

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 57 of 2021

- Smt. Savita Jena, W/o Vijay Kumar Jena, Aged About 50 Years, R/o House No. 159/A, Camp-1, Sai Nagar, Supela, Bhilai Tahsil and District-Durg, Chhattisgarh.

---- Petitioner

Versus

1. Ajay Dalmiya, S/o Madanlal Daimiya, Aged About 50 Years, R/o House No. 38/5, Nehru Nagar (East), Bhilai, Tahsil and District- Durg, Chhattisgarh.
2. State of Chhattisgarh Through The Collector, Durg, Chhattisgarh.

---- Respondent,

For petitioner	:	Mr. B.P. Singh, Advocate.
For respondent No.1	:	Mr. Shobhit Mishra & Mr. Naveen Shukla, Advocates.
For respondent No.2/State:	:	Mr. Gurudev I. Sharan, Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

23/03/2021

Heard.

1. This petition under Article 227 of the Constitution of India has been brought seeking indulgence of this Court to quash the impugned order dated 8.12.2020 passed in Misc. Civil Appeal No.12/2020 by the learned Fourth Additional District Judge, Durg, Chhattisgarh, dismissing the appeal filed by the petitioner.
2. The respondent has filed a civil suit praying for relief of declaration and permanent injunction with respect to the suit property. The respondent has made claim over the suit property bearing khasra No.1550/84 &1550/85 (plot No.26 & 27). The petitioner is defendant, who is contesting the civil suit and she has also placed her claim. She has

denied the pleadings in plaint and stated that she is owner of Plot No.27, which is part of khasra No.1550/82, therefore, that is a separate property on which the respondent is unnecessarily raising dispute. The application of the respondent under Order 39 Rule 1 & 2 of CPC was allowed by the trial Court vide order dated 30.9.2020 restraining the petitioner from raising construction over the disputed property. The appeal preferred has been dismissed by the impugned order.

3. It is submitted by the counsel for petitioner that the claim of the petitioner and the respondent No.1 is on different properties. The respondent No.1 has raised dispute without any basis. The property in possession of the petitioner is clearly identified and it is on that basis she has obtained sanction for construction and she is raising construction. The petitioner has spent huge amount on the construction, therefore, if the construction is stayed she will suffer irreparable loss. The learned trial Court and the appellate Court both have committed error in granting temporary injunction in favor of the respondent No.1, hence, the petition be allowed and the impugned order be quashed.
4. Learned counsel for respondent opposes the submissions and the petition. It is submitted that there is a dispute of identity of the plot belonging to the petitioner and the respondent No.1. It has been observed by the learned trial Court in the impugned order, that there is serious dispute present regarding the identity of the property and this dispute cannot be resolved without taking evidence in the trial, therefore, this dispute itself was a strong prima facie case in favor of the respondent No.1. The appellate Court has also held similarly in the impugned order mentioning that there is a confusion and dispute regarding the property between both the parties. Hence, it had been safer-course to stay the construction and that has been done accordingly. No error has been committed by trial Court and the appellate Court, hence, the petition be dismissed.
5. In reply, it is submitted by counsel for petitioner, that the impugned order and the order of the trial Court have been passed only on the basis of assumption. There is no such finding that the petitioner is

encroacher of the land of the respondent No.1, therefore, the impugned order and the order of the trial Court both are not sustainable.

6. I have heard both the parties and perused the documents on record.
7. Considered on the submissions. On perusal of the copy of plaint, written statement and other documents filed and also the impugned order, I am of this view that the dispute regarding the identity of the property of the petitioner and respondent No.1 is of serious nature and the same cannot be resolved only on the basis of the oral submission. Resolution of such dispute requires evidence and also inspection of the spot. This can be done only at the stage of trial. Raising of construction, if continued can cause loss not only to the respondent No.1 but also to the petitioner in future as the decision of the suit may be in favor of any one of these parties. Hence, it had been a safer-course to stay the construction by grant of temporary injunction. The learned trial Court and the appellate Court both have not committed error in granting temporary injunction in favor of the respondent, therefore, I do not find any substance in this petition, which is liable to be and is hereby dismissed at motion stage. However, looking to the circumstances of the case, it appears that the trial in this case should be expedited. Hence, the learned trial Court is directed to expedite the trial in this case and conclude the same as early as possible.

Sd/-

(Rajendra Chandra Singh Samant)
Judge