government Job, R/o 04 Sister House, Dr. Khetrapal Lane, Near Sefar School, Nehru Nagar, Tahsil- Bilaspur, District- Bilaspur (C.G.)
2. Smt. Anjeeta Beck, W/o Pravin Kumar Beck, Aged About 34 Years, Occupation- Government Employee, R/o Ramchandra Bora, Gondpara, Bilaspur, District- Bilaspur (C.G.)
3. Chetan Maravi, W/o Late Panchram Gond, Aged About 35 Years.
4. Smt. Maharin Bai, Wd/o Late Panchram, Gond, Aged About 55 Years.

R/o No. 3 & 4 Behind Nature City, Village Uslapur, Tahsil-Takhatpur, District- Bilaspur (C.G.)

5. State of Chhattisgarh, through Collector, District- Bilaspur (C.G.)

--- Respondents

For Petitioners	:	Mr. Atanu Ghosh, Advocate.
For Respondent No. 1 & 2	:	Mr. Prafull N. Bharat, Advocate.
For Respondent No. 3 & 4	:	Mr. Jitendra Shrivastava, Adv. & Mr. Hari Om Rai, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

CAV Order

1. This writ petition has been brought praying for invoking power under Article 227 of the Constitution of India and for seeking relief of status quo with respect to the subject matter of Civil Suit No. 50A/2019 before the Civil Judge Class-II, Takhatpur, District-Bilaspur (C.G.).
2. The petitioners are plaintiffs, who have filed the civil suit before the trial court pleading that the land bearing Khasra No. 383/1B admeasuring 0.50 acres and Khasra No. 428/4 admeasuring 0.26 acres was self acquired property of Anand Ram Gond. After partial sale made by Anand Ram, the remainder land is 0.32 acres of Khasra No. 383/1B and 0.6 acres of Khasra No. 428/4, which is under ownership and possession of the plaintiffs. The disputed land has been entered in the name of defendants/ respondent No. 3 & 4 on the basis of erroneous order passed by Tahsildar- Sakri. The appeal preferred by the plaintiffs was dismissed, however, the matter before Commissioner, Bilaspur is pending. It was pleaded that on the basis of this entry, respondent No. 3 & 4 have sold the disputed property to respondent No. 1 & 2, regarding which, the plaintiffs came to know on 15.06.2019 when the respondent No. 1 & 2 attempted to take possession of the disputed land for raising construction.
3. The respondents side have denied all the pleadings of the petitioners side and it is submitted that the suit property was

received by respondent No. 3 & 4 in partition of ancestral property and that after purchase by respondent No. 1 & 2 from respondent No. 3 & 4, the disputed property has been mutated in the name of respondent No. 1 & 2, therefore, they are holder of legal title and possession on which, they are raising construction.

4. The petitioners moved an application under Order 39 Rule 1 & 2 of the C.P.C., which was decided vide order dated 07.08.2019. The learned trial court gave finding that the petitioners have prima facie case in their favour along with balance and convenience in their favour, therefore, they may suffer irreparable injuries. The application was allowed and order of temporary injunction was passed against the respondents.
5. This order was challenged in Misc. Civil Appeal No. 62/2019 before 6th Additional Sessions Judge, Bilaspur. The learned appellate court has held that finding of the trial court regarding prima facie case, in favour of the plaintiffs, was erroneous and it was also held that the respondents were bonafide purchasers, therefore, in case, the construction, which is in progress, is stayed, the irreparable loss will be suffered by the respondents side and on that basis, the appeal was allowed and the prayer made by the petitioners for temporary injunction, was dismissed.
6. It is submitted by learned counsel for the petitioners, that there is no dispute with respect to the land bearing Khasra No. 428/4. The learned trial court has held in the order dated 07.08.2019

that the petitioners were in possession of the land bearing Khasra No. 383/1B. The learned appellate court has committed error in passing the impugned order, in which, the documents filed in the appeal, were appreciated and conclusions were drawn.

