

HIGH COURT OF CHHATTISGARH, BILASPUR**MA No. 84 of 2017****Reserved on 15.12.2017**
Pronounced on 05.01.2018

(Arising out of judgment/order dated 05.08.2017 in Case No.67-A/2011 of the learned 4th Addl. District Judge, Ambikapur)

- Kamlesh Kumar Keshari S/o Madan Chand Keshari, Aged About 50 Years R/o Deviganj Road, Ambikapur, P.O. & P.S. Ambikapur, District Surguja, Chhattisgarh(Plaintiff) ---- **Appellant**

Versus

1. Smt. Malti Devi W/o Shree Madan Chand Keshari, Aged About 70 Years R/o Deviganj Road, Ambikapur, P.S. & P.O. Ambikapur, District Surguja, Chhattisgarh
2. Dinesh Kumar Keshari S/o Shree Madan Chand Keshari, Aged About 46 Years R/o Deviganj Road, Ambikapur, P.S. & P.O. Ambikapur, District Surguja, Chhattisgarh
3. Madan Chand Keshari S/o Late Ramdayal Sao, Aged About 75 Years R/o Near Collectorate State Bank, Basdevapara, Kedarpur, Ambikapur, P.S. & P.O. Ambikapur, District Surguja, Chhattisgarh
4. Mohanlal Santwani S/o Bhagchandra Santwani, Aged About 67 Years R/o Maharaja Gali, Sindhi Colony, Ambikapur, P.S. & P.O. Ambikapur, District Surguja, Chhattisgarh
5. Jitendra Relwani S/o Kanhaiya Lal Relwani, Aged About 39 Years R/o Maharaja Gali, Sindhi Colony, Ambikapur, P.S. & P.O. Ambikapur, District Surguja, Chhattisgarh
6. Sardar Mahendra Singh Tuteja S/o Sardar Ranjeet Singh Tuteja, Aged About 52 Years R/o Babupara, Ambikapur, P.S. & P.O. Ambikapur, District Surguja, Chhattisgarh
7. Ashok Kriplani S/o Late Sugnamal Kriplani, Aged About 49 Years R/o Maharaja Gali, Sindhi Colony, Ambikapur, P.S. & P.O. Ambikapur, District Surguja, Chhattisgarh
8. Preetam Kriplani S/o Late Mathurayal Kriplani, Aged About 55 Years R/o Maharaja Gali, Sindhi Colony, Ambikapur, P.S. & P.O. Ambikapur, District Surguja, Chhattisgarh
9. Vijay Poptani S/o Shaukin Das Poptani, Aged About 47 Years R/o Maharaja Gali, Sindhi Colony, Ambikapur, P.S. & P.O. Ambikapur, District Surguja, Chhattisgarh
10. Manish Kumar Gupta S/o Krishna Prasad Gupta, Aged About 52 Years R/o Deviganj Road, Ambikapur, P.S. & P.O. Ambikapur, District Surguja, Chhattisgarh

11. Madhusudan Prasad Shukla S/o Devi Prasad Shukla, Aged About 53 Years R/o Sheetla Ward, Ambikapur, P.S. & P.O. Ambikapur, District Surguja, Chhattisgarh
12. Harmindar Singh S/o Bal Kishan Singh, Aged About 51 Years R/o D.C.Road, Ambikapur, P.S. & P.O. Ambikapur, District Surguja, Chhattisgarh
13. Rajeev Kumar Gupta S/o Shree Kanth Prasad Gupta, Aged About 49 Years R/o School Road, Ambikapur, P.S. & P.O. Ambikapur, District Surguja, Chhattisgarh
14. Ketan Gupta @ Rahul Gupta S/o Late Kishore Kumar Gupta, Aged About 36 Years R/o School Road, Ambikapur, P.S. & P.O. Ambikapur, District Surguja, Chhattisgarh
15. Roshan Kumar Gupta S/o Late Banshidhar Gupta, Aged About 38 Years R/o Deviganj Road, Ambikapur, P.S. & P.O. Ambikapur, District Surguja, Chhattisgarh(Defendants)

---- Respondents

For Appellant	:Ms. Priyanka Mehta, Advocate
For Respondent No.10	:Mr. Bhupendra Singh, Advocate

Hon'ble Shri Justice Sanjay Agrawal

CAV Order / Judgment

1. This is plaintiff's miscellaneous appeal preferred under Order 43 Rule 1(r) of the Code of Civil Procedure, 1908 (for brevity, the Code of 1908) questioning the propriety of the order dated 05.08.2017 passed by the learned 4th Additional District Judge, Ambikapur, Dist. Surguja in Civil Suit No.A67/2011 whereby the plaintiff's application for issuance of temporary injunction filed under Order 39 Rules 1 & 2 read with Section 151 of the Code of 1908 has been rejected.

2. The undisputed facts of the case are that the plaintiff instituted a suit claiming partition, separate possession, injunction and also for declaration that the registered deeds of sale executed by his father Madan Chand Keshari (defendant No.3), in favour of defendants be declared as null and void. It is pleaded in the plaint that the properties described in plaint Schedule 'A' were the self-acquired properties of his grandfather

Ramdayal, who expired on 13.07.1966 and after his death, it was inherited by him along with his father Madan Chand Keshari, brother Dinesh Kumar Keshari, the defendant No.2 and mother Rukmini Devi. It is pleaded further that defendant No.3 Madan Chand, being a Karta of the family, has sold the properties described in plaint Schedule 'B' to different defendants without consent of the co-owners and even without any legal necessities as he left the house in 1998 and started living separately with one Tanabai @ Parvati Bai as his concubine and has sold the properties for immoral purposes. It is pleaded further that after the alienation of the plaint Schedule 'B' properties, the suit properties described in plaint Schedule 'C' alone are left and since defendant No.3 (Madan Chand Keshari) is trying to alienate the same for immoral purposes, therefore, the plaintiff has been constrained to file the suit in the instant nature, instituted on 03.08.2005.

