

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Miscellaneous Appeal No. 98 OF 2017**

Mohri Bai W/o Sahalram aged about 60 years, Caste-Cheek R/o Village Lodhma (Girhaldeeh) Police Station & Tahsil Kunkuri, District Jashpur (C.G.)

---- Appellant**Versus**

1. Shri Samwanti Samooh Dev Sthanam Sewa Samiti Mahuwatoli Through President Samooh Ratn Ramji, R/o Village Kandora (Mahuwatoli) Police Station & Tahsil Kunkuri, District Jashpur (C.G.).
2. State of Chhattisgarh, Through Collector Jashpur, District Jashpur (C.G.)

---- Respondents

For Appellant	:	Mr. Anand Kesharwani, Advocate
For Respondent No. 2/State	:	Ms. Shobha Kashyap, Dy. Govt. Advocate

Hon'ble Shri Justice Sanjay Agrawal**Order On Board****30/10/2017**

1. This is a miscellaneous appeal preferred by the plaintiff/appellant under Order 43 Rule 1(d) of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC') against the order dated 03/08/2017 in Civil Suit No. 15-A/2015, by which, the learned trial Court has rejected the plaintiff's application filed under Order 39 Rule 1 & 2 read with Section 151 of the CPC.

2. The undisputed facts of the case are that the plaintiff Mohri Bai instituted a suit for declaration of title, confirmation of possession and also for cancellation of the registered deed of gift dated 10/05/2004 executed by her in favour of defendant No. 1. According to the plaintiff, the alleged deed of registered document was obtained by defendant No. 1 by playing fraud upon her, therefore, the same be declared as null and void. She pleaded further that she came to

know regarding the alleged fraud on 20/01/2011, therefore, she has been constrained to file the suit in the instant nature on 27/10/2015. Along with the claim, an application for issuance of temporary injunction under Order 39 Rule 1 & 2 read with Section 151 of the CPC has also been made praying for restraining the defendant No. 1 from interfering in her peaceful possession, pending decision of the suit.

3. The aforesaid application for issuance of temporary injunction was objected by defendant No. 1 stating *inter alia* that no fraud as alleged was committed upon the plaintiff. It is contested further on the ground that by virtue of the registered deed of alleged document, the right, title and interest has been conferred upon him way back in the year 2004 when the alleged document was executed. He submits further that no prima facie case lies in favour of the plaintiff, therefore, the application deserves to be rejected.

4. After considering the said application, the trial Court by its order impugned dated 03/08/2017 has come to the conclusion prima facie that the registered deed of gift was executed on 10/05/2004 in favour of defendant No. 1 and based upon it, the revenue papers were also mutated in his favour. As a consequence, the trial Court has come to the conclusion that three essentials as required for issuance of temporary injunction are not in favour of the plaintiff, and accordingly, the said application has been rejected.

5. Being aggrieved, the plaintiff has preferred this miscellaneous appeal.

6. Mr. Anand Kesharwani, learned counsel for the appellant submits that the order impugned as passed by the trial Court by ignoring the order of the Tahsildar, Kunkuri, District Jashpur dated 31/03/2015, in which, it was found on the basis of the report submitted by the concerned *Patwari* that the plaintiff is in possession over the suit land, is therefore apparently contrary to law. He submits further that the alleged deed of gift has been obtained by defendant No.1 by

playing fraud upon the plaintiff, therefore, no right, title or interest as such would confer upon him. Without considering the said material facts in its proper perspective, the trial Court has erred in rejecting her application for temporary injunction.

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

8. The plaintiff instituted a suit essentially on the ground that the alleged deed of registered gift dated 10/05/2004 has been obtained by defendant No. 1 by playing fraud upon her. With this premise, the suit was instituted that the same be declared as null and void. Under such circumstances, the burden was heavily upon the plaintiff to produce the cogent and reliable evidence in this regard in order to obtain the temporary injunction. However, from perusal of the documents annexed with this appeal, I do not find any *prima facie* material that the alleged fraud was committed by defendant No.1 in order to obtain the alleged registered deed of gift dated 10/05/2004. Moreover, revenue entries as made based upon the alleged deed would *prima facie* show that no fraud as such was committed by the said defendant. In any case, for issuance of temporary injunction, *prima facie* case, balance of convenience and irreparable loss are required to be seen. However, in the instant case, admittedly, the alleged deed of gift was executed by the plaintiff on 10/05/2004 in favour of defendant No. 1. Since the alleged document was registered one, therefore, the right, title and interest has been conferred *prima facie* upon the defendant No. 1 and based upon the alleged document, the revenue papers were also mutated in his name. Besides, the plea of fraud as alleged by the plaintiff is required to be taken into consideration only at the time of trial and prior to that, it is difficult to hold that any fraud as such was committed by defendant No. 1.

9. A bare perusal of the alleged registered gift deed would show further that it was executed in the year 2004, however, the suit has been filed on 27/10/2015. Therefore, by taking into consideration the prima facie material facts, the trial Court has rightly come to the conclusion that three essentials as required for issuance of temporary injunction are not in favour of the plaintiff. Consequently, the same deserves to be and is hereby affirmed.

10. In view of the aforesaid discussion, I do not find any substance in this appeal. Accordingly, the same deserves to be and is hereby dismissed at the admission stage itself. There shall be no order as to costs.

Sd/-

(Sanjay Agrawal)
Judge