

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP (227) No. 768 of 2019

1. Kailash Pradhan, S/o Late Vishesar, aged about 60 years.
2. Nanda Bai, D/o Late Vishesar, aged about 53 years,
Both R/o Basti Saraipali, District- Mahasamund (C.G.)
3. Safed Bai, D/o Vishesar, aged about 54 years, R/o Village-
Paterapali, Tahsil- Saraipali, District- Mahasamund (C.G.)

--- Petitioners

Versus

1. Ganga Ram Patel, S/o Paras Ram Patel, Aged About 49 Years,
R/o Basti Saraipali, District- Mahasamund (C.G.)
2. Paras Pradhan, S/o Ram Lal Pradhan, Aged About 53 Years.
3. Pramod Pradhan, S/o Late Ram Lal Pradhan, Aged About 49
Years.
4. Ila Bai Pradhan, W/o Late Ram Lal Pradhan, Aged About 80
Years.
No. 2 to 4 are R/o Jalgarh, Post Chattigirola, Tahsil Saraipali,
District- Mahasamund (C.G.)
5. Sharda, S/o Late Ram Lal Pradhan, Aged About 47 Years, R/o
Gardhtiya, Tikara, P.S. Sohela, District- Bargarh (Odisha).
6. Vinod Kumar Pradhan, S/o Late Kishori Pradhan, Aged About 46
Years, R/o Mohka, Post Singhanpur, Tahsil Basna, District-
Mahasamund (C.G.)
7. Rohit Kumar Pradhan, S/o Kishori Pradhan, Aged About 46
Years.
8. Gulapi Bai, W/o Lare Kishori Pradhan, Aged About 80 Years.
No. 7 & 8 are R/o Basti Saraipali, District- Mahasamund (C.G.)

9. Ananda, S/o Late Kishori Lal, Aged About 44 Years, R/o. Piproi, Post Office Sankara, Bodesara, District- Mahasamund (C.G.)
 10. Bhargaon, S/o. Late Labo Pradhan, Aged About 35 Years, R/o. Palsapali, Post Bodesara , Tahsil Saraipali, District- Mahasamund (C.G.)
 11. Taruni, S/o Labo Pradhan, Aged About 46 Years, R/o Village Padkipali, Post Office Lohra Chatti, District- Bargarh (Odisha)
 12. Sushma, D/o Late Labo Pradhan, Aged About 44 Years, R/o Charbhatha, Post Singhoda, Tahsil Saraipali, District- Mahasamund (C.G.)
 13. Jyotsana, W/o Krishna Kumar, Aged About 46 Years.
 14. Shrikant, S/o Krishna Kumar, Aged About 29 Years.
- No. 13 & 14 are R/o Basti, Saraipali, District- Mahasamund (C.G.)
15. Miniketan, S/o Kartik Ram, Aged About 46 Years R/o. Bonda, Tahsil Saraipali, District Mahasamund Chhattisgarh, District : Mahasamund, Chhattisgarh
 16. Doulat, S/o Harihar, Aged About 49 Years, R/o Village Kejunva, Tahsil Saraipali, District- Mahasamund (C.G.)
 17. Gopal Prasad, S/o Abhi Lal, Aged About 46 Years, R/o Forest Department Saraipali, Tahsil Saraipali, District- Mahasamund (C.G.)
 18. Kirtan, S/o Fagu Lal Dadsena, Aged About 46 Years, R/o Village Harratar, Post Saraipali, District- Mahasamund (C.G.)
 19. State of Chhattisgarh, Through: The Collector Mahasamund, District- Mahasamund (C.G.)

--- Respondents

For Petitioners	:	Mr. Ravindra Sharma, Advocate.
For Respondent No. 1 to 8	:	Mr. Sourabh Sharma, Advocate.
For State/ Respondent No. 19	:	Mr. Ravish Verma, Govt. Adv.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

