

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M.A. No. 122 of 2016**

- Dr. (Smt.) Surjit Behl W/o Shri Gurjeet Singh Behl, Aged About 67 Years Presently Residing At 107, Victoria Urbane, 12 Park Road, Indore, District Indore (Madhya Pradesh)(Plaintiff)

---- Appellant**Versus**

1. Smt. Jaspal Kaur Bhatia (Dead) Through Lrs
 1. (a) Sardar Gulbir Singh Bhatia Male Age - 70 S/o Late Sardar Gulab Singh Bhatia R/o Opposite Rajbhawan, Civil Lines, Raipur, District Raipur, Chhattisgarh
 1. (b) Smt. Arvindar Kaur Female Age - 0 W/o Mahendra Pal Singh Bhatia R/o Near Shyam Plaza, Pandri, Raipur, District- Raipur, Chhattisgarh
 1. (c) Smt. Arjindar Kaur Female Age - 0 W/o Avnit Singh Oberoi R/o Bottle House, Shankar Nagar, Raipur, District Raipur, Chhattisgarh
 1. (d) Smt. Sarabjit Kaur Female Age - 0 W/o Ravi Singh Bhatia R/o Baigunia Tower, Bistapur, Jamshedpur (Jharkhan)
 1. (e) Smt. Harpreet Kaur Female Age - 0 W/o Gurbakshish Singh Bhatia R/o 6-A. Sandesh Apartment, Union Park, Khar (West), Mumbai (Maharashtra)
2. Satpal Singh Bhatia S/o Gulvir Singh Bhatia, Aged About 43 Years R/o Opposite Raj Bhawan, Civil Lines, Raipur, District Raipur, Chhattisgarh
3. State Of Chhattisgarh, Through The Collector, Raipur, District Raipur, Chhattisgarh(Defendants)

---- Respondents

For Appellant:	Shri Ashish Surana, Advocate.
For Respondent No. 1:	Shri Abhishek Vinod Deshmukh, legal representatives.
For Respondent No. 2:	Shri Malay Kumar Bhaduri, Advocate

Single Bench: Hon'ble Shri Sanjay Agrawal, J**Order On Board****06.10.2017**

1. This Miscellaneous Appeal has been preferred by the plaintiff

against the order dated 18.11.2016 passed by 3rd Additional District Judge, Raipur in Civil Suit No. 91-A/2014, by which, the trial Court has rejected the plaintiff's application filed under Order 39 Rule 1 & 2 of the Code of Civil Procedure, 1908.

2. The undisputed facts of the case are that the Plaintiff- Surjit Behl instituted a suit claiming declaration with regard to the cancellation of the registered deed of sale, dated 31.03.2010 purported to have been executed by defendant No. 2- Satpal Singh Bhatia as her power of attorney holder to defendant No. 1 – Jaspal Kaur Bhatia. It is pleaded in the plaint that without any authority the Defendant No. 2 has sold the entire suit property by virtue of the alleged registered deed of sale to his mother Jaspal Kaur Bhatia. Therefore, the same be declared as null and void along with other reliefs.

3. Along with the aforesaid claim, the plaintiff has also moved an application for issuance of temporary injunction for restraining the defendant from creating third party interest with regard to the suit property. The said application was rejected by the trial Court vide order dated 24.11.2014, however, the same was reversed in M. A. No. 07/2015 by this Court and the defendants have been restrained from creating third party interest with regard to the suit property vide order dated 29.01.2015. During pendency of suit, the plaintiff has moved another application as per the provisions prescribed under Order 39 Rule 1 & 2 for restraining the defendants from raising any construction over the suit property as they came to know with regard to this fact from one Ranjeet Singh.

4. The aforesaid application was opposed by the defendants and stated that they are not going to raise any material construction over the

suit property and in fact the construction has already been made, therefore, the application deserves to be rejected.

5. The trial Court, after considering the materials available on record, has come to the conclusion that the alleged construction has already been made prior to the filing of the said application and observed further that since no affidavit of said Ranjeet Singh from whom the alleged information of construction was received by the plaintiff was submitted, therefore, her contention cannot be accepted. In consequence, the trial Court has come to the conclusion prima facie that the three essentials as required for issuance of temporary injunction are not in favour of the plaintiff and accordingly, the said application has been rejected by order impugned dated 18.11.2016.

6. Being aggrieved, the plaintiff has preferred this Miscellaneous Appeal. Shri Ashish Surana, counsel for the Appellant submits that the order impugned, as passed by the trial Court by considering the photographs submitted by the defendants, is not proper and has thus committed illegality in rejecting the application of the plaintiff.

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

8. During the pendency of the suit, the instant application for issuance of temporary injunction was made by the plaintiff on 28.01.2016, in which, it was prayed that since the defendants have started raising the construction over the suit property, therefore, injunction be granted by restraining the defendants from raising construction over the suit property. The said application was made mainly on the ground that she came to know about the said fact from one Ranjeet Singh that defendants are

raising the construction. However, from perusal of the record, the plaintiff has failed to prove the said fact. In order to establish the said fact, the plaintiff was required to produce at least the affidavit of said Ranjeet Singh in support of this contention. In absence of cogent and reliable evidence, it is difficult to hold that defendants are raising any construction as alleged by the plaintiff. The trial Court has, therefore, rightly rejected the said application.

9. Accordingly, the Appeal being devoid of merits is hereby dismissed at the admission stage itself. No order as to costs.

10. Registry is directed to send back the record of lower Court forthwith.

Sd/-

(Sanjay Agrawal)
JUDGE

Nikita