



2026:CGHC:17736



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NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MA No. 66 of 2026

1 - Hansraj Peswani S/o. Late Gurbomal Peswani Aged About 69 Years Caste Sindhi, R/o.- Patel Nagar Ward, Kharsiya, Tahsil- Kharsiya, District- Raigarh (C.G.) Power Of Attorney Holder Avinash Kumar Peswani, Aged About 33 Years, S/o. Shri Suresh Kumar Peswani, R/o. Sheela Park Apartment, Rajkishorenagar Bilaspur, Tahsil And District- Bilaspur (Mo No. 7489999940)

2 - Kundan Lal Peswani S/o. Late Gurbomal Peswani Aged About 68 Years Caste- Sindhi, R/o.- Patel Nagar Ward, Kharsiya, Tahsil- Kharsiya, District- Raigarh (C.G.) Power Of Attorney Holder Avinash Kumar Peswani, Aged About 33 Years, S/o. Shri Suresh Kumar Peswani, R/o. Sheela Park Apartment, Rajkishorenagar Bilaspur, Tahsil And District- Bilaspur (Mo No. 7489999940)

... Appellants

versus

1 - Suresh Kumar Bajpayee S/o. Shiv Ganesh Bajpayee Aged About 60 Years R/o. Ward No. 1, House No. 1/8, Narmada Nagar Bilaspur, Tahsil And District- Bilaspur (C.G.)

2 - Smt. Jyoti Bajpayee W/o. Suresh Kumar Bajpayee Aged About 50 Years R/o. Ward No. 1, House No. 1/8, Narmada Nagar Bilaspur, Tahsil And District- Bilaspur (C.G.)

3 - Narayan Das Peswani S/o. Late Gurbomal Peswani Aged About 73 Years Caste- Sindhi, R/o. Village Kharsiya, District- Raigarh (C.G.)

.... Respondents

(Cause title is taken from CIS)



For Appellants : Mr. Ratnesh Kumar Agrawal, Advocate

Hon'ble Shri Justice Bibhu Datta Guru

Judgment on Board

20/04/2026

1. The appellants/defendants have preferred the present appeal under Order 43 Rule 1(r) of the Code of Civil Procedure, 1908, being aggrieved by the order dated 10.04.2026 passed by the learned 2nd District Judge, Bilaspur, District Bilaspur (C.G.) in Civil Appeal No.161-A/2019 5-A/2023 (Hansraj Peswani & Others Vs. Suresh Kumar Bajpayee & Others), whereby the learned first appellate Court dismissed the application filed by the appellants/defendants under Order 39 Rules 1 & 2 read with Section 151 of CPC, seeking temporary injunction in respect of the suit property. For the sake of convenience, the parties would be referred as per their status before the learned trial Court.
2. (a) The plaintiff preferred a suit seeking for declaration of title and permanent injunction in respect of the land bearing khasra no. 448/49 admeasuring area 0.02 acre, khasra no. 448/50 admeasuring area 0.02 acre, khasra no. 448/52 admeasuring area 0.03 acre, khasra no. 448/53 admeasuring area 0.03 acre, total area 0.10 acre which diverted as sheet no. 15/19, plot no. 199, area 4000 sq. ft. situated at Village Ameri, P.H. No. 26, Tahsil-Sakri, District Bilaspur (C.G.) on the basis of the sale deed dated 01.09.2001, 03.09.2001 & 11.09.2001 executed by Indradev Kalwani and Smt. Kaushilya Devi Tirthani in the favour of



the respondent no. 1 & 2/ plaintiffs herein.

(b) The plaintiff pleaded that after purchasing the disputed land, the plaintiffs laid foundation pipes for future construction. As the land had pits where rainwater collected, they regularly visited it for maintenance. On 24.10.2005, when Plaintiff No.1 visited the plot, he found some people filling it with soil (murum). When he objected, they abused and tried to quarrel with him. He reported the matter to Civil Lines Police Station, Bilaspur, and also informed senior officials. The police stopped the illegal filling work. To prevent future encroachment, the plaintiffs began constructing a boundary wall. At that time, one Maniklal Soni stopped them, claiming the land belonged to Hansraj Peswani and his brothers (the defendants), and started threatened them. Next day on 19.11.2005, Maniklal Soni returned with Hansraj Peswani and again warned the plaintiffs to stop construction, claiming ownership of the land and creating a dispute before leaving.

3. The defendants filed their written statement along with counter claim and denied all the plaint averments. They stated that stated the questioned property is the part of the land bearing khasra no. 448/1 admeasuring area 1.40 acre and khasra no. 448/4 admeasuring area 0.90 acre situated at Village Ameri, Tahsil Sakri, District Bilaspur (C.G.). They stated that father of defendants namely Gorbomal purchased the aforesaid property through the registered sale deed dated 12.01.1954. They further stated that the name of Totaram Peswani was recorded in the



revenue records without any authority of law. It is alleged that he subsequently sold the suit property to Indradev Kalwani and Smt. Kaushilya Devi Tirthani, and thereafter Respondent Nos. 1 and 2 (the plaintiffs) purchased the said property.

