

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MA No. 120 of 2016**

- Atmaram Sahu S/o Late Shri Chintaram Sahu, Aged About 63 Years R/o Village Sarwani, Thana- Chakarbhanta, Bilaspur, Tahsil And District Bilaspur, Chhattisgarh(Plaintiff)

---- Appellant

Versus

1. Amit Mishra S/o Shri G.N.Mishra, Aged About 35 Years R/o Rajkishore Nagar, P.S. Sarkanda, Bilaspur, Chhattisgarh
2. Surendra Nath Jha S/o Upendra Jha, Aged About 46 Years R/o Rajkishore Nagar, P.S. Sarkanda, Bilaspur, Chhattisgarh
3. State Of Chhattisgarh, Through Collector Bilaspur, Chhattisgarh (Defendants)

---- Respondents

For Appellant	:	Shri Ajay Kumar Dwivedi, Advocate
For Respondent No.1 & 2	:	Shri Ashok Soni, Advocate
For Respondent No.3/State	:	Shri V.B.Singh, Panel Lawyer

Hon'ble Shri Justice Sanjay Agrawal**Order On Board****04/10/2017**

1. Heard on admission.
2. This Miscellaneous Appeal has been preferred by the plaintiff under Order 43 Rule 1 of the Code of Civil Procedure, 1908 (hereinafter referred to as the Code of 1908 in short) against the order dated 08.07.2016 passed by the 3rd Additional District Judge, Bilaspur, in Civil Suit No. 30-A/2016, by which, the plaintiff's application filed under Order 39 Rule 1 & 2 read with Section 151 of the Code of 1908 has been rejected.
3. The undisputed facts of the case are that the plaintiff Atmaram Sahu instituted a suit claiming declaration of title and injunction and also praying that the registered deed of sale executed by defendant No.1 acting as his Power of Attorney Holder in favour of defendant No.2 on 21.01.2015 be declared as null and void.

It is pleaded further by the plaintiff that he is the owner of the property bearing Kh.No. 604/4 admeasuring 0.15 acres and out of the said property, certain property was acquired and for obtaining the amount of compensation, he has executed the Power of Attorney on 22.12.2014 in favour of defendant No.1 Amit Mishra. However, he has incorporated certain terms with regard to the alienation of rest of the property (suit property) without his knowledge and based on this forged Power of Attorney, he has sold the suit property to his relative, namely Surendranath Jha, the defendant No.2. It is pleaded further that the plaintiff's intention was never to authorise the defendant No.1 Amit Mishra to execute or alienate the suit property to anyone else, therefore, the registered deed of sale as executed by him acting as his Power Attorney holder in favour of defendant No.2 be declared as null and void. Along with the suit, an application enumerated under Order 39 Rule 1 & 2 read with Section 151 of the Code of 1908 has also been made praying for restraining the defendants from interfering in his peaceful possession of the suit property.

4. The defendants have submitted their reply with regard to the said application for issuance of temporary injunction and stated that the plaintiff has duly executed the alleged Power of Attorney on 22.12.2014 while authorising the defendant No.1 to alienate the suit property and only on the basis of said document, the said defendant has sold the suit property to defendant No.2 by executing the registered deed of sale on 21.01.2015. It is contested further on the ground that the entire sale consideration was also paid to the plaintiff, and, therefore, the application as made by him deserves to be rejected.

5. The trial Court, after considering the documentary evidence placed on record and that by considering the alleged registered deed of Power of Attorney executed by the plaintiff in favour of defendant No.1 Amit Mishra on 22.12.2014, has come to the conclusion prima facie that the said defendant acting as an attorney holder of the plaintiff has validly sold the suit property to defendant No.2 by executing the registered deed of sale on 21.01.2015. Based on this prima facie conclusion, the trial Court has rejected the plaintiff's application for issuance of temporary injunction by observing that three essentials as required for issuance of it are not in favour of the plaintiff. As a consequence, the trial Court has rejected the said application.

6. Being aggrieved, the plaintiff has preferred this Miscellaneous Appeal. Shri Ajay Dwivedi, learned counsel for the appellant submits that the trial Court, without examining the alleged Power of Attorney in its proper perspective, has erred in holding that the plaintiff has authorised the defendant No.1 Amit Mishra to alienate the suit property and thereby erred in holding that no prima facie case lies in favour

of the plaintiff. Shri Dwivedi has invited the Court's attention to paragraph 3 of the alleged Power of Attorney by submitting that if the alleged authorisation for alienating the suit property was given to defendant No.1 then the said authorisation would have been mentioned in the earlier paragraph of the said document. Since the same was not mentioned as such, therefore, it would show prima facie that the plaintiff's intention was not to authorise him to sell the suit property to anyone else. Without considering the said document in its proper manner, the trial Court has erred in rejecting his application for issuance of temporary injunction.

7. I have heard learned counsel for the appellant and perused the entire relevant papers annexed with this appeal.

8. The plaintiff's suit is essentially based on the ground that he has not executed the alleged Power of Attorney on 22.12.2014 by authorising defendant No.1 Amit Mishra to sell his property to anyone else. The plaintiff, under such circumstances, is required to adduce prima facie evidence in this regard. However, the documentary evidence placed on record would unequivocally show that the registered Power of Attorney was executed by him in favour of defendant No.1 Amit Mishra on 22.12.2014 by authorising him to alienate his property to someone else. At this stage, particularly when the evidence of the parties is yet to commence, it is difficult to accept the contention of Mr. Dwivedi that the plaintiff had no intention to authorise the said defendant No.1 to alienate his property. Pertinently to be mentioned here further that despite the alleged alienation by defendant No.1 in favour of defendant No.2 on 21.01.2015, no steps were taken immediately thereafter by the plaintiff for the cancellation of the alleged registered deed of Power of Attorney, would therefore, show prima facie that the plaintiff's intention was there to authorise him to sell his property. After considering all these material facts, the trial Court has not committed any illegality in arriving at a prima facie conclusion that the three essentials as required for issuance of temporary injunction are not in favour of the plaintiff. Accordingly, prima facie observation as made by the trial Court does not suffer from any infirmity and, therefore, the same deserves to be and is hereby affirmed.

9. Consequently, this miscellaneous appeal, being devoid of merit, is liable to be and is hereby dismissed at admission stage itself. No order as to costs.

Sd/-

(Sanjay Agrawal)
Judge