

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 512 of 2015

Rajuram S/o Late Homlal Aged About 48 years R/o Village Garka, Singhanpur, P.S.
Keshkal Civil & Revenue District Kondagaon Chhattisgarh

---- Petitioner

Versus

1. Shayama Bai D/o Late Anant Ram Aged About 50 Years R/o Village Garka, Singhanpur, P.S. Keshkal, Civil and Revenue District Kondagarn Chhattisgarh
2. Bhagwati Bai D/o Late Anant Ram Aged About 50 Years R/o Village Garka Singhanpur, P.S. Keshkal Civil & Revenue District Kondagaon Chhattisgarh
3. State Of Chhattisgarh Through Collector Kondagaon, District Kondagaon Chhattisgarh

---- Respondents

For Petitioner	-	Shri C.R. Sahu, Advocate
For Respondent/State	-	Shri Vinod Tekam, Panel Lawyer

Order On Board

13/07/2015

Heard.

In this petition, under Article 227 of the Constitution of India, legality and validity of order dated 24.06.2015 passed in Miscellaneous Civil Appeal No.1 of 2015 has been assailed. The matter arises out of order deciding plaintiff's application for grant of temporary injunction.

2. Submission of learned counsel for the petitioner is that the learned Lower Appellate Court committed serious jurisdictional error in reversing the order of grant of temporary injunction by the Trial Court. It is argued that the suit for declaration and permanent injunction was brought by the petitioner/ plaintiff on the basis of a partition deed evidencing partition amongst all the share holders including parties to the suit and followed by correction of record of rights and other revenue records, making an entry of the name of the plaintiff to the exclusion of defendants, by an order of the Tehsildar. These two documents made out a prima facie case

in favour of the petitioner, which was duly appreciated by Learned Trial Court to grant temporary injunction. It is next contended that the learned Lower Appellate Court has transgressed its jurisdiction while deciding appeal arising out of the order of temporary injunction. In as much as, it has entered into the evidentially value of the partition deed and revenue records. All these are matters to be decided during trial but, at present, these documentary evidence prima facie make out a case. Refusing temporary injunction even though a case having been made out, has resulted in miscarriage of justice.

3. While the Trial Court granted temporary injunction in favour of the petitioner/plaintiff placing reliance upon partition deed and revenue records entries, the Appellate Court reversed the order taking into consideration that neither the partition deed nor *sanshodhan panji* contained signature of the defendants and there is a serious dispute with regard to the factum of partition amongst the parties to the suit. The Appellate Court has also taken into consideration that other share holders are not impleaded as a party. The learned Lower Court has also taken into consideration that prima facie Jugo Bai could not have bequeathed by will, those joint properties, which were not part of her self-acquired property.

4. The view taken by the learned Lower Appellate Court does not suffer from jurisdictional illegality much less any error apparent on the face of the record. It is not a case where the injunction has been refused without consideration of any clinching documentary evidence. When the two views are possible and the Court below has leaned to take one of the two views in the absence of any gross jurisdictional illegality or perversity, this Court is not inclined to interfere with the order, which arises out of an injunction matter without deciding the rights of the parties at this stage, keeping in view, principles laid down in ***Munendra Kumar Dwivedi and others v. Ramji Tiwari and others, 1992 J LJ 293.***

5. No case for interference with the order is made out. Accordingly, the petition is dismissed.

Sd/-

Manindra Mohan Shrivastava

J U D G E