7. It is also submitted that there is dispute regarding partition of the suit property. As the matter is pending and the construction has started during pendency of this dispute itself, therefore, if the construction is raised on the disputed property, then there would be danger of getting vested, in the rights of the petitioner, if any, to be established in the future, will be clearly affected. The petitioners had clear prima facie case in their favour along with balance and convenience, therefore they are the party, who were bound to suffer irreparable loss in case relief had not been granted. Therefore, the impugned order be quashed and relief may be granted in favour of the petitioners.
8. Learned counsel for respondent No. 1 & 2 submits that the learned appellate court has not committed any error in passing the impugned order. Looking to the nature of dispute that is present, regarding Khasra No. 383/1B, is based on rival claims. It cannot be said that the plaintiffs have prima facie case in their favour. It was observed by the appellate court that the petitioners/ plaintiffs had filed no documents regarding pendency of any appeal, against the partition order, therefore, the partition was under challenge, in any manner, was not established. Respondent No. 3 & 4 were owner of the property on the basis

of the partition and the same property has been transferred to respondent No. 1 & 2, therefore, respondent No. 1 & 2 are bonafide purchasers for consideration.

9. Reliance has been placed on the judgment of the Supreme Court, in the matter of **Ambalal Sarabhai Enterprise Limited Vs. KS Infraspace LLP Limited & another**, reported in **2020 (5) SCC 410**. It is submitted that the presence of prima facie case itself, is not sufficient for grant of injunction. The court has to further satisfy itself, that non interference by the court would result in irreparable injuries to the party seeking relief and that there is no other remedy available to the parties except one to grant of temporary injunction. In this matter, the situation is contrary as respondent No. 1 & 2 have already raised construction on the disputed property, which is at an advance stage. Respondent No. 1 & 2 have obtained bank loan for this construction and they are suffering loss because they have to make payment of monthly installments regularly.
10. The counsel for respondent No. 1 & 2 makes statement, that respondent No. 1 & 2 are ready to undertake to pull down the construction in case, the decision of the Court is adverse to them. It is also submitted that it had been pleaded by the respondents that the disputed property was the ancestral property belonging to two brothers namely Lalji and Lalaji. The petitioner are from branch of Lalji whereas, respondent No. 3 & 4 are from branch of Lalaji, therefore, the suit property was not self acquired property of Anand Ram.

11. Considered on the submissions and perused the documents that are present on record.
12. There are rival claims over the property bearing Khasra No. 383/1B whereas the respondents side support the partition order dated 29.09.1999. Pleadings of the petitioners/ plaintiffs is that the partition matter is still pending, which has been clearly denied by the respondents side. There is no documentary proof presented by the petitioners side regarding pendency of such dispute. The partition dated 29.09.1999 is the basis of mutation in favour of respondent No. 3 & 4 and subsequent to which, the sale deed has been executed in favour of respondent No. 1 & 2. Considering the dispute raised by both the side in the pleadings, it can be said that the title of the subject matter of the suit, is highly disputed, which may be regarded as a prima facie case.
13. The claim on the property and the dispute can be decided in the trial after the parties leading evidence in proof of that claim, therefore, at present, it appears to be difficult to hold that which of the party has balance of convenience. On the other hand, it is undisputed that respondent No. 1 & 2 are in possession of the dispute property and they have already raised construction on the same, which is at an advance stage, hence, the petitioners/ plaintiffs then, may need to claim relief of possession in case. The petitioners side has also admitted that the construction is going on. In such condition, the proposed undertaking given by respondent No. 1 & 2, has relevance. The undertaking so given is taken on record, which may be complied with in the future, in

case, the respondents side do not succeed in the civil suit. Otherwise, I am of this view that the appellate court has exercised the jurisdiction properly and there is no need of interference by this court. Hence, this petition is liable to be dismissed.

14. In view of the above, the instance petition is dismissed at motion stage itself.

Sd/-
(Rajendra Chandra Singh Samant)
Judge