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HIGH COURT OF CHHATTISGARH AT BILASPUR

W.P. (227) No. 2856 of 2008

Amrit Pawar & Others

Vs.

Narad Pradhan & Others

Post of pronouncement of judgment and orders on 31 /07/2009.

**Sd/-
N.K. Agarwal
Judge**



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HIGH COURT OF CHHATTISGARH AT BILASPUR

W.P. (227) No. 2856 of 2008

Petitioners
Respondents

- : 1. Amrit Pawar, S/o Purna Chandra
Pawar, aged about 47 years.
2. Alekh Pawar, S/o Narayan Pawar,
aged about 48 years.
3. Shiv Prasad, S/o Narayan Pawar, aged
about 27 years.
4. Ashwani Kumar S/o Alekh Pawar,
aged about 27 years,

All R/o village Sukda, Post Gerra, Via
Saraipali, Distt. Mahasamund (CG).

Versus

Respondents
Appellants

- : 1. Narad Pradhan, S/o Kripasindhu
Pradhan, aged about 62 years, Caste-
Kolta, R/o Village Artunda, Post
Gerra, Via Saraipali, Distt.
Mahasamund (CG).
2. Deviprasad Pawar, S/o Kripasindhu
Pradhan, aged about 71 years, R/o
near Bheriya Chowk, Padampur, Post
Padampur, District Bargarh (Orissa).
3. Sub Divisional Officer (R) Saraipali,
Distt. Mahasamund (CG).
4. State of Chhattisgarh, through
Collector, Distt. Mahasamund (CG).

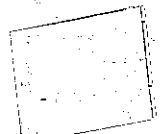
Writ Petition Under Article 227 of the Constitution of India
(Single Bench: Hon'ble Mr. N.K. Agarwal, J.)

Present : Ms. Sharmila Singhai, Advocate for petitioners.
Shri Manoj Paranjpe, Advocate for respondent No.1.
Shri Raghvendra Pradhan, Advocate for respondent No. 2.

ORDER

(Passed on 31 day of July, 2009)

1. The instant petition is directed against the order dated
24.02.2007(Annexure P/1), passed by Ist Additional District Judge,
Mahasamund, in Misc. Civil Appeal No. 01/2006, whereby and





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whereunder the application for temporary injunction under Section 39 Rule 1 & 2 of CPC preferred by the plaintiffs was allowed, setting aside the order passed by the trial court.

2. The brief facts of the case are that, the plaintiff instituted a suit for declaration of title over the suit land and for permanent injunction to restrain the defendants from interfering in his possession, also filed an application for temporary injunction.
3. The application was heard by the trial court and vide order dated 29.01.2005 (Annexure P/4), it was dismissed holding that the plaintiffs have failed to prove his possession over the suit land, failed to establish prima-facie case, balance of convenience and irreparable loss. The plaintiffs did not file any appeal against this order.
4. Thereafter, the plaintiffs moved an application for amendment seeking relief of possession over the suit property. The said amendment was allowed by the trial court.
5. The plaintiffs again filed an application for temporary injunction (Annexure P/8), in which factum of possession over suit land was sought to be established on the basis of proceeding of one criminal case apart from other facts stated in the earlier application.
6. The trial court, after hearing both the parties, vide order dated 19.07.2006 (Annexure P/9), dismissed the application of the plaintiffs against which an appeal was preferred before the Additional District Judge, Mahasamund which was allowed by setting aside the order passed by the trial court. Hence this petition.
7. Ms. Singhai, learned counsel appearing for the petitioners would submit that the order impugned passed by the appellate court is bad in law, illegal and contrary to law on the following reasons:





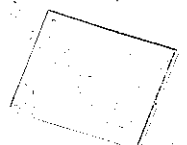
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- i.) The order passed by the trial court on 29.01.05 was not challenged by the plaintiffs the same attained finality and thereafter second application on the same fact and grounds cannot be entertained.
- ii.) The plaintiffs, after rejection of its application under Order 39 Rule 1 & 2, amended his plaint and sought relief of possession over the suit property therefore, the order passed by the appellate court is contrary to the facts of the case.
- iii.) The trial court has passed even the second order on a cogent reason which has been wrongly reversed by the appellate court.

8. Per contra, Shri Manoj Paranjpe, learned counsel appearing for respondent No. 1 would submit that repeated applications for temporary injunction are not barred if new facts are pleaded. The appellate court passed the order of injunction in favour of respondent No. 1 after considering new and fresh facts. The plaintiffs by way of amendment only claimed alternative relief of possession and it does not mean that he is not in possession of the suit property. He further submits that in exercise of extraordinary jurisdiction under Article 227 of the Constitution of India, this court should not interfere with the order passed by the appellate court.

9. I have gone carefully through the material placed on record and the order impugned.

10. A bare perusal of impugned order would reveal that the appellate court has not passed the injunction order in favour of respondent No. 1 on the basis of some fresh or new facts, but has been passed by interpreting it differently almost on the same facts on which the trial court had rejected the application of the applicants vide order dated 29.01.05 (Annexure P/4) against which no appeal has been preferred.





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11. The Supreme Court in case of Arjun Singh v. Mohindra Kumar & Others¹ observed in para 13 that "such orders are certainly capable of being altered or varied by subsequent applications for the same relief, though normally only on proof of new facts or new situations which subsequently emerge."
12. In the instant case, the appellate court has not passed the impugned order based on new facts or new situations which subsequently emerged. Moreover, after rejection of earlier application for temporary injunction, plaint was amended and relief of possession has been claimed and thus, even taking into consideration the subsequent event, the appellate court ought not to have allowed the appeal.
13. In the facts situation of the case, the order impugned passed by the appellate court is illegal, perverse and without jurisdiction. The same deserves to be and is accordingly set aside. The order passed by the appellate court is accordingly quashed, and the order passed by the trial court is restored.
14. However, to do justice with both the parties, it is directed that the suit should be disposed of by the trial court, on its own merits, as early as possible preferably within a period of six months from the date of communication of this order, in accordance with law, without being influenced by any observations made hereinabove. No order as to costs.

Sahu

Sd/-
N.K. Agarwal
Judge

¹ AIR 1964 SC 993