

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Misc. Appeal No. 40 of 2016**

- Vijay Soni S/o Late S.C. Soni, Aged About 34 Years R/o Janjgir, Civil & Revenue District- Janjgir-Champa, Chhattisgarh(Plaintiff)

---- Petitioner**Versus**

1. Ashish Matreja S/o Hansraj Matreja, Aged About 22 Years R/o Near Hanuman Temple, Pachpedi Naka (Residing In The House Of Shree Sheetla Prasad Shukla, Advocate As Tenet), Raipur, Civil & Revenue District- Raipur, Chhattisgarh
2. Hansraj Matreja S/o Late Shree Darshan Singh, Aged About 63 Years R/o Near Hanuman Temple, Pachpedi Naka (Residing In The House Of Shree Sheetla Prasad Shukla, Advocate As Tenet), Raipur, Civil & Revenue District- Raipur, Chhattisgarh
3. Dr. Rabel Singh Matreja S/o Late Shree Darshan Singh, R/o Fulchowk, Raipur, Civil & Revenue District- Raipur, Chhattisgarh
4. Veer Bahadur Singh Matreja S/o Late Shree Darshan Singh, Aged About 53 Years R/o Ward No.-15, Janjgir, Civil & Revenue District- Janjgir-Champa, Chhattisgarh
5. Rajendra @ Raju Matreja S/o Late Shree Darshan Singh, Aged About 31 Years (Working At National Insurance Company), R/o Devendra Nagar, Raipur, Civil & Revenue District- Raipur, Chhattisgarh
6. State Of Chhattisgarh, Through- District Magistrate, District- Janjgir-Champa, Chhattisgarh(Defendants)

---- Respondents

For Applicant:
For State:

Mr. Anish Tiwari, Advocate
Mr. Adhiraj Surana, Dy.Govt. Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****06.06.2016**

1. Present miscellaneous appeal has been preferred under Order 43 Rule 1(r) of the Code of Civil Procedure, 1908 (for short 'the Code') challenging the order dated 05.5.2016 passed by Additional District Judge (FTC), Janjgir Champa. Vide impugned order, the Court below has rejected the application filed by the appellant/plaintiff under Order 39 Rule 1 & 2 of the Code, in civil suit i.e. 19A/15.

2. Case of the plaintiff is that he had filed suit for specific performance of the contract based on the *ikrarnama* dated 10.5.2011 wherein respondent No.4 agreed to sell the suit property to the appellant/plaintiff for an amount of Rs.2,00,000/-. The plaintiff has also filed an application under Order 39 Rule 1 & 2 of the Code seeking temporary injunction of the disputed suit property from being alienated to third party. The contesting respondents have entered their appearance before the Court below and specifically denied all the contentions put forth by the plaintiff. However, respondent No.4 with whom the alleged *ikrarnama* has been executed by the plaintiff has not entered appearance before the court below and is proceeded ex-parte.

3. Counsel for the appellant submits that he has pressed the application under Order 39 Rule 1 & 2 of the Code based upon the newspaper advertisement published in Nav Bharat on 18.4.2016. Counsel for the appellant submits in the interest of justice temporary injunction ought to have been granted by the Court below pending the suit for the reason that if the property in question is alienated, the same may raise

more complications as well as multiplicity of litigation.

4. I have heard counsel for the appellant and perused the impugned order along with the documents annexed.

5. On appreciating the impugned order, I find that the Court below has specifically considered all the contentions and submissions put forth by the plaintiff while rejecting the application under Order 39 Rule 1 & 2 of the Code.

6. Perusal of the order of the Court below shows that the plaintiff has prima facie failed to establish that respondent No.4 was in fact the actual title holder or the owner of the suit property by virtue of which he could have executed the *ikrarnama* with the plaintiff. The impugned order also reflects that the contesting respondents have specifically denied the fact of oral partition between the defendants of the suit property and that they have neither entrusted the area of the suit property to respondent No.4, which is alleged to have been sold to the plaintiff. The plaintiff thus has not made out a prima facie case in his favour and he has also not been able to establish his case on the point of balance of convenience or irreparable loss.

7. In the considered view of this Court, the Court below has not committed any error of law in rejecting the application filed by the appellant/plaintiff for grant of temporary injunction.

8. In the opinion of this Court, the appellant/plaintiff, in the given facts and circumstances of the case, would still have the liberty to

establish his case by leading cogent evidence and examining independent witnesses in support of his case before the Court below for getting the relief as sought by him.

9. In any case, the case for specific performance is a discretionary matter and while exercising the discretion the Court below did not find sufficient material strong enough for grant of temporary injunction. Thus the order of the Court below cannot be faulted at warranting interference.

10. In view of the above, no case is made out for interference with the impugned order. The appeal is dismissed.

Sd/-
(P. Sam Koshy)
V. JUDGE