16/07/2020

1. This petition has been brought praying for invoking power under Article 227 of the Constitution of India for setting aside impugned order dated 30.07.2019 (Annexure- P/1) and for granting relief to the petitioners under Order 39 Rule 1 & 2 of C.P.C.
2. The petitioners had filed a civil suit against the respondents praying for relief of declaration, permanent injunction of prohibitory as well as mandatory nature. It is pleaded in the plaint that the suit land admeasuring 184 sq.ft. is at present in possession of respondent No. 1, who is raising construction on it. The petitioners have placed their claim over the suit property and relief has been prayed that respondent No. 1 be restrained to make any projection in the construction made by him. A separate application under Order 39 Rule 1 & 2 of C.P.C. was filed praying for issuance of interim injunction to restrain respondent No. 1. The petitioners had then filed a repeat application under Order 39 Rule 1 & 2 of C.P.C. on 19.09.2017 submitting that the partition between the parties has already taken place, even then, the respondents have initiated the partition proceeding before the Revenue Court, therefore, the

interim order to restrain the partition proceeding may also be passed.

3. Respondent No. 1 in reply, has denied the averment made by the petitioners/ plaintiffs side placing his claim over the suit property, stating that he is raising construction on the land on which, he has possession and title, therefore, the petitioners are not entitled for any relief of interim injunction. The respondent replied to this second application and submitted that the partition proceeding has already been completed by Tahsildar- Saraipali, District- Mahasamund and the petitioners/ plaintiffs are not in possession of any of the suit land, therefore, there is no prima facie case in favour of the petitioners.
4. The learned trial court decided the application vide order dated 09.05.2018 and held that the possession of respondent No. 1 is admitted in the pleading of the petitioners/ plaintiffs themselves and there is no documentary proof produced in support of claim of the petitioners. It was also held that there is no prima facie case or balance of convenience present in favour of the petitioners and the application has been dismissed. The learned trial court vide order dated 09.05.2018 held that there is no pleading in the plaint as to what are the share of the petitioners/ plaintiffs in the family property/ suit property, therefore, their

rights over the property are not defined and no ground is found for staying the proceeding of partition. Prima facie, the case is not in favour of the petitioners and the application was dismissed.

5. The petitioners, then preferred an appeal bearing Miscellaneous Civil Appeal No. 04/2018 before the court of Additional District Judge, Saraipali, District- Mahasamund (C.G.), which has been decided by the impugned order by which, the appeal was dismissed and the order of the trial court was upheld.
6. It is submitted by learned counsel for the petitioners that the impugned order and the order of the trial court suffer from infirmity and illegality. The petitioners had established that they have prima facie case in their favour with respect to the land on which respondent No. 1 was raising construction, therefore, they had right for prohibitory relief against respondent No. 1. With respect to the repeat application filed by the petitioners under Order 39 Rule 1 & 2, it is submitted that earlier a Writ Petition (227) No. 761/2017 was filed by the petitioners with respondent No. 11 & 12, in which, stay order was passed by the High Court. However, that petition was later on withdrawn by the petitioners. Subsequent to that, some of the respondents have filed application before the court of Tahsildar for partition of

agricultural land. As the proceeding is against the interest of relevant and necessary parties, therefore, the petitioners had right to move prayer for staying of the partition proceeding.

7. It is further submitted that the court below had not made any appropriate appreciation on the fact present and the law in that respect. The prima facie case had been in favour of the petitioners, therefore, balance of convenience irreparable injury ought to have been decided in favour of the petitioners. The petitioners are the party who are going to suffer irreparable loss, hence, the impugned order suffers from infirmity which is liable to be interfered with and relief of injunction may be granted in favour of the petitioners.
8. Learned counsel for respondent No. 1 to 8 opposes the submissions and submits, that both the applications filed by the petitioners for grant of temporary injunction has been contested by the respondents side. It is very much clear from pleading in the plaint that the respondent No. 1 is in possession of the Aabadi land, on which he is raising construction and further, the petitioners have failed to establish any right on their part on that Aabadi land, therefore, both the courts below have not committed any error on holding, that there is no prima facie case present in favour of the petitioners. As regard the second

application filed by the petitioners, it is submitted that subsequent to withdrawal of the writ petition before the High Court, the case before the Revenue Court has traveled up to Board of Revenue and it is on the basis of order of the Board of Revenue, the partition proceeding has been taken up and completed. The petitioners are not in possession of any of the suit land that is mentioned in the plaint. Copy of the final order dated 07.09.2017 passed in Revenue Case No. 258A/74 year 2016-17 is filed along with reply, which mentions that share in partition of the parties concerned has been finalised and also accordingly mutation has been made in revenue records, therefore, there is no prima facie case present in favour of the petitioners and learned trial court as well as the appellate court have not committed any error in dismissing the second application filed by the petitioners, hence, this petition is without any substance which may be dismissed.

