

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 511 of 2020

- Chhotelal S/o Shri Kriparam Kaushik, Aged About 64 Years, R/o Village - Limtari, Tahsil - Bilha, District - Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh (Respondent No.1)

---- Petitioner

Versus

1. Rajeshwar S/o Latelram Yadav, Aged About 38 Years, R/o - Village Basiya, Tahsil Bilha, District Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh (Appellant)
2. State Of Chhattisgarh, through the Collector, District - Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh (Respondent No.2)

---- Respondents

For Petitioner – Mr. J.K. Gupta, Advocate.

For Respondent No.1 – Mr. Ratnesh Kumar Agrawal, Advocate.

For State/respondent No.2 – Ms. Smita Jha, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

15-02-2021

Heard.

1. This petition has been brought seeking indulgence of this Court to quash the impugned order dated 13-10-2020 passed in Misc. Civil Appeal No.26/2020 by the First Additional District Judge Bilaspur, District Bilaspur (C.G.) allowing the application of respondent No.1 under Order 39 Rule 1 and 2 read with Section 151 of the CPC for grant of temporary injunction in his favour.

2. It is submitted by learned counsel for the petitioner, that the respondent No.1 is plaintiff in Civil Suit No.14A/2020, which has been filed for grant of relief of declaration, title and permanent injunction, on the ground that respondent No.1 is title holder of the suit property bearing Khasra No. 1684/3 part measuring 0.78 acres, Khasra No.1683/2 measuring 0.74 acres, Khasra No.1683/1 measuring 0.78 acres and Khasra No.1684/3 measuring 0.47 acres total acres being 2.77 acres. On the basis of registered sale deed in his favour.

An application was filed under Order 39 Rule 1 and 2 read with Section 151 of the CPC for grant of temporary injunction. Learned trial Court passed the order dated 31-08-2020 relying on the Panchnama dated 22-08-2020 which mentions that the petitioner was in possession of the suit property, it was held that the respondent No.1 has no prima facie case in his favour and the application was rejected.

Respondent No.1 then preferred miscellaneous civil appeal before the Court of First Additional District Judge, Bilaspur, which has been decided by the impugned order, in which the finding of the trial Court on the point of possession was set aside and it was held that respondent No.1 is in possession and he has thus a prima facie case in his favour. The application was then allowed and relief of temporary injunction was granted in favour of the respondent No.1 and against the petitioner.

3. It is submitted by learned counsel for the petitioner, that the sale deed dated 21-04-2017 has been executed by a power of attorney holder Murari Prasad Singh. The petitioner denies executing any power of attorney for sale, in favour of Murari Prasad Singh and therefore, the sale deed executed is without any authority and title and thus respondent No.1 has no legal entitlement over the suit property. The power of attorney was executed as a security for loan which was obtained by the petitioner. The petitioner has filed a separate civil suit praying for relief of declaration, that the sale deed in favour of respondent No.1 is void ab-initio. The mutation order that was passed by the Tahsildar was challenged in appeal before the SDO(revenue) Bilha, District Bilaspur in which by order dated 27-06-2020 (Annexure-A/5) the appeal was allowed and order has been passed for re-recording the name of the petitioner in revenue records. Hence, under these circumstances the finding of prima facie case in favour of the respondent No.1 by the appellate Court is totally erroneous. The impugned order is liable to be set aside. Therefore, it is prayed

that the petition be allowed and the relief be granted in favour of the petitioner.

4. Learned counsel for the respondent No.1 submits that respondent No.1 is rightful title holder of suit property by virtue of sale deed dated 21-04-2017. An application under Section 145 of the Cr.P.C. was also moved, but the proceeding was dropped, because the civil suit has been filed by the respondent No.1. Learned appellate Court has rightly made observation in favour of respondent No.1. Further, the report of Patwari dated 22-08-2020 given to SDO (revenue) mainly mentions that respondent No.1 is in physical possession of the suit property. Hence, the impugned order is correctly passed which needs no interference.

5. Considered on the submissions.

6. There is no denial that there is sale deed dated 21-04-2017 in favour of the respondent No.1. which has been executed by the power of attorney holder Murari Prasad Singh on behalf of the petitioner. The Annexure - A/3 on which the petitioner himself is relying upon, mentions that the power of attorney was executed in favour of Murari Prasad Singh, although he has claimed that this execution was made as a security for loan. That power of attorney was existing on the date when the sale deed was executed. Although, the petitioner has separately filed a civil suit challenging the sale in favour of respondent No.1 on similar ground, but so long the sale deed is not set aside, its existence as a deed of transfer in favour of respondent No.1 continues. Apart from that, the report of Patwari given to the SDO (revenue) vide Annexure – A/6 and Annexure – P/7 regarding physical possession of respondent No.1 over the suit property is also evidence which cannot be ignored. Hence, on this basis finding of the appellate Court that respondent No.1 has prima facie case in his favour cannot be said to be erroneous finding and similarly the other finding regarding balance of convenience and on the point of irreparable injury also appear to be proper. Therefore, the impugned order has been passed in accordance with

law that does not need any interference by this Court in its supervisory jurisdiction. Hence, this revision petition is dismissed at motion stage.

Sd/-

(Rajendra Chandra Singh Samant)
Judge

Aadil

HIGH COURT OF CHHATTISGARH, BILASPUR

M.C.C. No.135 of 2021

- Chhotelal S/o Shri Kriparam Kaushik, Aged About 64 Years R/o Village Limtari, Tahsil Bilha, District Bilaspur Chhattisgarh

---- Applicant

Versus

1. Rajeshwar S/o Latelram Yadav, Aged About 38 Years R/o Village Basiya, Tahsil Bilha, District Bilaspur Chhattisgarh
2. State Of Chhattisgarh Through The Collector, District Bilaspur Chhattisgarh

---- Non-applicants

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

10-03-2021

1. P.U.D. has been received from the Registry. It is requested that in the order dated 15.02.2021 passed in W.P.(227) No.511 of 2020, the words 'revision petition' has been mentioned erroneously, which is a clerical error and, therefore, correction is prayed for.
2. After perusal of the order dated 15.02.2021, it is found that there is the clerical error present as pointed out, therefore, it is ordered that instead of words 'revision petition' mentioned in the last line of the order, it should be hereinafter read as 'petition' only.
3. Copy of this order be made a part of the order dated 15.02.2021 in W.P. (227) No.511 of 2020.
4. Accordingly, the petition stands disposed off.

Sd/-

(Rajendra Chandra Singh Samant)

Judge