

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP(227) No. 956 of 2019

1. Sant Ram S/o Rasiya Uraon Aged About 55 Years R/o Village Dhangaon Tahsil Pussour, District Raigarh, Chhattisgarh., District : Raigarh, Chhattisgarh
2. Anantram S/o Rasiya Uraon Aged About 47 Years R/o Village Dhangaon, Tahsil Pussour, District Raigarh, Chhattisgarh., District : Raigarh, Chhattisgarh
3. Kandari Wd/o Late Rasiya Uraon Aged About 90 Years R/o Village Dhangaon, Tahsil Pussour, District Raigarh, Chhattisgarh. (Plaintiffs), District : Raigarh, Chhattisgarh

---- Petitioners

Versus

1. Dasrathi S/o Purshottam Vaishnav R/o Village Ghughawa, Tahsil Pussour, District Raigarh, Chhattisgarh., District : Raigarh, Chhattisgarh
2. Tikeshwar S/o Purshottam Vaishnav, R/o Village Ghughawa, Tahsil Pussour, District Raigarh, Chhattisgarh., District : Raigarh, Chhattisgarh
3. Kensarhin Wd/o Late Prushottam, R/o Village Ghughawa, Tahsil Pussour, District Raigarh, Chhattisgarh., District : Raigarh, Chhattisgarh
4. Smt. Sapta @ Deepmalika D/o Purshottam W/o Gautam Vaishnav, R/o Village Baikunthpur Mohalla Raigarh, Tahsil And District Raigarh, Chhattisgarh., District : Raigarh, Chhattisgarh
5. Smt. Ratna Malika D/o Purshottam Vaishnav W/o Kumar Das Vaishnav, R/o Village Bhedwan, Tahsil Sarangarh, District Raigarh, Chhattisgarh., District : Raigarh, Chhattisgarh
6. Smt. Godo @ Kherkumari D/o Purshottam Vaishnav, R/o Village Kodatarai (Bhupdevpur New) Tahsil Sarangarh, District Raigarh, Chhattisgarh., District : Raigarh, Chhattisgarh
7. Fagulal S/o Raghuvar Aghariya, R/o Village Ghughwa, Tahsil Pussour, District Raigarh, Chhattisgarh., District : Raigarh, Chhattisgarh
8. State Bank Of India Branch Itwari Raigarh, District Raigarh, Chhattisgarh., District : Raigarh, Chhattisgarh
9. State Of Chhattisgarh Through Collector Raigarh Taluka Raigarh, District Raigarh, Chhattisgarh. (Defendants), District : Raigarh, Chhattisgarh

---- Respondents

For the Petitioners	: Shri Vineet Kumar Pandey, Advocate.
For Respondent No.7	: Shri Abhishek Saraf, Advocate.
For Respondent No.9/State	: Shri Sanjay Pathak, P.L.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

22-01-2020

1. Heard.
2. This petition has been brought being aggrieved by the order dated 26.11.2019 passed by the Court of District Judge, Raigarh in Misc. Civil Case No. 29 of 2019 dismissing the miscellaneous appeal filed by the petitioners.
3. It is submitted by counsel for the petitioners that the petitioners have filed a suit against the respondents making a claim that they are the owner of the suit property described as Khasra No.445/1 area 0.82 acres situated in village Ghughawa, Tehsil Pussour, District Raigarh. The property earlier belonged to one Jagmohan who transferred the same by a registered sale deed on 8.2.1963 to Purshottam, who happens to be father of respondents No.1 and 2. Purshottam then sold the same property to Rasiya Uraon who happens to be father of petitioners No.1 and 2 and husband of petitioner No.3. The petitioners could not get the land mutated in the revenue records, therefore, after the death of father of respondents No.1 and 2, the mutation has been entered in the name of respondent No.7. It is submitted that taking benefit of this mutation entry the respondents are raising dispute over the suit property and there is also apprehension that the petitioners may be dispossessed from the same.
4. It is submitted that after filing of civil suit, application was filed under Order 39 Rule 1 and 2 of the CPC. The trial Court vide order dated 13.10.2019 although held that *prima facie* case is in favour of the petitioners and they are in possession of the suit property, however, mentioning that there is no specific detail as to in what manner the respondents are interfering in possession of the petitioners, the grant of

temporary injunction was refused. This order was challenged before the Court of District Judge in Misc. Civil Case No.29 of 2019 and the same has been dismissed holding that there are rival statements on affidavits regarding the possession of the suit property, therefore, learned trial Court has not committed any error in holding that there is no balance of convenience and irreparable injury in favour of the petitioners and the order of the trial Court was upheld.

5. It is further submitted by counsel for the petitioners that the learned Appellate Court has not set aside the finding of the trial Court that the petitioners are in possession of the suit property and the *prima facie* case also is in their favour. It is nowhere in dispute that the petitioners are the successors of Rasiya Uraon, who is the purchaser of the suit property from Purshottam, father of respondents No.1 and 2. The spot inspection report given by Patwari which has been filed in the civil suit by the plaintiffs, very clearly shows that at present the petitioners are in possession of the suit property, therefore, affidavit sworn from the petitioners' side had more weight compared to the affidavit sworn by the respondents' side, and as such, the reason given for dismissal of miscellaneous appeal is erroneous. The petitioners have apprehension that their property shall be interfered with because respondent No.7 has the advantage of having mutation entry in his favour. Hence, for these reasons, the petitioners were entitled for grant of temporary injunction, and the petition be allowed by setting aside the impugned orders.
6. Respondents No.1, 2, 3, 4 and 6 are not represented.
7. Respondent No.9/ State is a formal party.
8. The main contesting party is respondent No.7 and on his behalf counsel submits that the learned trial Court as well as the Appellate Court have not committed any error in passing the orders by rejecting the

application for temporary injunction filed by the petitioners. Respondent No.7 is the rightful owner of the suit property and there is entry of his name in the revenue records showing that he is the person in possession of suit property, therefore, there is no balance of convenience or irreparable injury in favour of the petitioners. Hence, the petition be dismissed.

9. I have heard learned counsel for the parties and perused the documents on record.
10. Considering the fact that there is a finding in favour of the petitioners that they have a *prima facie* case being the owner of the suit property on the basis of a sale deed dated 3.4.1970, further, the finding of the trial Court that the petitioners are in possession of the suit property has not been set aside in the Appellate order, therefore, it is a clear finding that the petitioners are in possession of the suit property and for that they have a support of the title in the sale deed. The apprehension of the petitioners is not unfounded that they may be dispossessed from the suit property, because there is an entry in the revenue records in favour of respondent No.7 and he is also contesting the case claiming himself to be the owner of the suit property. Therefore, on the basis of this apprehension it can be held that the balance of convenience existed in favour of the petitioners and if they are dispossessed from the property they may suffer irreparable injury. Hence, for these reasons, I feel inclined to allow this petition, therefore, the petition is allowed at the motion stage and accordingly, the impugned order is set aside. Affirming the finding of the trial Court regarding the *prima facie* case in favour of the petitioners and setting aside the finding on the point of balance of convenience and irreparable injury, on the basis of the findings recorded herein-above, it is ordered that the respondents are

prohibited to interfere with the possession of the petitioners on the suit property until further orders or until the suit is decided.

11. Accordingly, this petition is disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Nimmi