9. I have heard learned counsel for the parties and perused the records.
10. Considered on the submissions made by learned counsel from both sides. On perusal of copy of the plaint filed by the petitioners/ plaintiffs, it is found in paragraph No. 6, where it was pleaded that the suit property is Aabadi land, admeasuring 184

sq.ft., which is in possession of respondent No. 1 and it is also admitted that he is raising construction on the same land. It shows that the petitioners are clearly not in possession of the suit property. The statement in the application that respondent No. 1 is making projection, is not complete statement, whether that projection in the building is within the land which is in possession of respondent No. 1 or that projection is interfering the rights of the petitioners or in enjoyment of property of the petitioners, on which they are in possession. Therefore, this being incomplete statement in the plaint as well as in the application under Order 39 Rule 1 & 2 of C.P.C., would not have been of any effect.

11. Considered on the basis of this admission and vague statement in pleading in the plaint and in the application with respect to construction of Abadi land. The finding of the courts below that the petitioners have no prima facie case, does not seem against the facts and provisions of law, therefore, I do not find any error in that part of the order of the trial court as well as the appellate court.
12. As regard the second application, for which the separate application has been filed by the petitioners/ plaintiffs, the pleading in the plaint in paragraph 15(c) mentions the

description of agricultural land, on which the petitioners have prayed for declaration of title and entitlement of partition, there is no mention of any partition proceeding present before any of the Revenue Court in the plaint itself. The petitioners stated in their second application filed under Order 39 Rule 1 & 2 of the C.P.C. that the petitioners along with respondent No. 6 and others have filed Writ Petition (227) No. 761/2015 in which, the order was passed for staying the proceeding of partition before the Revenue Court. Subsequent to withdrawal of that writ petition, the respondents have proceeded with the partition proceeding without arraying the necessary parties, therefore, rights and interest of necessary parties, is being affected and on that basis interim relief was prayed for staying the partition proceeding before the Revenue Court. The respondents replied to this application stating that subsequent to withdrawal of the writ petition before the High Court, the case has traveled up to the Board of Revenue and final order has been passed demarcating the separate share in favour of the parties in that partition proceeding. The prayer made in that application appears to be of vague nature.

13. Section 178 of the Chhattisgarh Land Revenue Code, 1959 provides that the application can be filed before Tahsildar for

partition of joint holding. Proviso to sub-section 1 provides that if any question of title is raised, then the Tahsildar has power to stay the proceeding before him and grant time to facilitate the institution of a civil suit for determination of the question of title.

14. The pleading in the plaint filed by the petitioners mentions about agricultural land as suit property and also mentions about pendency of the writ petition before the High Court, but there is no further mention about proceeding of partition before the Revenue Court, which was pending and has terminated on 07.09.2017. After passing of this final order on 07.09.2017, an application under Order 39 Rule 1 & 2 has been filed by the petitioners before the trial court on 14.09.2017. It appears that the order dated 07.09.2017 passed in Revenue Case No. 258A/74 year 2016-17, the petitioners had been party and they have been granted share by the same order and the partition proceeding was completed, therefore, there had been no occasion or no reason to stay the same on the basis of application under Order 39 Rule 1 & 2, which was subsequently filed.
15. As regard the entitlement of the petitioners to make a prayer for stay of execution of the order of partition proceeding, it is observed that the right to appeal against the order of Tahsildar

dated 07.09.2017 was available to the petitioners and that had been the appropriate forum. The appellate court would have been the proper forum to consider on prayer to stay the operation of order of the Tahsildar dated 07.09.2017.

16. The second application filed by the petitioners is vague mentioning of the pendency partition proceeding and it is also found that passing of this final order of Tahsildar dated 07.09.2017 was suppressed for making a prayer to stay the partition proceeding, which also shows that the petitioners had not been before the Court with clean hands.
17. On overall assessment of the facts and circumstances of the case and the statement made by both the parties, it is found that this petition is without any substance which is liable to be dismissed.
18. In view of the above, the instant writ petition is dismissed at motion stage itself.

Sd/-
(Rajendra Chandra Singh Samant)
Judge