

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No. 493 of 2020

1. Ravi Shankar, S/o. Late Shiv Prasad, aged about 40 years,
 2. Rama Shankar, S/o. Late Shiv Prasad, aged about 35 years,
 3. Daya Shankar, S/o. Late Shiv Prasad, aged about 32 Years,
 4. Smt. Bhagwantin Bai, Wd/o. Late Shiv Prasad, aged about 65 years,
- All by Caste Dhobi and resident of - Village Pacheda, Tahsil- Janjgir,
District- Janjgir-Champa, Chhattisgarh.

---- Petitioners

Versus

1. Ram Prasad, S/o. Late Bhagau Ram, aged about 62 years, Resident of Village Pacheda, Tahsil- Janjgir, District- Janjgir-Champa, Chhattisgarh (Plaintiff)
2. State of Chhattisgarh, Through : Collector Korba, District Korba, Chhattisgarh (Defendant No. 5)

-----Respondents

For Petitioners	: Mr. F.S. Khare, Advocate
For Respondent No.1.	: Mr. Parasmani Shrivastava, Advocate
For State-Respondent No.2	: Mr. Gurudev I. Sharan, Govt. Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

09/02/2021

1. This petition under Article 227 of the Constitution of India has been brought being aggrieved by the order dated 21.10.2020, passed by the learned District Judge, Janjgir-Champa in Civil Appeal no.12/2020 allowing the application of respondent No.1

and granting relief of temporary injunction in his favour.

2. The petitioners are the defendants in Civil Suit No.9-A/2020 between Ram Prasad Vs. Ravi Shankar and others. The respondent No.1/plaintiff has pleaded in his plaint that the suit property is ancestral and that was received by respondent No.1 in partition, by partition deed dated 24.10.1977, according to which, he is in continuing possession of the suit property. It is further pleaded that the petitioner/defendants have got their names mutated on the suit property behind the back of the respondent No.1 by mutation order dated 09.02.2017. The respondent No.1 then preferred an appeal before the Sub-Divisional Officer, Janjgir-Champa, but the same has been dismissed by order dated 15.07.2020. Subsequent to which, the petitioners No.2 filed an application under Section 250 of the Land Revenue Code, 1959, before the Tahsildar, in which, order has been passed on 09.12.2019 to place the petitioner No.2 in possession of the suit property. Being aggrieved by this order, suit was filed by the respondent No.1 and relief of declaration and permanent injunction was prayed for. Separate application was filed by the respondent No.1/plaintiff under Order 39 Rule 1 and 2 of C.P.C. praying for relief of temporary injunction.
3. The petitioners/defendants admitted that the property in question was ancestral, but denied the other pleadings in plaint. Specifically denying the partition deed dated 24.10.1977. It was claimed that the petitioners are in possession of the suit property

and the same is being continuously recorded in their names in the revenue records. It is admitted that the petitioner No.2 filed an application under Section 250 of the Land Revenue Code, before the Court of Tahsildar, Janjgir, in which order dated 09.12.2019 has been passed, but that order has not been challenged in any appeal, therefore, it can not be challenged in civil suit. Raising objection on the maintainability of the suit, prayer was made for dismissal of the suit. The application under Order 39 Rule 1 and 2 of C.P.C. has also been replied and contested.

4. The learned Trial Court has passed the order dated 18.09.2020 and dismissed the application of the respondent no.1 under Order 39 Rule 1 & 2 of C.P.C. holding that the pleading of the partition is contested and that the jurisdiction of the civil Court is barred under Section 257 of the Land Revenue Code with respect to any order passed under Section 250 of the Land Revenue Code, 1950, therefore, there is no prima-facie case against which appeal was preferred.
5. The appellate Court has held in the impugned order, that the partition deed dated 05.05.1977 and 25.05.1977 is the document more than 30 years produced from proper custody, therefore, that has a prima-facie value and on that basis it was held that the finding of the trial Court was not proper. It was also held that civil Court has jurisdiction to consider on the order passed by the revenue Court under Section 250 of the Land Revenue Code,

when a civil suit is filed for a relief of declaration and injunction on that basis, the appeal was allowed, relief of temporary injunction was granted in favour of respondent No.1.

6. It is submitted by the learned counsel for the petitioners that the ground of the contest of the petitioners is that partition of 05.05.1977 and 25.05.1977 have not taken effect as a result of which no mutation was affected in favour of the respondent No.1 and it was on that basis, the order has been passed by the Tahsildar under Section 250 of the Land Revenue Code. It is submitted that an affidavit was sworn by the respondent No.1, making admission that partition has taken place between him and his brother Shivprasad and suit property has been fallen in the share of his brother Shiv Prasad therefore, he has no objection in mutation to be in favour of his brother Shiv Prasad.
7. There is no entry in the revenue records in favour of the respondent No.1 since 1977 till date and the filing of civil suit is also delayed, therefore, there had been no error in order passed by the trial Court. The findings and the observation made in the impugned order by the appellate Court are erroneous and not sustainable, therefore, it is prayed that the petition be allowed and the impugned order be set-aside.
8. Counsel for the respondent No.1 opposes the petition and the submission made in this respect. It is submitted that no error has been committed by the appellate Court in passing the impugned order. The partition is though contested, but the documents of

partition of 1977 has been produced from proper custody, which is a 30 years old document and therefore, that has presumptive value. Therefore, the finding on this point recorded by the appellate Court is sustainable. It is further submitted that as the present case is a title suit, therefore, any order of Tahsildar passed under Section 250 of the Land Revenue Code can be questioned in civil suit. Hence, there is no merit in the present petition, which may be dismissed.

9. I have heard the learned counsel for the parties and perused the documents placed on record.
10. The partition deed dated 05.05.1977 and 25.05.1977 are of course a documents more than 30 years old, regarding which, the Court made presumption under Section 90 of the Evidence Act, that the signature and every other part of such document, which purports to be in the handwriting of any particular person, is in that person's handwriting. As the word "may presume" has been used in the provision, therefore, the presumption, if any, drawn is a rebuttable presumption. It has to be viewed from the material available on record, whether the presumption that has been drawn by the appellate Court stands rebutted on account of facts present in the case. It has been observed by the appellate Court in the impugned order itself, that on the basis of the partition of 1977, no mutation has taken place in favour of the respondent No.1 in the revenue records and the same is the submission of the petitioners' side, that the revenue records

continuously show the name of the petitioners as the recorded owner of the suit property. This fact could not have been ignored in any respect for the simple reason that, if any, person has a document in his favour to claim title over a property, for what reasons, he could not file an application for mutation in the revenue records for the past period of more than 30 years. Therefore, the pleading in the plaint although make out a case that a presumption can be drawn but such presumption can not be drawn at such preliminary stage, therefore, this Court is of the view that observation of the appellate Court, that presence of the partition deed is a ground in favour of the respondent No.1 appears to be erroneous and on the contrary it is found that the observation of the trial Court had been correct that there is no prima facie case in favour of respondent No.1 and there was no need to interfere in the same.

11. The another observation of the appellate Court in the impugned order that the order of revenue officer under Section 250 of Land Revenue Code, 1959 can be questioned in civil Court is again erroneous finding for the simple reason, that Section 257 Clause (x) is puts a clear bar on the jurisdiction of the civil Court with respect to any order passed by the revenue officer under Section 250 of the Land Revenue Code, 1959. Such an order passed, of course can be challenged by the person aggrieved, before the appellate Court under the Code, 1959. Hence, this Court is of the view that the impugned order passed is not sustainable in view of

the discussion made here-in-above.

12. In the result, the petition is allowed at the motion stage. The impugned order dated 21.10.2020, passed by the learned District Judge, Janjgir-Champa in Civil Appeal no.12/2020 is hereby set-aside.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Balram