

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M.A No.65 of 2017**

Ajay Kumar S/o Late Manikchand Gupta, Aged About 46 Years R/o Nagar Ramanujganj, P.S. And Tahsil Ramanujganj, District Balrampur-Ramanujganj, Chhattisgarh

---- Appellant**Versus**

1. Smt. Savitri Devi @ Parwati W/o Late Manikchand Gupta, Aged About 80 Years
2. Uday Kumar S/o Late Manikchand Gupta, Aged About 48 Years
3. Rajesh Kumar S/o Late Manikchand Gupta, Aged About 44 Years
4. Chhotelal S/o Late Manikchand Gupta, Aged About 42 Years (Mental Disorder), Through Litigant Guardian Shri Ajay Kumar Kerketta, Executing Clerk, Civil Court, Ramanujganj, Chhattisgarh
5. State Of Chhattisgarh, Through Collector, Balrampur-Ramanujganj, District Balrampur-Ramanujganj, Chhattisgarh
6. Satyanarayan Gupta S/o Late Parmeshwar Sao, Aged About 57 Years R/o Balrampur, P.S. And Tahsil Balrampur, District Balrampur-Ramanujganj, Chhattisgarh

-----Respondents

For Appellant:	Shri CJK Rao, Advocate.
For Respondent No.5/State:	Smt Shobha Kashyap, Dy. G.A.

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

05.09.2017

1. Heard on admission.
2. This is a Miscellaneous Appeal preferred by Plaintiff Ajay Kumar under Order 43 Rule 1 (u) of the Code of Civil Procedure, 1908 against the order dated 10.4.2017 passed by the Additional District Judge, Ramanujganj, District Surguja in Civil Suit No.15-A/2016 whereby the Plaintiff's application for temporary injunction has been refused.
3. The undisputed facts of the case are that Plaintiff Ajay Kumar has

instituted a suit for declaration of title and injunction by claiming 1/5th share with regard to the Plaintiff Schedule-C property by submitting *inter alia* that this property has been purchased by his father-Manikchand Gupta and after his death, it was inherited by him along with his other heirs. It is pleaded further that since the property is the joint family property, therefore, Defendant No.1-Smt Savitri Bai, the mother alone was not competent to execute the registered deed of sale on 3.5.2016 in favour of Defendant No.6-Satyanarayan Gupta and therefore, the alleged sale be declared as null and void.

4. Along with the aforesaid claim, an application enumerated under Order 39 Rules 1 & 2 CPC has been filed praying for restraining Defendant No.6 from alienating the property in question described in Plaintiff Schedule-'C' pending decision of the suit.

5. The Defendants have contested the aforesaid application of the Plaintiff by stating therein that the suit property is not the joint family property as pleaded by the Plaintiff. It is pleaded very specifically that the suit property is purchased by Defendant No.1-Smt Savitri Bai from her own income and it was her self-acquired property, therefore, she was competent to execute the sale according to her own wishes.

6. After considering the aforesaid claim for temporary injunction, the trial Court has come to the conclusion that the Plaintiff has failed to produce any document in order to establish the fact that the suit property described in Plaintiff Schedule-'C' was ever purchased by his father Manikchand, however, revenue papers disclose the name of mother Smt-Savitri Devi, Defendant No.1 and the registered deed of sale executed on 11.10.1985 shows also *prima facie* that it was purchased by Defendant

No.1. In consequence, it was observed that three essentialness as required for issuance of temporary injunction are not in favour of the Plaintiff. Accordingly, the trial Court has rejected the said application for issuance of temporary injunction.

7. Being aggrieved, the Plaintiff has preferred this Miscellaneous Appeal. Shri CJK Rao, learned counsel for the Appellant submits that the trial Court, without considering the said application for temporary injunction in its proper manner, has erred in rejecting the same. He submits further that the Plaint Schedule-C property, though purchased and recorded in the name of his mother Smt Savitri Devi, but in fact, it was purchased by his father and therefore, after the death of his father Manikchand Gupta, all his heirs are entitled to inherit the property in equal share. In such circumstances, the mother alone was not competent to alienate the Plaint Schedule-C property to Defendant No.6-Satyanarayan by executing a registered deed of sale dated 03.05.2016 in his favour and therefore, Defendant No.6, who has not acquired any valid title deserves to be restrained from creating any third party interest over the Plaint Schedule-'C' property pending decision of the suit.

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

9. The Plaintiff's entire case is based upon the facts that the Plaint Schedule-'C' property is the joint family property and therefore, under the registered deed of sale dated 03.05.2016 executed by his mother Smt Savitri Devi in favour of Defendant No.6-Satyanarayan would not confer any right or interest upon him. However, *prima facie* materials and documentary evidence like registered sale deeds and vis-a-vis the

pleadings of the parties would demonstrate the facts *prima facie* that the Plaintiff Schedule-'C' property, the suit property are not belonging to the joint family property. The suit property was purchased admittedly in the name of mother by virtue of a registered deed of sale dated 11.10.1985 and the revenue papers recorded accordingly in her name also shows *prima facie* that it is not the joint family property as alleged by the Plaintiff. In such circumstances, Defendant No.6-Satyanarayan Gupta, who has purchased the suit property under the registered deed of sale dated 03.05.2016 from said Savitri Devi cannot be restrained by any manner. Consequently, three essentials for issuance for temporary injunction are not in favour of the Plaintiff so as to restrain the Defendant No.6 as pleaded by him.

10. In view of the aforesaid facts, the trial Court has not committed any illegality in refusing to grant temporary injunction to the Plaintiff. The findings so recorded *prima facie* do not suffer from any infirmity and therefore, deserve to be and are hereby affirmed.

11. In view of the foregoing discussions, the Appeal being devoid of merits, is hereby dismissed at the admission stage itself. No order as to costs.

Sd/-
(Sanjay Agrawal)
JUDGE