

**HIGH COURT OF CHHATTISGARH, BILASPUR****M.A. No. 101 of 2017**

1. Bhagwan Das S/o Shankar Lal Aged About 66 Years Caste Vishwakarma ( Badhai ), R/o Post Naya Baradwar Ward No. 8, P. S. Baradwar, Tahsil Sakti, District Janjgir Champa Chhattisgarh

**---- Appellant****Versus**

1. Munni Bai W/o Late Ganesh Prasad Aged About 68 Years Caste Vishwakarma ( Badhai) R/o Raipur Presently Resided At Naya Baradwar, District Janjgir Champa Chhattisgarh
2. Jamuna Bai W/o Banshilal Aged About 65 Years Caste Vishwakarma ( Badhai ) R/o Post Naya Baradwar Ward No. 8 P. S. Baradwar, Tahsil Sakti District Janjgir Champa Chhattisgarh
3. Indira W/o Santosh Kumar Aged About 40 Years D/o Banshi Lal, Caste Vishwakarma ( Badhai ), R/o Post Naya Baradwar Ward No. 8 P. S. Baradwar, Tahsil Sakti District Janjgir Champa Chhattisgarh
4. Santosh Kumar S/o Shankar Lal Aged About 55 Years Cate Vishwakarma ( Badhai ), R/o Post Naya Baradwar Ward No. 8 P. S. Baradwar, Tahsil Sakti District Janjgir Champa Chhattisgarh
5. State Of Chhattisgarh, Through Collector, District Janjgir Champa Chhattisgarh

**---- Respondents**


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| For Appellant:               | Shri Ishwar Jaiswal, Advocate. |
| For Respondent No. 5/ State: | Shri V. B. Singh, PL.          |

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**Single Bench:Hon'ble Shri Sanjay Agrawal, J****Order On Board****01.11.2017**

1. Heard on admission.
2. This is the plaintiffs' miscellaneous appeal preferred under Order 43 Rule 1 of the Code of Civil Procedure, 1908 against the order dated 29.06.2017 passed by 2<sup>nd</sup> Additional District Judge, Sakti, District- Janjgir- Champa in Civil Suit No. 16-A/2016 by which, the trial Court has rejected

the application filed under Order 39 Rules 1 & 2 of the Code of Civil Procedure.

3. The undisputed facts of the case are that the Plaintiff- Bhagwandas instituted a suit claiming declaration that the suit property and house be declared as a joint family property, in which, he has half share and therefore, entitled to obtain the separate possession of it. Along with the said claim, the plaintiff has also moved an application as required under Order 39 Rules 1 & 2 of the CPC praying for restraining defendant No. 4 from entering into possession over the suit property and from creating any third party interest pending decision of the suit.

4. Defendants No. 2 & 3 supported the plaintiff's claim, while defendant No. 4 contested the claim by submitting *inter alia* that the suit property has already been partitioned and claiming his interest by virtue of will deed executed by plaintiff's brother Kailash in his farm. While filing the written statement, as such, the defendant has also objected the said application for issuance of temporary injunction.

5. The trial Court, after considering the materials available on record, has come to the conclusion that the plaintiff has failed to prove *prima facie* that he is entitled to claim as such and, therefore, essential ingredients as required for issuance of temporary injunction are not in favour of the plaintiff. Accordingly, the application has been rejected.

6. Being aggrieved, the Plaintiff has preferred this Appeal. Shri Ishwar Jaiswal, learned Counsel for the Appellant submits that the order impugned refusing his temporary injunction is apparently contrary to law. He submits further that defendant No. 4 is required to be restrained from creating any third party interest, otherwise in the event of alienation of the

property in question, irreparable loss would be caused to the plaintiff.

7. I have heard learned Counsel for the Appellant and perused the entire relevant papers annexed with this miscellaneous appeal carefully.

8. The plaintiff's suit is essentially made on the ground that the suit property is a joint family property and therefore, it has been prayed that it be declared as a joint family property along with other reliefs. Perusal of the record would show that since plaintiff is one of the co-owners, therefore, he is praying for such a relief. It is, however, the settled principle of law that unless and until partition is effected, the other co-owner cannot be restrained from alienating the property in question. Even otherwise, the trial Court, after considering the materials available on record, has come to the conclusion that three essentials, as required for issuance of temporary injunction are not in favour of the plaintiff. Consequently, the trial Court has not committed any illegality in rejecting the said application for grant of temporary injunction.

9. In view of the foregoing discussions, 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. The appeal being devoid of merits is, therefore, dismissed at admission stage itself. No order as to costs.

Sd/-  
(Sanjay Agrawal)  
**JUDGE**