

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No.564 of 2021

1. Ritesh Pandey @ Bhawani Shankar Pandey S/o Sanat Kumar Pandey
Aged About 35 Years
2. Durgesh Pandey @ Rudra Shankar Pandey S/o Sanat Kumar Pandey
Aged About 35 Years
(Both are r/o Village Nevra, Up Tahsil Ganiyari, Tahsil Sakri, District
Bilaspur Chhattisgarh)

---- Petitioners

Versus

1. State Of Chhattisgarh Through Collector Bilaspur Chhattisgarh
2. Smt. Sarita Sahu W/o Shri Girdhari Sahu Aged About 27 Years
3. Shri Bihari Singh Todar S/o Late Shri Mangal Singh Todar Aged About
40 Years
4. Shri Ramchandra Yadav S/o Shri Anuplal Aged About 28 Years
(respondents No.2 to 4 are r/o Gram Nevra, Tahsil Takhatpur, District
Bilaspur Chhattisgarh)

---- Respondents

For Petitioner	– Mr. Awadh Tripathi, Advocate.
For State/respondent No.01	– Ms. Akansha Jain, Dy. G.A.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

18-10-2021

Heard.

1. It is submitted that the petitioners have filed a Civil Suit No.53A/2020
praying for relief of permanent injunction against dispossession from the
suit property, in which the petitioners have claimed that it is their
ancestral property. The petitioners filed an application under Order 39
Rule 1 and 2 of C.P.C. which was rejected by the trial Court.

Subsequent to which, an appeal under Order 43 Rule 1 of C.P.C. was filed before the Court of District Judge, Bilaspur against that order, which is pending.

2. It is submitted that despite the pendency of the Miscellaneous Appeal before the Court of District Judge, a report has been submitted by Patwari to Additional Tehsildar, Ganiyari, District- Bilaspur showing that the petitioners are in un-authorised possession of 0.24 acres of the land. The petitioner moved an application before Nayab Tehsildar, Ganiyari by which the order dated 05.07.2021 (Annexure-P/6) was passed mentioning that there is difference in the report of Patwari from the earlier report and stay order was granted with respect to eviction of the petitioners from the suit land which is alleged to be land encroached by them. Subsequent to that, the Nayab Tehsildar has passed an order on 23.09.2021 holding that the petitioners have encroached upon the 0.040 hectare Government land bearing Khasra No.850 and directing their dispossession from the same.
3. The petitioners then, filed an application under Order 39 Rule 3 of C.P.C. before the Court of District Judge, Bilaspur in the appeal case praying for grant of ex-parte interim injunction which has been dismissed by the impugned order dated 01.10.2021.
4. It is further submitted that the matter of the petitioners had an urgency because of which the petitioners had entitlement for grant of ex-parte interim injunction, hence, dismissal of the application by the learned appellate Court is erroneous, illegal and arbitrary, hence, prayer has been made to grant relief in this petition.
5. Learned State counsel appearing for respondent No.1 opposes the petition and submissions and submits that the petitioners are not entitled

for any relief. Although the application under Order 39 Rule 3 of C.P.C. was dismissed but it appears that the application under Order 39 Rule 1 and 2 of C.P.C. must be pending. The petitioners have not filed any documents showing the title of the disputed land, the petitioners have not come with clean hands before this Court. Therefore, the petition may be dismissed.

6. Considered on the submission. On perusal of the documents, it is found that although the application under Order 39 Rule 3 of C.P.C. was filed by the petitioners has been dismissed but application under Order 39 Rule 1 and 2 read with Section 151 of C.P.C. appears to be pending, in which the prayer for interim relief can be considered by the appellate Court itself. Therefore, there being statutory remedy available to the petitioners, no reason is found to entertain and allow this petition. Hence, this petition is dismissed and disposed off at the motion stage. The learned appellate Court is directed to consider on the application of the petitioners under Order 39 Rule 1 and 2 of C.P.C. expeditiously and decide the same preferably within a period of 01 month from the date of this order.

7. Accordingly, this petition stands disposed off.

Monika

Sd/-
(Rajendra Chandra Singh Samant)
Judge