

(2018) 08 CHH CK 0227
Chhattisgarh High Court
Case No: MA No. 46 Of 2018

Naresh And Ors

APPELLANT

Vs

Ghanshyam Prasad Dewangan
And Ors

RESPONDENT

Date of Decision: Aug. 21, 2018

Acts Referred:

- Code Of Civil Procedure 1908 - Order 39 Rule 1, Order 39 Rule 2

Hon'ble Judges: Goutam Bhaduri, J

Bench: Single Bench

Advocate: PM Shriwas

Final Decision: Dismissed

Judgement

Goutam Bhaduri, J

1. Heard.

2. The present appeal is against the order dated 30.04.2018 passed in civil suit No.29-A/2017 whereby an application filed by the plaintiff/respondent

No.1 under Order 39 Rule 1 & 2 of the CPC has been allowed and the defendants have been restrained to interfere into the subject suit property

bearing Khasra No.3484/1 admeasuring 8.615 hectare. The suit of the plaintiff before the Court below was that the property was purchased through

the ancestors of the respondent/plaintiff by a sale deed dated 11.12.1933, thereafter, the plaintiff is in possession. It was contended that in the year

2006, defendants/appellants No.1 to 6 tried to takeover the land through the panchayat so as to construct a stage, which was objected and the efforts

to takeover the possession were diluted. Subsequently, the plaintiff was preparing his house which was in dilapidated condition which situates over the part of the land and brought the materials for construction, which was objected by the respondents and subsequently a false report was made to the

Nagar Panchayat by saying that the land is a public land, wherein the plaintiff is trying to construct. It was the further case that again that defendants

No.1 to 8 tried to takeover the possession of the land by construction of a stage. As against this, it is submitted that the property was belonging to one

Gopal Dewangan in the year 1930 and in the year 1974, the land was given to Dewangan Society for public thoroughfare and the land belong to

public. Therefore, the plaintiff/respondent No.1 was claiming the land as his ancestral property, whereas the defendants/appellants were raising their

plea of ownership and that the property belong to the public thoroughfare.

3. The order would show that before the Court below sale deed of the year 1933 was placed, wherein the demarcation of the subject land is shown.

Whereas as against this in support of the plea of the defendants/appellants herein, no document was placed on record. The trial Court also affirmed

that the memo was asked from the Tehsildar, Baloda Bazar, which purports that the construction was being made over the land by repairing of the

existing old house. Taking into the facts of this case, it appears that prima facie, no document was produced by the defendants/appellants before the

Court to establish their claim, whereas the plaintiff has filed the document of sale deed as also the report of the Tehsildar in his favour, which shows

that over the land old structure exists, which was subject to repair. In any case, prima facie, the observation made by the Court below cannot be

faulted on the mere say of the appellants/defendants. It is for the trial Court to adjudicate the case on merits and at this stage, therefore, I am not

inclined to interfere with such order of injunction passed by the court below.

4. This appeal has no merit. It is accordingly dismissed.