

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 409 of 2020

Order Reserved on : 22/02/2021

Order Delivered on : 26/03/2021

1. Jageshwar, S/o Nathoram Yadav, Aged About 70 Years, Caste Mahkul, R/o Village Palidih, Tahsil Pathlagaon, District-Jashpur, Chhattisgarh.

---- Petitioner

Versus

1. State of Chhattisgarh Through The Collector, Jashpur, District-Jashpur, Chhattisgarh.
2. Chetaram, S/o Late Girdhariram Yadav, Aged About 60 Years, R/o Village-Pathalgaon, Ward No. 15, Bhathudand, Tahsil-Pathalgaon, District-Jashpur, Chhattisgarh.
3. Lachan Ram, S/o Banmali Ram Yadav, Aged About 70 Years, R/o Village-Pathalgaon, Ward No. 15, Bhathudand, Tahsil-Pathalgaon District -Jashpur, Chhattisgarh.

---- Respondents-

For Petitioner	:	Mr. Varun Sharma, Advocate.
For Respondent No.1/State:	:	Mr. Adil Minhaj, Govt. Advocate.
For respondent No.2	:	Mr. Hari Agrawal, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

CAV Order

26/03/2021

1. This petition under Article 227 of the Constitution of India has been brought challenging the legality and propriety of the order dated 4.3.2020 passed by the learned Additional District Judge, Patthalgaon, District-Jashpur in Misc. Civil Appeal No.04/2020 thereby allowing the appeal of respondent No.2 and granting temporary injunction in his favor under Order 39 Rule 1 & 2 CPC.
2. It is submitted by the counsel for petitioner that the disputed property is khasra No.413 area 0.357 hectares, situated in village-Palidih on

which respondent No.2 is claiming his possession, whereas the fact is this that, the petitioner is in possession of this property. The Kistbandi khatoni (AnnexureP-6) shows the petitioner as recorded owner of the suit property and khasra Panchsala of the year 2017-18 also shows the petitioner as the person in possession of the suit property. The property was demarcated and the demarcation report (Annexure-P7) dated 24.9.2017 mentions that on the area of 0.178 hectares of khasra No.413 the respondent No.2 is in possession, whereas on the area of 0.178 hectares of the same khasra number there is possession of respondent No.3. There is also a report of gram panchayat (Ex.P4) that the petitioner is in possession of the part of the suit property.

Reliance has been placed on the judgment dated 21.10.2016 passed by this High Court in WP227 No.492/15, parties being Sanjeet Singh v. Kamlesh Singh and another.

3. It is submitted, that the respondent No.2 has filed civil suit praying for relief of declaration of title and permanent injunction. Along with civil suit, an application under Order 39 Rule 1 & 2 CPC for grant of temporary injunction has also been filed, which was rejected by the trial Court on 23.12.2019. The learned appellate Court while deciding the appeal has erroneously held that the records of 1931-32 mention names of the ancestors of the plaintiff i.e. respondent No.2, and therefore without any inquiry and trial it has been held that the petitioner/defendant got his name entered into revenue records in a fraudulent manner and the mutation is illegal. On this basis, it was held that the petitioner/defendant No.2 was in illegal possession and on this basis it was held that the respondent No.2 has prima facie case in his favor which is the basis of impugned order. The impugned order is totally unsustainable. It is prayed that this petition be allowed and impugned order be quashed.
4. Learned counsel for respondent No.2 opposes the submissions and submits that the application under Order 39 Rule 1 & 2 CPC contains a family tree, according to which, it is only respondent No.2 who is successor of Banmali, who is mentioned as recorded owner of the suit property in the revenue records in 1931-32. The finding of the learned appellate Court is totally correct and sustainable. It is mentioned in the impugned order that khasra No.689 was the old survey number which

has been re-numbered as khasra No.430. The petitioner has not produced any previous revenue entries showing entry regarding the suit property in his favor, therefore, it is clear cut case of fraudulent mutation.

Reliance has been placed on the judgment of Supreme Court in the case of Sameer Suresh Gupta v. Rahul Kumar Agrawal, reported n (2013) 9 SCC 374, in which, the learned Supreme Court has made a mention of the criteria in which the High Court can exercise jurisdiction under Article 227 of Constitution of India. Hence, the learned appellate Court has acted within its own jurisdiction in which this Court cannot interfere under Article 227 Constitution of India.

Therefore, the petition is liable to be dismissed.

5. Learned counsel for petitioner submits in reply that there is no submission to rebut the revenue entries in Ex.P-4 the report of Gram Panchayat and the revenue entries in Ex.P/6 & P/7, hence, there is no prima facie proof of possession of the respondent No.2 and thus the respondent No.2/plaintiff had no prima facie case and no entitlement for grant of any relief for temporary injunction.
6. Considered on the submissions. The learned appellate Court has based its finding of prima facie case in favor of respondent No.1, on the basis of previous entries of year 1931-32 in the name of Banmali @ Ghasi and in the revenue records of the year 1954-55. It is the claim of respondent No.2 that he is successor of Banmali and that the petitioner is not the successor. The petitioner in his written statement has denied the family-tree mentioned in the plaint and the application and claimed that the suit property is the ancestral property of the petitioner/ defendant No.1, therefore, there is a clear dispute of title in respect of the suit property.
7. The petitioner has produced documents showing recent entries and the impugned order also mentions of such documents. The reports regarding possession of the respondent No.3 and another, who is the respondent No.2 Chetaram, over the suit property shows, that the respondent No.2 is not in complete possession of the suit property. The possession of the respondent No.2 is only on 0.178 hectares out of the total area of 0.357 hectares. This report has been totally ignored by the learned appellate Court. The prayer for temporary injunction

sought by respondent No.2 is with respect to the whole area of **khasra No.413** whereas the respondent No.2 appears to be in partial possession of the same according to the reports present, therefore, the finding of prima facie case in favor of the respondent No.2 by the appellate Court appears to be erroneous and perverse.

8. As per judgment of Supreme Court in Surya Dev Rai vs Ram Chander Rai & Ors., reported in (2003) 6 SCC 675 the supervisory jurisdiction under Article 227 of Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When a subordinate court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction. Such jurisdiction has to be exercised when the error is prima facie and apparent on the face of proceeding and based on clear or utter disregard of the provisions of law.
9. In this case, it appears that the learned appellate Court has clearly ignored the principles on which the prima facie case is decided. The presence of rival claims of title on the suit property and the possession had been the deciding factor. The learned trial Court has drawn conclusion that the respondent No.2 has no prima facie. The learned appellate Court has by ignoring the current reports regarding possession over the suit land has come to this conclusion that the respondent No.2 has prima facie case with respect to the whole suit property which is not a correct finding. The respondent No.2 has not sought relief for protection of possession on the actual area of the land which is mentioned in the report. Hence, it appears that the conclusion drawn by the learned appellate is totally erroneous and against the principles of law, which is unsustainable, hence, this petition deserves to be allowed.
10. Consequently, the petition is allowed and the impugned order of the appellate Court is hereby quashed.

Sd/-

(Rajendra Chandra Singh Samant)
Judge