

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No. 91 of 2017**

1. Ashutosh Mandal S/o Late Phoolchand Mandal, aged about 45 years, R/o Village Subhash Nagar, Police Station Gandhinagar, Tahsil Ambikapur, District Sarguja, Chhattisgarh
2. Mahaswer Mandal, S/o Late Phoolchand Mandal, aged about 42 Years R/o Village Subhash Nagar, Police Station Gandhinagar, Tahsil Ambikapur, District Sarguja, Chhattisgarh
3. Shankar Mandal S/o Late Phoolchand Mandal, aged about 35 Years R/o Village Subhash Nagar, Police Station Gandhinagar, Tahsil Ambikapur, District Sarguja, Chhattisgarh

---- Petitioners

Versus

1. Smt. Rama Mandal D/o Late Phoolchand Mandal, aged about 50 years W/o Haren Mandal, R/o Village Subhash Nagar, Police Station Gandhinagar, Tahsil Ambikapur, District Sarguja, Chhattisgarh
2. Smt. Taradevi alias Nyato, D/o Late Phoolchand Mandal, aged about 38 years, R/o Village Nehru Nagar, Police Station Gandhinagar, Tahsil Ambikapur, District Sarguja, Chhattisgarh
3. State of Chhattisgarh through Collector Ambikapur, District Sarguja, Chhattisgarh
4. Sumitra D/o Late Phoolchand Mandal, aged about 40 years, R/o Village Subhash Nagar, Police Station Gandhinagar, Tahsil Ambikapur, District Sarguja Chhattisgarh

---- Respondents

For Petitioners	:	Shri Ravi Kumar Bhagat, Advocate
For Respondent/State	:	Smt. M. Asha, Panel Lawyer

Hon'ble Shri Justice P. Sam Koshy**Order On Board****01/02/2017**

The present petition under Article 227 of the Constitution of India has been preferred assailing the order dated 10.07.2014 passed by the 2nd Civil Judge, Class-II, Ambikapur in Civil Suit No.132-A/2013 and also the order dated 27.09.2016 passed by the 3rd Additional District Judge, Ambikapur, District Sarguja in Mis. Civil Appeal No. 07/2015.

2. The facts in brief are that the respondents 1 & 2 are the plaintiffs and the petitioners and respondent no.4 are the defendants in the civil suit. Further, the petitioners are the sons and the respondents 1, 2 & 4 are the daughters of late Phoolchand Mandal. The plaintiffs i.e. respondents 1 & 2 had filed a suit for declaration of title and permanent injunction in respect of the suit property situated at Khasra No. 258/2 measuring 2.2550 hector land. The claim of the plaintiffs was that they had also a share in the suit property being the legal heirs of late Phoolchand. According to the plaintiffs, the land was originally allotted to their father Phoolchand Mandal under rehabilitation scheme by the Govt. of India on 25th January, 1999. After death of Phoolchand, the property got mutated in the name of the widow of late Phoolchand i.e. mother of the petitioners and respondents 1, 2 & 4. Later on, the widow of late Phoolchand also died. Thereafter, the mutation order was challenged before the Tahsildar in a revenue case in the year 1998-99 which was rejected. The plaintiffs challenged the order of the Tahsildar before the Sub Divisional Officer, Ambikapur which too got rejected. The order of the SDO was also challenged before the Commissioner, Ambikapur and thereafter before the Board of Revenue at Bilaspur and at both the places, the plaintiffs' appeal got rejected.

3. Subsequently, the plaintiffs filed a civil suit registered as Civil Suit No. 132-A/2013 wherein the Court below vide its order dated 10.07.2014 (Annexure P-7) allowed the application filed under Order 39 Rule 1 & 2 read with Section 94, 151 CPC and ordered for maintaining the status quo in respect of the suit property directing the defendants not to alienate the property and create third party interest. This order dated 10.07.2014 was subjected to challenge before the 3rd Additional District Judge, Ambikapur District Sarguja in Mis. Civil Appeal No. 07/2015 under Order 43 Rule 1 of

CPC. The lower appellate Court vide impugned order dated 27.09.2016 rejected the Mis. Appeal leading to the filing of the present writ petition.

4. Counsel for the petitioners submits that it is a case where the plaintiffs do not have any right whatsoever over the suit property in as much as before the death of their father and mother, the plaintiffs had already been married off and therefore they would not have any right in the father's property. It is also contended that the suit property was originally allotted to late Phoolchand Mandal along with the petitioners being the male members in the family and therefore, the plaintiffs being female members in the family would not have any right over the said property. Thus, the petitioners prayed for the setting aside of the impugned order.

5. Having considered the contentions put forth by the counsel for the petitioners and on perusal of the record what is an undisputed fact is that the plaintiffs are the real sisters of the petitioners. It is also not in dispute that the plaintiffs are also the daughters of late Phoolchand Mandal, the person in whose name the property was originally allotted. Now, whether the plaintiffs would have any right over the suit property is a matter of evidence which can only be decided after both the parties lead their evidence in support of their respective claim. The only order which the trial Court has passed and which has been affirmed by the lower appellate Court is that pending the suit, no third party interest should be created by the petitioners who are in possession of the suit property otherwise it will further complicate the matter and as such, they were restrained from selling the property. This in the opinion of this Court is nothing but only an order directing the parties to maintain status quo in respect of the suit property as it exists today. Undisputedly, the suit property is in possession of the petitioners and that the order dated 10.07.2014 does not in any manner affect the possession part of the parties to the suit

property. Thus, in the opinion of this Court, the petitioners should not have any grievance against both the impugned orders.

6. So far as the claim of the plaintiffs are concerned, that can only be adjudicated upon after both the parties lead their evidence in support of their respective claim.

7. Thus, the present writ petition being devoid of merit deserves to be and is accordingly dismissed.

**Sd/-
(P. Sam Koshy)
JUDGE**