

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M.A No.47 of 2017**

Ghanshyam S/o Jeevan Lal Sahu, Aged About 38 Years Caste Teli, R/o Village And Post Jamali, Tahsil Kurud, District Dhamtari, Chhattisgarh(Plaintiff)

---- Appellant

Versus

1. Smt. Geeta Bai W/o Shri Devdhar Ram, Aged About 65 Years Caste Teli, R/o Village And Post Belora, Tahsil Kurud, District Dhamtari, Chhattisgarh
2. Sewaram S/o Jagaturam, Aged About 65 Years Caste Teli, R/o Village And Post Jamali, Tahsil Kurud, District Dhamtari, Chhattisgarh
3. Baldau Singh Kunjam S/o Leelaram, Aged About 62 Years Occupation Patwari, Halka No.02, Jamali, Tahsil Kurud, Distt. Dhamtari, R/o Village Gatapar, Post Sirri, Tahsil Kurud, Distt. Dhamtari, Chhattisgarh
4. Govind Singh Dahariya, Tahsildar, Tahsil Magarlod, District Dhamtari, Chhattisgarh
5. State Of Chhattisgarh, Through Collector District Dhamtari, Chhattisgarh(Defendants)

-----Respondents

For Appellant:	Shri RS. Patel, Advocate.
For Respondents No.1 & 2:	Shri Raj Kumar Palli, Advocate.
For Respondent No.5/State:	Shri VB Singh, Panel Lawyer.

Single Bench: Hon'ble Shri Sanjay Agrawal, J
Order On Board

03.11.2017

1. This is the Miscellaneous Appeal preferred under Order 43 Rule (1) CPC, 1908 (for short referred to as 'the CPC') against the order dated 16.12.2016 passed by the Additional District Judge (FTC), Dhamtari in Civil Suit No.32-A/2016 by which the Plaintiff's application filed under Order 39 Rules 1 & 2 of the CPC has been rejected.
2. The undisputed facts of the case are that the Plaintiff-Ghanshyam instituted a suit claiming declaration that the registered deed of Will dated 10.12.2015 executed by his grandmother Sitabai in favour of Defendant

No.1-Geeta Bai be declared as null and void and praying further that the revenue entries as made in the name of Sitabai are not binding upon her. It is pleaded further that the suit property admeasuring 7.81 acres have come in partition in share of one Bhushan, the son of Ghasiram. It is pleaded in the Complaint that earlier, a registered deed of sale was executed on 5.5.1994 by Sita Bai in favour of one Nirmala Bai and since the alleged sale was not a genuine one, therefore, the said Bhushan had instituted a suit claiming declaration with regard to the fact that the alleged registered deed of sale be declared null and void. It is pleaded further that the said suit registered as Civil Suit No.204-A/98 was dismissed by the trial Court by its judgment and decree dated 23.12.1998 and in Appeal, it was reversed by the lower appellate Court in an Appeal preferred by said Bhushan in Civil Appeal No.17-A/99 vide order dated 8.5.2000 by which, the registered deed of Sale as executed on 5.5.1994 was held to be a fictitious document. The Plaintiff has prayed that since Sita Bai had executed the registered deed of sale by taking undue advantage of mental illness of her son Bhushan, which was ultimately declared as invalid by the competent Court, therefore, it shows *prima facie* that Sita Bai had again executed the instant registered deed of Will illegally on 10.12.2015 in favour of her daughter Gita Bai. In view of the said fact, the instant suit has been filed.

3. Along with the aforesaid claim, an application enumerated under Order 39 Rules 1 & 2 r/w Section 151 CPC has been made praying that Defendant No.1-Gita Bai be restrained from obtaining revenue entries mutated in her name and also prayed further that she be restrained from alienating the suit property during the pendency of the suit.

4. The Defendants have contested the aforesaid claim of the Plaintiff and the trial Court, after considering all the material documents as produced, has come to the conclusion that no *prima facie* case lies in favour of the Plaintiff so as to grant him the temporary injunction as claimed by him. Accordingly, the said application was rejected by way of impugned order dated 16.12.2016.

5. Being aggrieved, the Plaintiff has preferred this Miscellaneous Appeal. Shri RS Patel, learned Counsel for the Appellant submits that the order impugned as passed by the trial Court by observing that since no document has been produced by him by which, it could be presumed that Defendant No.1 is trying to get her name mutated in the revenue papers is apparently contrary to the material available on record as the notice was issued from the revenue authorities in this regard which *prima facie* shows that Defendant No.1 is trying to get her name mutated on the basis of the alleged registered deed of Will in her name. He submits further that since the Court below did not consider all the documents in its proper perspective, therefore, order impugned be set aside while granting the temporary injunction to the Plaintiff.

6. I have heard learned Counsel for the Appellant and perused the entire record carefully.

7. The Plaintiff's suit is based mainly on the ground that the suit property described in Plaint Schedule-A has come in share of one Bhushan, the son of Ghasiram in partition and the registered deed of Will purported to have been executed by Sita Bai in favour of Defendant No.1- Gita Bai is *prima facie* shown to be a fabricated and illegal document. However, at this stage, particularly when the trial is yet to be commenced,

it is difficult to hold that it is not a genuine one. Even otherwise, I do not find any document that under what basis he (Ghanshyam) is showing his interest over the suit property. It is the settled principles of law that for issuance of temporary injunction, three essentials are required to be satisfied, which is completely lacking in the matter. Accordingly, I do not find any infirmity in the order impugned as passed by the trial Court. Therefore, the same deserves to be and is hereby affirmed.

8. In view of the foregoing discussions, the Appeal being devoid of merits is hereby dismissed at the admission stage itself. There shall be no order as to costs.

Sd/-

(Sanjay Agrawal)
JUDGE

Priya