

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 801 of 2018

1. Digvijay Singh Thakur Aged About 52 Years.
2. Sangram Singh Thakur, Aged About 45 Years.
3. Smt. Savitri Thakur Wd/o Yashwant Singh Aged About 40 Years.
4. Manjula Thakur Aged About 47 Years.
5. Divya Thakur Aged About 43 Years.
6. Laxmi Thakur Aged About 41 Years.

All sons & daughter of late Gaukaran Thakur, R/o- Mangal Bazar, Idgah Batha, Raipur, Tahsil and District Raipur, Chhattisgarh.

---- Petitioners

Versus

1. Pratap Singh Thakur S/o Late Gaukaran Singh Aged About 56 Years R/o- Village Godhi, Post Mohdi, Police Station Dharshiwa, Raipur, Tahsil and District- Raipur, Chhattisgarh.
2. State of Chhattisgarh Through Collector, Electorate Complex, Raipur, Chhattisgarh.

---- Respondents

For the Petitioners	:	Shri A. K. Prashad, Advocate.
For Respondent No.1	:	Shri H.B. Agrawal, Sr. Advocate with Ms. Priti Yadav, Advocate.
For Respondent No.2/State	:	Shri Roshan Dubey, PL. .

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

23.01.2020.

1. This petition has been brought being aggrieved by the order dated 14.08.2018 passed by the learned 3rd Additional District Judge, Raipur in Misc. Civil Appeal No.34/2018 thereby dismissing the appeal and upholding the order passed by the learned trial Court rejecting application of the plaintiffs/petitioners herein filed under Order 39 Rule 1 & 2 of CPC.
2. It is submitted that the petitioners and respondent No.1 were

joint holders of the property described in the Schedule annexed to the plaint. On a revenue case being filed by them, the Tahsildar vide order dated 13.10.2017 ordered for partition of the said property. Details of partition have been mentioned in Para-4 of the plaint. The dispute is with regard to shares allotted to the plaintiffs. Allegation of the plaintiffs is this that respondent No.1 is interfering with the possession of the plaintiffs over the disputed property as they are making attempts to lease out the said property to other persons. In these circumstances, the suit was filed along with an application for grant of temporary injunction. The trial Court vide order dated 18.5.2018 has erroneously rejected the application filed under Order 39 Rule 1 & 2 of the CPC against which a miscellaneous civil appeal bearing No.34/2018 was preferred before the learned 3rd Additional District Judge, Raipur, which also came to be dismissed vide order impugned.

3. It is submitted that as both the Courts below have erroneously appreciated the facts and other evidence brought on record, therefore, arrived at a wrongly conclusion that there is no specific evidence regarding interference by respondent No.1. Whereas the petitioners/plaintiffs have very specifically mentioned in their plaint in this regard and even description of the property on which respondent No.1 is interfering was also given and an affidavit in support thereof has also been filed, which could have been discarded. Hence, the petitioners are entitled for grant of temporary injunction and the impugned orders passed by the Courts below are liable to be set aside.

4. Learned Sr. Counsel for respondent No.1 submitted that respondent No.1 has never challenged the partition nor admitted that he is interfering with the share of the petitioners in the said property. Affidavit evidence given by the petitioners/ plaintiffs has also been rebutted by respondent No.1 in the affidavit evidence given in reply to the application filed under Order 39 Rule 1 & 2 of CPC. Therefore, no case is made out for grant of temporary injunction.
5. Heard and perused.
6. On the basis of the submissions made and perusal of the documents filed along-with the petition, it is found that there is no dispute regarding the partition between the petitioners and respondent No.1, therefore, there is only one allegation made by the petitioners remains to be examined is whether respondent No.1 is interfering with the possession of the petitioners or not, which is a subject matter of evidence and which can be pursued only in the trial.
7. At the present stage, the averments are supported only by the affidavit evidence given by the petitioners in support of their application under Order 39 Rule 1 & 2 of the CPC, whereas the same has been specifically denied by respondent No.1 in his affidavit. Therefore, on this basis any preponderance of probability cannot be made out and as such, at this stage it is not primarily established that respondent No.1 is interfering with the possession of the petitioners. Case of the petitioners is prima facie in their favor with regard to their shares in the property, however, at this stage the balance of convenience and the issue

of irreparable injury is not found in favour of the petitioners, Therefore, I do not find any error in the orders passed by the trial Court and the Appellate Court. Accordingly, this petition is dismissed. However, the petitioners will be at liberty to file a repeat application under Order 39 Rule 1 & 2 of the CPC in future, if such condition arises.

8. At this stage, learned counsel for the petitioners prays for a direction to the trial Court for expeditious disposal of the civil suit itself.
9. In given facts and circumstances of the case, the trial Court concerned is directed to decide the suit expeditiously.

Sd/-

(Rajendra Chandra Singh Samant)

Judge