

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP(227) No. 1009 of 2018

Pramod Kumar Agrawal S/o Late Jogiram Agrawal Aged About 52 Years
R/o Badibazar, Ratanpur, Tahsil Kota, District Bilaspur Chhattisgarh.
(Plaintiff).

---- Petitioner

Versus

1. Smt. Champa Devi W/o Late Jogiram Agrawal Aged About 80 Years R/o Badibazar, Ratanpur, Tahsil Kota, District Bilaspur Chhattisgarh.
2. Smt. Seema D/o Late Jogiram Agrawal Aged About 42 Years R/o Badibazar, Ratanpur, Tahsil Kota, District Bilaspur Chhattisgarh.
3. State Of Chhattisgarh Through Collector Bilaspur., District : Bilaspur, Chhattisgarh
4. Nayab Tahsildar Tahsil Office Ratanpur, Tahsil Kota, District Bilaspur Chhattisgarh.
5. S.H.O. Police Station Ratanpur, Tahsil Kota, District Bilaspur Chhattisgarh. (Defendants)

---- Respondents

For Petitioner	: Mr. Prafull Bharat, Advocate.
For Respondents No.1 & 2	: Mr. Sharad Mishra, Advocate on behalf of Shri S.S. Rajput, Advocate.
For Respondent/ State	: Mr. R.V. Rajwade, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

26-02-2020

1. This petition has been brought challenging the order of the Appellate Court in C.A. No. 54 of 2018 dated 6.10.2018, by which the order of the trial Court refusing to grant temporary injunction to the petitioner was upheld and the appeal was dismissed.
2. It is submitted that the petitioner and respondent No.1 are beneficiaries of a will dated 13.10.1993 and addendum dated 14.10.2018. On the basis of which, the petitioner has obtained the possession of the disputed property and similarly respondent No.1 has obtained her share in the disputed property which are adjacent in the same construction.

3. There is a dispute present between the parties, as the petitioner/ plaintiff is pleading and claiming that the respondent has made an attempt to encroach upon the share of the petitioner's property, whereas respondent No.1 is also making the same claim against the petitioner. The petitioner filed an application under Order XXXIX Rule 1 and 2 of the CPC before the trial Court. The first order was passed by the trial Court on 25.11.2017 which was *ex parte* against the respondents and the temporary injunction was granted in favour of the petitioner. Thereafter, the respondents appeared and they contested the application for grant of temporary injunction. On the basis of which, the second order dated 23.7.2018 was passed, by which the application of the petitioner under Order XXXIX Rule 1 and 2 of the CPC was rejected. This order was challenged in appeal before the Court of learned Seventh Additional District Judge, which was decided by the impugned order and the order passed by the trial Court was confirmed.
4. It is submitted that both the Courts below have erroneously appreciated the facts and circumstances present in the case. There is no denial made by the respondents' side in this respect, that the petitioner is holder of the share on the strength of the will in his favour and also that he is in possession of his share. The dispute regarding area of the shares that is present between the parties is also not denied, therefore, existence of these facts itself sufficient to hold that there had been a *prima facie* case present. Similarly, there is possibility that irreparable injury may be caused if the status quo is disturbed and the balance of convenience also appears to be in favour of the petitioner. Hence, the refusal to grant temporary injunction to the petitioner by both the Courts below is erroneous and arbitrary which needs interference.

5. Learned counsel for respondents No.1 and 2 opposes the submissions and submits that there is concurrent finding of the two Courts below, therefore, the impugned order does not suffer from any infirmity. Reliance has been placed on the judgment of the Supreme Court in the case of **Kashi Math Samsthan and Another vs. Srimad Sudhindra Thirtha Swamy and Another** reported in **AIR 2010 SC 296**, wherein it has been held that the person claiming temporary injunction has to prove that he has made out a *prima facie* case to go for trial and similarly the balance of convenience and irreparable loss are also in his favour and in this case the petitioner has failed to prove the same for grant of temporary injunction.
6. Heard counsel for both the parties and perused the documents present on record.
7. On perusal of the copy of the orders filed and also the copy of the other documents, it is found that the learned trial Court had made a mention in the order dated 6.10.2018 that the will dated 13.10.1993 mentions the share which has been bequeathed to the petitioner and respondent No.1. There is also mention that both the parties are in possession of their respective shares and there is a dispute present as the petitioner/ plaintiff has pleaded that respondents No.1 and 2 had engaged labourers to demolish and encroach upon the share of the petitioners property. There is similar allegation made by the respondents' side that the petitioner encroached upon the respondents property. The will mentioned is relied upon by both the parties, therefore, there appears to be no dispute regarding the title over the share allotted to the parties, according to the will in their favour. There is dispute regarding the area and the boundary of the property, on the strength of their title over the property in their possession, is itself a *prima facie* case, therefore, the

finding of the Court below is definitely erroneous and needs to be interfered.

8. On the point of irreparable loss. It is considered that if any person in possession of property is disturbed then there is possibility he may suffer irreparable loss, which cannot be compensated with money. The balance of convenience in such a case would be only to maintain the status quo. Therefore, all the three necessities for grant of temporary injunction are in favour of the petitioner, hence, the orders passed by the Courts below need interference in this petition. Accordingly, the petition is allowed at motion stage. The impugned orders passed by the Courts below are set aside. It is ordered that both the parties shall maintain the status quo as it is present today till the case is decided by the trial Court.
9. Accordingly, the petition stands disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge