

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No. 150 of 2021

Smt. Krishna Gupta, W/o. Ashok Prasad Gupta, aged about 50 years, R/o. Bhatni Road Kedarpur, Ambikapur Nagar, Ambikapur, District Surguja Chhattisgarh.

---- Petitioner

Versus

1. Indra Prasad Gupta, S/o. Late Devnarayan Ram Gupta, aged about 75 years, Through : Santosh Kumar Gupta (Advocate) C.G. High Court, R/o. Mahima Tower Rajiv Gandhi Chowk Bilaspur Chhattisgarh.
2. State of Chhattisgarh, Through : Collector Surguja Ambikapur (Chhattisgarh).

---- Respondents

For Petitioner	: Mr. A.N. Pandey, Advocate
For Respondent No.1	: Mr. Manoj Paranjpe, Advocate with Mr. Rishabh Gupta, Advocate
For State-Respondent	: Ms. Shivali Dubey, P.L.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

17/09/2021

1. This petition has been brought being aggrieved by the order dated 18.02.2021, passed by the Fifth Civil Judge Class-2, Ambikapur, District – Surguja, in Civil Suit No.173-A/2017, by which the learned trial Court has rejected the application filed by the petitioner under Section 151 of C.P.C. praying for interim relief to restrain the alienation of the suit property.
2. It is submitted by the learned counsel for the petitioner that the civil suit has been brought praying for relief of declaration of title and permanent

injunction with respect to the suit property Kh. No. 1465/3, measuring area 0.032 hectares, situated at Thanganpara, Ambikapur. It is submitted that the respondent No.1 has entered into an agreement for sale of the suit property and on the basis of that agreement, has filed an application before the Collector, Sarguja praying for permission for sale of the land. Therefore, the application was filed under Section 151 of C.P.C. praying for grant of order of status-quo, which has been rejected by the impugned order. The impugned order is illegal and unsustainable and therefore, it is prayed that this Court may interfere and pass appropriate order under the supervisory jurisdiction.

3. Learned counsel for the respondent No.1 opposes the petition and the submission made in this respect. It is submitted that the prayer that was made by the petitioner under Section 151 of C.P.C. was the same that was earlier made by the petitioner under Order 39 Rule 1 and 2 of C.P.C., before the learned trial Court. The application under Order 39 Rule 1 and 2 of C.P.C. was dismissed by order dated 11.12.2018 by the trial Court that order was not challenged by the petitioner in appeal, therefore, in presence of finding that the petitioner has no prima-facie case in his favour, the prayer under Section 151 of C.P.C. was not fit to be considered. Reliance has been placed on the judgment of Supreme Court in case of **Amar Singh Vs. Union of India & Ors**, reported in **(2011) 7 SCC 69**, in which it has been held that the litigants must come to the Court with clean hands and they must observe total clarity and candour in their pleadings and especially when it contains a prayer for injunction. It is submitted that the petitioner has suppressed the fact of rejection of her earlier application under Order 39 Rule 1 and 2 of C.P.C. in which similar prayer was made. Therefore, the application under Section 151 of C.P.C. was not filed with clear intention of the petitioner. Reliance has been placed on the judgment of Supreme Court in case of

National Institute of Mental Health & Neuro Sciences Vs. C. Parameshwara, reported in **(2005) 2 SCC 256**, in which it was held that inherent power under Section 151 of C.P.C. can not be exercised so as to nullify the provisions of the Code, where the Code deals expressly with a particular matter, provision should normally be regarded as exhaustive. Further reliance has been placed on the judgment of Supreme Court in case of **Surjit Singh & Ors. Vs. Gurwant Kaur & Ors.**, reported in **(2015) 1 SCC 665**, in which it was held that successive application based on the same set of facts can be rejected on the ground of abuse of process of the Court.

4. It is further submitted, that the respondent No.1 is an old aged person of age about 80 years, and it is very unfortunate that the petitioner/plaintiff is the daughter of the respondent No.1, who is prosecuting the case against the respondent No.1 stating that the suit property was benami purchased by the petitioner in the name of the respondent No.1, which is being contested by the respondent No.1. The impugned order does not suffer from any infirmity, therefore, it is sustainable.
5. I have heard the learned counsel for the parties and perused the documents placed on record.
6. Civil suit was filed in the year 2017 and the application for grant of temporary injunction under Order 39 Rule 1 and 2 of C.P.C. appears to have been filed along with. In that application, the petitioner had raised her apprehension that the suit property may be alienated by the respondent No.1 and prayed for grant of temporary injunction. The learned trial Court had by order dated 11.12.2018 copy of which has been filed as (Annexure R-1/1) held that the petitioner has no prima-facie case in her favour, therefore, she will not suffer any irreparable injury, neither balance of convenience is in her favour. The petitioner has produced the copy of the application (Annexure P-4), which is filed

by the respondent No.1, before the Collector, Sarguja praying for permission for sale of the suit property on the basis of the agreement to sale with one Smt. Shashikala Singh this application is dated 19.11.2019, therefore, it can be regarded as a subsequent event.

7. The petitioner had option to file a fresh application under Order 39 Rule 1 and 2 of C.P.C. praying for temporary injunction. In view of the finding that are already present in the order dated 11.12.2018, that the petitioner/plaintiff has no prima-facie case in her favour, which has not been challenged before any Court although the petitioner had remedy available to file appeal against that order, therefore, an application on the same set of facts was not fit to be agitated under Section 151 of C.P.C., regarding which there is clear view of the Supreme Court in the case of **Surjeet Singh (Supra)** that such application should be regarded as abuse of process of law.
8. In view of the aforesaid discussion made, I do not find any reason to interfere in the impugned order. Hence, this petition is devoid of any merit, which is dismissed and disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge