

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No.264 of 2021

- Rizwan Ul Haque S/o Late Abdulwari Aged About 56 Years Resident Of Village Antagarh, Tahsil Antagarh, District-North-Bastar, Kanker Chhattisgarh

---- Petitioner

Versus

1. Jethi Bai D/o Late Itwariram Nirmalkar Aged About 49 Years Resident Of Village Antagarh, Tahsil Antagarh, District North Bastar Kanker Chhattisgarh
2. State Of Chhattisgarh Through The Collector, District-North-Bastar, Kanker Chhattisgarh

---- Respondents

For Petitioner : Mr. Anil S. Pandey, Advocate.

For respondent No.1 : Mr. Rajkumar Pali, Advocate.

For State/respondent No.2 : Mr. Alok Nigam, Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

23/07/2021

1. This petition has been brought being aggrieved by the order dated 09.03.2021, passed by the Court of Additional District Judge, Bhanupratappur, District- North- Bastar, Kanker, C.G. in Miscellaneous Civil Appeal No.01/2020 by allowing the appeal against the rejection order passed by the trial Court on application under Order 39 Rule 1 & 2 of C.P.C. and granting order of temporary injunction in favour of respondent No.1.
2. Learned counsel for the petitioner submits that respondent No.1 has filed a Civil Suit No.21-A/2019 praying for reliefs of declaration and

permanent injunction with respect to suit property, which is Khasra No.918/3 measuring 0.03 hectares, on the ground of adverse possession. The application was filed under Order 39 Rule 1 & 2 of C.P.C. pleading that the petitioner/defendant has caused damage to the property in possession of the respondent No.1, therefore, plaintiff/respondent No.1 may be given relief of temporary injunction against dispossession. The learned trial Court passed order dated 03.01.2020 and dismissed the application. The appeal preferred has been allowed by the impugned order of the appellate Court.

3. It is further submitted that the learned appellate Court has committed error in passing the order. The petitioner had brought to the notice of the trial Court itself that petitioner came to know of the encroachment by the respondent No.1 in demarcation dated 19.10.2016, in another demarcation dated 21.06.2019, the encroachment of respondent No.1 was again confirmed. Subsequent to which, the respondent no.1 has handed over the possession to the petitioner, therefore, the petitioner has started raising construction on the suit property from 22.06.2019 and now the construction is at the stage of putting the roof over the walls, therefore, the respondent No.1 is no longer in possession of the suit property, because of which, she was not entitled for any kind of relief. Therefore, the impugned order is not sustainable and interference is prayed for by this Court in exercise of Article 227 of Constitution of India.
4. Learned counsel for the respondent No.1 opposes the submissions and submits that the appellate Court has not committed any error in passing the impugned order. The case of respondent no.1 is clearly based on her 30 year old adverse possession, therefore, the respondent No.1 has the possessory title over the suit property, which is required to be

protected by the law. Hence, the petition is without any substance which may be dismissed.

5. Heard learned counsel for both the parties and perused the documents present.
6. Considered on the submissions. It was pleaded by the respondent No.1 in her plaint, that she is in possession of the suit property since 30 years and on 21.06.2019, the petitioner has made an attempt to damage the construction of the respondent No.1, which is present over the suit property. Therefore, interim relief for protection of possession was sought. The petitioner filed reply to the application under Order 39 Rule 1 & 2 of C.P.C., in which she has mentioned that after the demarcation of 21.06.2019, the respondent No.1 has handed over possession to the petitioner in which the construction has already started and has been raised up to roof level. The learned trial Court has taken notice of this statement and held that there is no prima-facie case present in favour of the respondent No.1. The appellate Court has disbelieved the statement of the petitioner that he has received possession from the respondent No.1 and there is no observation with respect to the construction that has been raised over the suit property.
7. The statement of the petitioner, that he is already in possession and he is raising construction over the suit property is in clear rebuttal of the statement of the respondent No.1 that she is in possession of the property. The case of the respondent No.1 is based only on possession over the suit property. When the statement of the respondent No.1 herself is not convincing on account of the statement made by the petitioner, that the construction has been raised on the suit property and that is on the verge of completion, which would imply that the respondent No.1 is no longer in possession of the suit property.

Therefore, without there being a clear establishment of the fact regarding possession on the suit property in favour of the respondent No.1 no prima-facie case could have been held in the favour of the respondent No.1 and the learned trial Court has rightly rejected her application. The impugned order that has been passed appears to be erroneous, which needs to be interfered with. The petition is allowed at the motion stage. The impugned order is set aside and the order of the learned trial court is confirmed by this order.

8. Accordingly, the petition stands disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Monika