4. The learned Trial Court, after framing the issues and upon due consideration of the oral and documentary evidence adduced by both parties, as well as the material available on record, dismissed the counter claim of the defendants No.1 and 2 allowed the suit filed by the plaintiffs by declaring that the plaintiffs are the owners of the land situated at Mouza Ameri, P.H. No. 26, R.N.M., Tehsil Takhatpur, District Bilaspur (C.G.), bearing Khasra Nos. 448/49, 448/50, 448/52, and 448/53, admeasuring 0.02 acre, 0.02 acre, 0.03 acre, and 0.03 acre respectively, totaling 4,000 square feet, as detailed in the schedule annexed to the plaint. The trial Court further ordered that the defendants, their authorized agent Maniklal Soni, or any other person acting on their behalf, are hereby permanently restrained by way of injunction from causing any interference, obstruction, or disturbance in the plaintiffs' possession of the suit property.
5. Against the said judgment and decree, the defendants filed the Civil Appeal before the learned Appellate Court. During the pendency of the First appeal, the plaintiffs started construction on the suit property. Thereafter, the defendants filed an application under Order 39 Rules 1 and 2 of the Code of Civil Procedure, along with photographs in support thereof.



6. The Appellate Court after going through the material available on records, dismissed the application filed by the defendants under Order 39 Rules 1 and 2 of CPC by observing that in the order granting building permission, Khasra No. 448/67 has also been mentioned; however, the said Khasra number is not reflected in the judgment and decree dated 29.07.2019 passed by the trial Court. The plaintiffs are carrying out construction after the judgment of declaration in favour of him by the Court. It is evident that the plaintiffs must have invested substantial capital and funds in the construction work. The photographs submitted by the defendants also indicate that construction activity is ongoing and the same has not yet been completed. The Appellate Court further observed that the civil appeal filed in the matter is still pending for final disposal, and the ultimate outcome will be subject to the final order/judgment passed therein. In such circumstances, the respondents/plaintiffs are continuing construction by investing capital. Considering the original record of the case and the judgment dated 29.07.2019, a prima facie case and the balance of convenience lie more in favour of the respondents/plaintiffs. Since the respondents/plaintiffs are carrying out construction pursuant to the judgment and decree passed by the trial Court, restraining them at this stage, would cause greater irreparable loss to them as compared to the appellants/defendants. Therefore, it does not appear just, proper, or equitable to stop the construction work. Thus, this appeal.



7. Learned counsel for the appellants submits that the appellants have produced cogent evidence to establish that the suit property was originally purchased by Gorbumal, the father of the appellants, through a registered sale deed dated 12.01.1954. Despite this, the name of Totaram Peswani came to be recorded in the revenue records without any authority of law. The learned Trial Court as well as the learned Appellate Court have failed to properly consider and appreciate this material evidence. Learned counsel submits that the land bearing Khasra No. 448/67, admeasuring 1500 sq. ft., does not form part of the suit property; however, construction is being carried out thereon. Learned counsel further submits that the application under Order 39 Rule 1 and 2 of CPC before the Appellate Court has been filed to prevent the respondents/decreed holder to raise construction over the plot/land in question bearing khasra No.448/67, however, without appreciating the entire facts and circumstances of the case the learned first appellate Court dismissed the application filed by the defendants under Order 39 Rule 1 & 2 of the CPC.
8. I have heard learned counsel for the appellant and perused the pleadings and the documents annexed thereto.
9. It is evident from the record, that the First Appellate Court, while dealing with the application under Order 39 Rules 1 and 2 CPC, has recorded a clear finding that the respondents/plaintiffs are proceeding with construction after the judgment and decree dated 29.07.2019 passed by the Trial Court. The Appellate Court has



further assessed the issues of prima facie case, balance of convenience, and irreparable injury, and has found that these factors weigh in favour of the respondents/plaintiffs. The contention of the appellants that Khasra No. 448/67 does not form part of the suit property is noted.

10. From the pleadings and the submission made during the course of hearing, it is manifest that the alleged construction is being raised over land bearing khasra No.448/67, which is not covered by the decree, therefore, the appellants would be at liberty to avail appropriate remedy in accordance with law. This safeguard adequately protects the appellants' rights, if any, in respect of the said Khasra number i.e. 448/67.
11. In such circumstances, where construction is being carried out pursuant to a subsisting decree and no illegality or perversity in the exercise of discretion by the First Appellate Court has been demonstrated, this Court finds no justification to grant interim restraint at this stage. Interference would disrupt ongoing construction and cause greater prejudice to the respondents, particularly when the appellant herein is alleging that the construction is being made over the land bearing Khasra No.448/67, which is not a part of decree and hence, if any construction is being raised over the said Khasra as alleged, the appellant would be at liberty to avail the remedy as may be available to him under the provisions of law.



12. In view of foregoing, the instant appeal is **dismissed** at the motion stage itself. However, the appellants/defendants would be at liberty to approach the appropriate forum, as may be available to them under the provisions of law for redressal of their grievances, if any.

SD/-

(Bibhu Datta Guru)
Judge

Gowri/
Amardeep