

HIGH COURT OF CHHATTISGARH, BILASPUR
M.A No.61 of 2017

Anup Kumar Agrawal S/o Shri Santlal Agrawal, Aged About 42 Years Occupation Business, R/o Nayaganj, Itwari Bazar, Raigarh, Tahsil And District Raigarh, Chhattisgarh. At Present Dhourabhata, Tahsil Tamnar, District Raigarh, Chhattisgarh.

----Appellant

Versus

1. Smt. Sushila W/o Santlal Agrawal, Aged About 60 Years R/o Village Dhaurabhata, Tahsil Tamnar, District Raigarh, Chhattisgarh.
2. Santlal Agrawla, S/o Omprakash Agrawal, Aged About 65 Years Occupation Business, R/o Village Dhaurabhata, Tahsil Tamnar, District Raigarh, Chhattisgarh.
3. Arun Kumar S/o Santlal Agrawal, Aged About 44 Years R/o Village Dhaurabhata, Tahsil Tamnar, District Raigarh, Chhattisgarh.
4. Uma, D/o Santlal Agrawal Aged About 35 Years W/o Anand Agrawal, Occupation Dependant, R/o Friends Colony, Raigarh, Tahsil And District Raigarh, Chhattisgarh.
5. State Of Chhattisgarh Through Collector, Raigarh, District Raigarh, Chhattisgarh.

-----Respondents

For Appellant:	Shri Vineet Kumar Pandey, Advocate.
For Respondent/State:	Shri Lav Sharma, Panel Lawyer.

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

19.06.2017

1. Heard on admission.
2. This Miscellaneous Appeal has been filed under Order 43 Rule 1(r) of the Code of Civil Procedure, 1908 questioning the order dated 29.4.2017 passed by the 2nd Additional District Judge, Raigarh in Civil Suit No.85-A/2016 whereby the application filed by the Plaintiff under Order 39 Rule 1 & 2 r/w Section 151 CPC has been rejected.

3. Brief facts of the case are that the Plaintiff Anup Kumar Agrawal instituted a suit claiming declaration and partition with regard to the property in question described in Plaint Schedule-A by submitting *inter alia* that the alleged property was purchased on 10.1.1996 in the name of his mother namely Sushila Bai. It is pleaded further that though the said property was purchased in the name of his mother, but in fact, the sale consideration was paid by him and his brother Arun Kumar Agrawal, Defendant No.3. Since the mother is going to alienate the property by executing an agreement to sale to someone else, therefore, he has been constrained in filing the suit in the instant nature.

4. Along with the Plaint, the Appellant has also moved an application under Order 39 Rule 1 & 2 restraining Defendant No.1 from alienating the property in question during the pendency the suit.

5. Upon considering the aforesaid application and the averments as made in the Plaint as well as the documentary evidence produced, the trial Court has rejected the said application for grant of temporary injunction by its order impugned dated 29.04.2017.

6. Being aggrieved, the Plaintiff has filed this Appeal. Shri Pandey, learned Counsel for the Appellant submits that the order impugned is not at all sustainable as the same has been passed without considering the affidavit in its proper manner which was submitted by the vendor of the said deed dated 10.1.1996. He submits further that since the property was purchased by providing the sale consideration by him and his brother, therefore, the same is a joint family property and under such circumstances, particularly in view of execution of the alleged agreement to sale by his mother, the trial Court ought to have restrained Defendant No.1 from alienating the property in question

during the pendency of the suit.

7. I have heard learned Counsel for the Appellant and perused the entire relevant papers annexed to this memo of Appeal.

8. Admittedly, the property in question was purchased in the name of the Mother i.e. Sushila Bai by virtue of the alleged registered deed of sale dated 10.1.1996 and the revenue paper was also recorded in her name in pursuance to the said sale. So far as contention of Shri Pandey that the property purchased by him and his brother Arun Kumar Agrawal in the name of his mother was in fact required to be examined at the time of trial and merely on the basis of the affidavit as submitted by the vendor of the alleged sale deed namely Shivnarayan, would be difficult to hold that his mother is not the owner of the suit property. Therefore, in my opinion, the trial Court has not committed any error by rejecting the said application. Even otherwise, for issuance of temporary injunction, three essential ingredients as required have not been satisfied by the Plaintiff, therefore, under such circumstances, the application has rightly been rejected by the trial Court. I therefore, affirm the order impugned passed by the trial Court.

9. In view of above, I do not find any merit in this Appeal. Accordingly, the Appeal is hereby dismissed at the admission stage itself. There shall be no order as to costs.

Sd/-

(Sanjay Agrawal)
JUDGE