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HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No. 377 of 2021

1. Vimla Rajak, W/o. Late Sangal Ram, aged about 45 years,
2. Ajay, S/o. Late Sangal Ram, aged about 33 years,
3. Arun, S/o. Late Sangal Ram, aged about 23 years,
4. Arti, D/o. Late Sangal Ram, aged about 21 years,

All are Caste Dhobi, R/o. Phundurdihari, Police Station -Gandhinagar, Tahsil -Ambikapur, District -Surguja, Chhattisgarh.

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Versus

1. Somari, D/o. Karmu, W/o. Jagal Sao, aged about 53 years,
 2. Meena, D/o. Karmu, W/o. Janak Ram, aged about 52 years,
- Both are R/o Asandih, Tehsil and Police Station Dhourpur, District Surguja Chhattisgarh.
3. Shimla, D/o. Karmu, W/o. Ramkunwar, aged about 39 years, R/o Sargawan (Bangalipara) Tahsil and Police Station Ambikapur District Surguja Chhattisgarh.
 4. Manti, D/o. Bokharam, W/o. Bandhan Ram, aged about 50 years, Caste Dhobi R/o Namnakala (Patpariya), Police Station Gandhingar, Tahsil Ambikapur District Surguja Chhattisgarh.
 5. Phulmati, D/o. Late Khoraram, W/o. Nanhuram, aged about 52 years, Caste Dhobi, R/o. Phundurdihari, Police Station Gandhinagar, Tahsil Ambikapur , District Surguja Chhattisgarh.
 6. Mangal Ram, S/o. Harishchandra, aged about 47 years, Caste Dhobi,
 7. Reeta, W/o. Madan Ram, aged about 53 years, Caste Dhobi,
 8. Radhika, D/o. Madan Ram, aged about 25 years, Caste Dhobi
 9. Nitesh, S/o. Madan Ram, aged about 23 years, Caste- Dhobi
 10. Avinash, S/o. Madan Ram, aged about 22 years, Caste Dhobi

No. 6 ot 8 are R/o Phundurdihari, Police Station Gandhinagar, Tahsil Ambikapur , District Surguja Chhattisgarh.

11. State of Chhattisgarh, Through : Collector Surguja (Ambikapur)
Chhattisgarh.

---- Respondents

For Petitioners	: Mr. A.N. Pandey, Advocate
For Respondents No.1 & 2	: Mr. Santosh Bharat, Advocate
For State-Respondent	: Mr. Alok Nigam, Govt. Advocate

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 30.07.2021, passed by the First Additional District Judge, Ambikapur, District – Surguja, in Civil appeal No.23-A/2021.
2. Respondents No.1, 2 and 3 filed a civil suit praying for relief of declaration of title and permanent injunction, which was registered as Civil Suit No.34-A/2010 and the suit was decreed in favour of the respondents No.1 to 3. The petitioners have challenged the judgment and decree in appeal.
3. During the pendency of the appeal, the petitioners filed an application under Section 151 of C.P.C. praying that an order be passed restraining the respondents for alienation and construction over the suit property that was rejected on 02.07.2021. This order was challenged, before this Court in W.P.(227) No.316 of 2021. This Court disposed off the petition by order dated 13.07.2021 and liberty was granted to the petitioners to file a repeat application under Section 151 of C.P.C. making a mention of their apprehension along with evidence in support of the same and the learned appellate Court was also directed to consider on the application.

4. It is submitted that pursuant to that order of this Court, a fresh application has been filed by the petitioners under Section 151 of C.P.C. It was clearly stated in that application that the respondents have forcibly entered upon the suit property and they are raising construction on the same. Photographs were produced in support of this statement. On that basis, prayer was made for passing the restraint order. This application was supported with affidavit of witness Vedmati. The learned appellate Court has disbelieved the evidence produced by the petitioners in support of the application, that was a certificate given by the three residents of the area and the affidavit given by the witness Vedmati and refused to pass any order of restraint, although the application was unopposed. Therefore, the impugned order is unsustainable and the petitioners are entitled for grant of relief.
5. Learned counsel appearing for the private respondents opposes the petition and the submissions made by the counsel for the petitioners. It is submitted that the impugned order does not suffer from any infirmity, therefore, it is sustainable.
6. I have heard the learned counsel for the parties and perused the documents placed on record.
7. Considered on the submissions. From perusal of the impugned order, it appears that the application was unopposed. The evidence that was produced in support of the application was unrebutted, therefore, the learned appellate Court should have believed the version of the petitioners and passed appropriate orders. Hence, this Court is of the view that the impugned order is erroneous and contrary to the circumstances present. The appreciation of the evidence has been

made against the principle of law, therefore, this petition is allowed. The impugned order dated 30.07.2021, passed by the First Additional District Judge, Ambikapur, District – Sarguja, in Civil appeal No.23-A/2021, is set-aside and by invoking the power under Section 151 of C.P.C., the respondents are directed to maintain status-quo with respect to the suit property during the pendency of the appeal No.23-A/2021.

8. Accordingly, this petition is disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Balram