

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 726 of 2019

- Savitri Devi W/o Govind Ram Agrawal, Aged About 75 Years, R/o Jutemil Road Raigarh, Tahsil and District- Raigarh Chhattisgarh..... (Plaintiff), District : Raigarh, Chhattisgarh

---- Petitioner

Versus

- Umashankar Sonkar S/o Shiva Dhar Sonkar, Aged About 50 Years, R/o Dhangardipa, Raigarh, Tahsil and District- Raigarh Chhattisgarh..... (Defendant), District : Raigarh, Chhattisgarh

--- Respondent/Plaintiff

For Petitioner – Shri Hari Agrawal, Advocate.

For Respondent – Shri Yash Agrawal and Shri Sunil Verma, Advocates.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

04-02-2020

Heard.

1. This petition has been brought being aggrieved by the order dated 27-08-2019 passed by the appellate Court dismissing the Misc. Appeal No.17/2019 and upholding the order of the First Civil Judge Class -I Raigarh in Civil Suit No.89A/2019 on 31-07-2019 dismissing the application under order 39 Rule 1 and 2 read with Section 151 of the CPC.
2. It is submitted by learned counsel for the petitioner that the petitioner/plaintiff has filed a civil suit making a pleading that she has easementary right over the property in her title having right to light and air from the northern boundary of her property on which there is situated public road. The respondent is contesting and denying the claim of the petitioner/plaintiff. The petitioner had filed petition under Order 39 Rule 1 and 2 read with Section 151 of the CPC and during pendency of this application another application was filed under Order 39 Rule 7 of the CPC, in which it was prayed that before deciding application under Order 39 Rule 1 and 2 read with Section 151 of the CPC an inspection be made of the suit property, which may be of assistance in

deciding the application for grant of temporary injunction. The learned trial Court has decided the application of the petitioner under Order 39 Rule 1 and 2 read with Section 151 of the CPC on 31-07-2019 without deciding the application under Order 39 Rule 7 of the CPC. The application for temporary injunction was rejected and subsequent to that application under Order 39 Rule 7 of the CPC was also rejected in an arbitrary manner.

It is submitted that inspection of the spot was necessary before determining the application under Order 39 Rule 1 and 2 read with Section 151 of the CPC. Reliance has been placed on the judgment of Rajasthan High Court in the matter of **Dhanna Ram Vs. Jairoop Ram & Ors.**, 2013 SCC OnLine Raj 2514, in which it is held by the learned single Judge that the trial Court can well within its jurisdiction seek inspection of the site to have a better conclusion on the application filed under Order 39 Rule 1 and 2 of the CPC. Similarly, it is held in **Pradip Port Trust represented through its Secretary and another Vs. Sankhanand Behera and others** by Orissa High Court which is reported in 2016 SCC OnLine Ori 753 that object of Order 39 rule 7 is to find out the actual position and conditions of the property. Therefore, this petition deserves to be allowed which may be allowed and relief be granted in favour of the petitioner.

3. Learned counsel for the respondent opposes the submission made by learned counsel for the petitioner and submits that no error has been committed by the learned trial Court as well as by the appellate Court, therefore, there is no ground for interference in this case.

4. Heard learned counsel for the parties and perused the documents.

5. On perusal of the impugned order, order of the trial Court and also the other documents filed along with the petition, it is found that there has been a dispute present regarding location, portion and direction with respect to the suit property between the parties. The learned trial Court has itself held in the order

dated 31-07-2019 rejecting the application for grant of temporary injunction that claim of the petitioner/plaintiff regarding her easementary rights on the northern side of the plot is not substantiated with the evidence. The learned appellate Court has also not appreciated this dispute present before the parties.

6. Order 39 Rule 7 of the CPC is a provision under the chapter of Order 39 of the CPC which is titled as "Temporary Injunctions and Interlocutory Orders". It can be clearly made out that provision under Order 39 Rule 7 of the CPC is meant for other provisions which are present under Order 39 of the CPC. Therefore, inspection of the disputed spot under Order 39 Rule 7 of the CPC is meant to directly deal with the applications which may be presented before the Court for grant of temporary injunction and other interlocutory orders in the other provisions of Order 39 of the CPC.

7. This fact is not denied that the application for order 39 Rule 1 and 2 of the CPC was pending before the Court praying for grant of temporary injunction to the petitioner/plaintiff and it was also a prayer in the application filed by the petitioner under Order 39 Rule 7 of the CPC that inspection be made for the purpose of deciding the application under Order 39 Rule 1 and 2 of the CPC. The learned trial Court as well as the appellate Court both have not appreciated these facts and circumstances and provision of law and pass the orders. Therefore, it appears that order passed rejecting the application for temporary injunction was passed without complying with the necessary requirement that was present looking to the dispute between the parties and that was this, that firstly the application under Order 39 rule 1 and 2 read with Section 151 of the CPC have been decided by the trial Court. Therefore, for the purpose that correct procedure is followed by the Courts below, this petition is allowed at the motion stage. The impugned order of the appellate Court as well as the order passed by the trial Court both are set aside and the order passed by the trial Court under Order 39 Rule 7 of the CPC is also set aside. The

learned trial Court is directed to firstly consider and decide the application under Order 39 Rule 7 of the CPC after affording opportunity of hearing to both the parties and subsequent to that, the other application under Order 39 Rule 1 and 2 read with Section 151 of the CPC which is restored shall be considered and decided by the same Court.

8. The petition stands disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge