CGHC010219662018

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WP227 No. 619 of 2018

Jaylal Yadav Late Natthuram Yadav, Aged About 49 Years Occupation Private Service, R/o Shanker Nagar, Dhangardipa, Baikunthpur, Raigarh, Tahsil And District Raigarh, Chhattisgarh **... Petitioner(s)**

versus

1 - Dauwa Kahar (Dead) Through Lrs. As Per Honble Court Order Dated 13-05-2019.

1.1 - (A). Dhan Say S/o Late Dauwa Kahar Aged About 63 Years R/o Dhangardipa, Shankar Nagar, Ward No. 2 Raigarh, Tahsil And District Raigarh Chhattisgarh

1.2 - (B). Fugga Bai W/o Bulthu Kahar Aged About 55 Years D/o Late Dauwa Kahar, R/o Village Jashpur, Tahsil Sarangarh, District Raigarh Chhattisgarh

1.3 - (C). Ful Bai W/o Dhumra Kahar Aged About 53 Years D/o Late Dauwa Kahar, R/o Near Durga Mandir, Gerba Ghat, Korba, Tahsil And District Raigarh Chhattisgarh

1.4 - (D). Jhul Bai W/o Dharam Lal Kahar Aged About 50 Years D/o Late Dauwa Kahar, R/o Near Bhima Talab, Kahrapara, Janjgir, Tahsil Janjgir, District Janjgir Champa Chhattisgarh

2 - Manglu Kahar, Dauwa Kahar, Aged About 50 Years Occupation- Labour, R/o Shanker Nagar, Dhangardipa, Baikunthpur, Raigarh, Tahsil And District Raigarh, Chhattisgarh

3 - Ajay, Manglu Kahar, Aged About 25 Years Occupation- Labour, R/o Shanker Nagar, Dhangardipa, Baikunthpur, Raigarh, Tahsil And District Raigarh, Chhattisgarh

4 - State Of Chhattisgarh, Through The Collector, Raigarh, Chhattisgarh

... Respondent(s)

(Cause title is taken from the CIS)

For Petitioner	:	Shri Vikram Bahdur Singh, Advocate
For Respondent/State	:	Shri Ashutosh Trivedi, PL
For Respondents 1 to 3	:	Shri Ravindra Sharma, and Shri Sahul Sahu, Advocates

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Hon'ble Shri Justice Ravindra Kumar Agrawal

Order on Board

02.11.2026

1. Heard.

2. Present is a writ petition filed by the petitioner under Article 227 of the Constitution of India against the order dated 17.05.2018 passed by the learned Second Additional District Judge, Raigarh, in Misc. Civil Appeal No.12 of 2018, whereby the Misc.appeal filed by respondents-1 to 3 was allowed and the order dated 28.03.2018 passed by the learned Third Civil Judge Class-II, Raigarh in Civil Suit No.36A of 2018 has been set aside.

3. Learned counsel for the petitioner would submit that Petitioner is plaintiff before the learned trial Court, who is prosecuting a suit for declaration of title, confirmation of possession and for permanent injunction over the suit property situated at Village-Dhangardipa, district-Raigarh. Along with the suit, plaintiff had filed an application under Order 39 Rule 1 and 2 of the Code of Civil Procedure (for short, 'CPC') for restraining the defendants from raising construction over the suit property. He would also submit that plaintiff is claiming in the suit that he is in possession of ABCD part of the suit property annexed with the plaint, in which the defendants are raising construction and therefore, during pendency of the suit, they may be restrained from raising construction over the suit property. The learned trial Court after hearing the parties, directed the parties for maintaining status *quo* with respect to the subject property by allowing the application filed under Order 39 Rule 1 and 2, read with Section 151 of the CPC, vide its order on 28.03.2018.

The order passed by learned trial Court was challenged by the defendants in Misc.Civil Appeal before the learned Second Additional District Judge, Raigarh, which was allowed and the order passed by the learned trial Court is set aside. He would further submit that during pendency of the suit and the enforcement of the order dated 28.03.2018, the defendants have raised construction over the subject property by violating the order passed by the learned trial Court, for which he is also prosecuting an application under Order 39 Rule 2A of the CPC, which is also pending before the learned trial Court. He would further submit that this Court has also directed to maintain status *quo* with respect to the suit land vide its order dated 25.07.2018 and the petitioner is prosecuting a contempt petition against the respondents for violation of the order dated 25.07.2018. Now, the suit is at its fag end and fixed for final argument on 05.11.2026. Therefore, the learned trial Court may be directed to obtain security from the defendants to remove the construction, if they will ultimately lose the suit and also directed the learned trial Court to take action against the defendants for violating the order passed by it.

4. On the other hand, learned counsel appearing for the respondents-1 to 3/defendants opposes the submissions made by learned counsel for the petitioner/plaintiff and would submit that they have not violated any order passed by the learned trial Court, as well as appellate court, as they have never raised any construction over the subject property. Rather they are following the order passed by the learned trial Court by maintaining status *quo*, even though the interim order granted against the

parties, has been set aside by the learned appellate court, yet, they have not raised any construction over the suit property and therefore, there is no question of demolishing any construction, or violation of orders passed by the learned trial Court or the appellate court. The suit is at its fag end and fixed for final argument on 05.11.2026 and they are bound by the ultimate outcome of the suit, subject to challenge it in the appeal. He would further submit that they have not violated the order passed by this court on 25.07.2018 and complied with the order by maintaining status *quo* with respect to the suit land. Therefore, the application under Order 39 Rule 1 and 2 filed by the plaintiff may not be considered at this stage of the suit and the writ petition is liable to be dismissed.

5. Heard learned counsel for the parties and perused the documents annexed with the petition.

6. Though the copies of the plaint have not been annexed in the petition, however, from the order dated 28.03.2018 passed by the learned trial Court, while considering the application under Order 39 Rule 1 and 2 of the CPC filed by the plaintiff, it transpires that the plaintiff has claimed restrainment from raising any construction by the defendants, in which the learned trial Court allowed the application and directed the parties to maintain status *quo* with respect to the suit land. The said order was challenged by the defendants before the learned appellate court and the learned appellate Court vide its order dated 17.05.2018, set aside the order passed by the learned trial Court. However, this Court

vide order dated 25.07.2018 directed the parties to maintain status *quo* with respect to the suit land and in compliance thereof, the parties, by doing so, participated in the suit. The plaintiff is claiming that during pendency of the petition as well as the suit, defendants have completed their construction, for which the plaintiff is prosecuting an application under Order 39 Rule 2A of the CPC, and therefore, learned trial Court may be directed to obtain security from the defendants to remove construction, if ultimately they will lose in the suit and draw appropriate proceeding for violation of the order passed by it.

7. Since the plaintiff is already prosecuting an application under Order 39 Rule 2A of the CPC before the learned trial court and a contempt proceeding is also pending before this Court for violation of order dated 25.07.2018, this Court is not inclined to direct the learned trial Court to obtain any security from the defendants for removal of construction, if they will lose in the suit, as the subject matter of violation of the order, if any, is already pending in the proceeding under order 39 Rule 2A of the CPC before the learned trial Court and the contempt proceeding before this Court.

8. Further, considering that an order of status *quo* has already been passed on 25.07.2018 which is still operative, and the suit is fixed for its final argument on 05.11.2026, this Court is of the view that present writ petition stands disposed of directing the learned trial Court to decide the

suit as early as possible and till then, parties shall maintain status *quo*, in view of order dated 25.07.2018.

9. Accordingly, writ petition stands **disposed of** directing the learned trial Court to expedite the proceeding of the suit and decide the same as early as possible and the parties are also directed to maintain status *quo* till the final adjudication of the suit.

Sd/-
(Ravindra Kumar Agrawal)
JUDGE

padma