

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No. 218 of 2021

Rajendra Kumar Kaushik, S/o. Late Bhuklu Ram, aged about 58 years,
R/o. Villge Hanfa, P.O. Saktri, Tehsil Takhatpur, P.S. - Sakri, District –
Bilaspur (C.G.)

----Petitioner

Versus

1. Rajesh Kumar Kaushik, S/o. Late Bhuklu Ram, aged about 41 years, R/o. Village Hanfa, P.O. Sakri, Tehsil Takhatpur, P.S. Sakri, District – Bilaspur (C.G.).
2. Smt. Indrani Kaushik, D/o. Late Bhuklu Ram, aged about 46 years, W/o. Shri Prem Narayan Kaushik, R/o. Village Chanadongri, Tehsil Takhatpur, P.S. Sakri, District – Bilaspur (C.G.).
3. Smt. Kalyani Kaushik, D/o. Late Bhuklu Ram, aged about 44 years, W/o. Shri Jayant Kumar Kaushik, R/o. Village Chanadongri, Tehsil Takhatpur, P.S. - Sakri, District – Bilaspur (C.G.).
4. Yusuf Mohammad Hussain, R/o. Idgah Chowk, Bilaspur, P.S. Civil Line, District – Bilaspur (C.G.).
5. State of Chhattisgarh, Through : Collector – Bilaspur (C.G.)

---- Respondents

For Petitioner : Mr. Rohit Sharma, Advocate

For Respondents No.1 & 2 : Mr. Rahul Mishra, Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

12/04/2021

Heard on admission.

1. Present petition has been brought being aggrieved by the order dated 18.02.2021, passed by the Sixth Additional District Judge, Bilaspur, passed in Miscellaneous Civil Appeal No. 18 of 2020 allowing the appeal and set-aside the order of the trial Court dated 05.02.2020.
2. It is submitted by the learned counsel for the petitioner that the petitioner is plaintiff in Civil Suit No. 98-A/2019. Suit has been filed for the relief of partition and possession, on this basis that the petitioner was not given any share in the joint family property by the respondent No.1 and 2. The application under Order 39 Rule 1 and 2 of C.P.C. was separately filed praying for temporary injunction, that no third party interest be created in suit property by the respondents. The learned trial Court by order dated 05.02.2020 allowed this application and granted temporary injunction as prayed for by the petitioner.
3. It is submitted that the respondent No.1 filed a miscellaneous civil appeal under Order 43 Rule 1 of C.P.C. against this order, which has been allowed by the impugned order and the temporary injunction granted in favour of the petitioner has been set-aside.

4. It is submitted by the counsel for the petitioner that the respondents have played fraud upon the Court. It was stated by respondents in written statement that the partition had taken place in the year 1999, in which share was allotted in favour of the petitioner. It has been stated that this partition was never challenged in any Court, therefore, it has attained finality. It is submitted by the counsel for the petitioner that the partition was challenged before the SDO, but the same was dismissed on the ground of limitation. The order of the SDO is at present under challenge, before the Commissioner and that matter is pending. This fact has been concealed by the respondents. Hence, the respondents No.1 and 2 have obtained favourable order from appellate Court by concealing this fact. This order is not sustainable. Reliance has been placed on the judgment of Supreme Court in case of **Ram Chandra Singh Vs. Savitri Devi**, reported **(2003) 8 SCC 319**, in which it was held that any order obtained by practicing fraud on Court is non est in the eyes of law. Hence, it is prayed that this petition be admitted for hearing and interim relief be granted in favour of the petitioner.
5. Counsel for the respondent No.1 & 2 have appeared on Caveat. He opposes the submissions made by the counsel for the petitioner. It is submitted that in fact there had been two partitions. First partition took place in the year 1999 and the subsequent partition has taken place in the year 2013. The petitioner has received his share in the partition of the year 1999.

The suit land that have been mentioned in the plaint do not show that the petitioner has any joint title over them in the revenue records and no such revenue records has been produced by the petitioner. The statement of the petitioner in the plaint that he is one of the joint owner of the suit property is by itself false, therefore, the petitioner had no prima-facie case in his favor. The fact is this that the petitioner has already sold out his share of the property and now he is making attempt to receive a share in the property of the respondents No.1 and 2, which is totally unlawful. Therefore, the present petition is without any substance, which may be dismissed.

6. In reply, it is submitted by the counsel for the petitioner that revenue records do not give any title to the persons whose name is reflected in such records. It is submitted that the fraud has been committed by the respondent No.1 and 2 by suppressing of facts of pendency of appeal before the Commissioner, Bilaspur Division. Documents have been filed in this petition, which is Annexure P-6, which shows that pendency, therefore, the petition be admitted and allowed.
7. I have heard the learned counsel for the parties and perused the documents placed on record.
8. The petitioner himself has not mentioned about the partition of the year 1999 in his plaint, whereas in the submission made, the petitioner side has conceded about the partition of the year 1999 and that the same has been challenged by the petitioner side,

before the Revenue Courts. On perusal of the Annexure P-6 and P-7, it is found that the petitioner has not challenged the partition of the year 1999, but partition order of Additional Tahsildar dated 07.09.2013, regarding which, it is claimed by him that his share of the property of the petitioner was erroneously recorded in the name of the respondent No.1, which has been partitioned, is under challenge.

9. Taking into consideration this submission and the documents filed and also after perusing the order of trial Court and appellate Court, it is found that there is no mention of challenge given to the partition of the year 1999 or 2013 in these orders and this is also not mentioned in the plaint and the application under Order 39 Rule 1 and 2 of C.P.C. filed by the petitioner, hence, it is not a case, in which the respondents have suppressed any fact. On the contrary, it appears that the petitioner/plaintiff himself has not pleaded and brought to the notice of the trial Court and the appellate Court of this fact, that there had been partition before the Additional Tahsildar and that order of Additional Tahsildar was challenged before the S.D.O. and subsequent to that it is presently under challenge before the Commissioner, Bilaspur. Therefore, it can be said that the petitioner himself has not come with clean hands, before the trial Court and appellate Court. The facts pleadings that were present before the Court below have been appreciated. The learned appellate Court has drawn conclusions in the impugned order, which can not be interfered

with looking to the lapses that the petitioner himself has made.

10. Hence, this petition appears to be without any substance, which is not fit to be admitted, hence, it is dismissed at admission stage itself. However, the petitioner is granted liberty to pray for amendment in the pleadings, regarding challenge given to the partition by him in the revenue Courts and if the same is allowed in that case, the petitioner shall be at liberty to move fresh application under Section 39 Rule 1 and 2 of C.P.C. if it is so desired or advised by the counsel.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Balram