3. It is pleaded further by way of amendment that during the pendency of the suit, defendant No.3 has sold part of Kh.No.1021 admeasuring 1216 sq.ft. to defendant No.10 (Manish Kumar Gupta) by executing a registered deed of sale dated 31.01.2014 of plaint Schedule 'C', the suit property and, likewise has sold part of Kh.No.1054/1 admeasuring 1444 sq.ft. to defendant No.11 (Madhusudan Shukla), and therefore, their sales are also required to be declared as null and void as the same were executed for immoral purposes by him.

4. Along with the aforesaid claim, the plaintiff has moved an application enumerated under Order 39 Rule 1 & 2 read with Section 151 of the C.P.C. praying for issuance of temporary injunction against defendant No.10 while reiterating the averments made in the plaint that although the suit property, as mentioned aforesaid, was sold to defendant No.10, but possession has not been delivered to him and on the strength of the said registered deed of sale, he is trying to obtain the forcible and illegal possession of the said

co-parcenery property.

5. Defendant No.3 Madan Chand Keshari, in his written statement and reply to the said application for grant of temporary injunction, has contested the aforesaid claim by submitting, inter alia, that at the time of death of his father Ramdayal, he alone was entitled to inherit the properties left by him as neither the plaintiff nor defendant No.2 were born and pleaded further that he has sold the suit property of his ownership to said defendant No.10 by executing a registered deed of sale in his favour while delivering the possession of it.

6. Defendant No.10 has contested the said application for issuance of temporary injunction by saying that defendant No.3 was the exclusive owner of the suit property and has obtained possession of it validly from him on the strength of registered deed of sale dated 31.01.2014 by paying the entire sale consideration to him.

7. The trial Court, after considering the said application, has observed that since Ramdayal expired in 1966 and upon his death, the properties left by him, were recorded only in the name of defendant No.3 being his son and as plaintiff has failed to produce any document in order to disprove the fact regarding his and his brothers' date of birth, as alleged by defendant No.3 in his written statement, therefore, it is yet to be established by him that he is one of the co-owners. In consequence, the trial Court has rejected the said application by way of order impugned on finding that the three essential ingredients as required for issuance of temporary injunction are not in favour of the plaintiff.

8. Being aggrieved, the plaintiff has preferred this appeal. Ms. Priyanka Mehta, learned counsel for the appellant submits that the order impugned as passed by the trial Court holding that the plaintiff has failed to

produce any document in order to establish the fact that he is one of the co-parceners is apparently contrary to law. While drawing attention to para 4 of the order dated 08.07.2005 (Annexure A/3) passed in M.A.No.448/2001 "Smt. Malti Devi and others vs. Madan Chand Keshari and others", submits that the property in question is, in fact, admittedly the co-parcenary property and even without considering the said finding, the trial Court has committed an illegality in rejecting the said application for grant of temporary injunction by observing as such. She submits further that defendant No.10, being a stranger, without filing a suit for partition, cannot enter into the possession over the suit property.

9. On the other hand, Shri Bhupendra Singh, learned counsel for respondent No.10, while supporting the order impugned, submits that the possession of the suit land was delivered to him by virtue of the registered deed of sale dated 31.01.2014 and his building materials are also lying on the spot. He submits further that the trial Court, after examining the prima facie materials, has come to the conclusion that since the plaintiff is not a co-parcener, therefore, not entitled to the relief of temporary injunction. The trial Court has thus rightly rejected his application.

10. I have heard learned counsel for the parties and perused the entire relevant papers attached with this appeal carefully.

11. The plaintiff's suit is essentially based upon the fact that the suit property is a co-parcenery property, and therefore, the registered deed of sales, as executed by his father Madan Chand Keshari (defendant No.3) without any legal necessity, is apparently contrary to law and deserves to be declared as null and void. In order to establish the fact that the suit property is the co-parcenery property, the plaintiff is required to produce the prima facie cogent and reliable evidence in this regard. However, I do not find any document or materials so as to hold prima facie that the suit

property is the co-parcenery property. The character of the suit property, as reflected from their respective pleadings, is very much in dispute. The contention of Ms. Priyanka Mehta that the order impugned as passed by the trial Court without considering the observation made by this Court in M.A.No.448/2001 in an earlier instituted suit, is noted to be rejected. A bare perusal of the pleadings made in the said suit (Annexure A/4) registered as Civil Suit No.8-A/2000 filed earlier by Malti Devi and others would, however, show that a relief was claimed therein that the plaint Schedule 'A' property held by their predecessor-in-interest, namely, Ramdayal be declared as co-parcenery property. Meaning thereby a serious dispute with regard to the character of the property in question was involved in the said suit. Therefore, mere observation as made in para 4 of the order dated 08.07.2005 passed in said M.A.No.448/2001 cannot be taken into consideration by holding that the suit property is the co-parcenery property, as contended by Ms. Mehta.

12. It is settled principles of law that for issuance of temporary injunction, prima facie cogent and reliable documentary evidence are required to be produced by the plaintiff. However, the plaintiff has failed to produce the same. The date of death as mentioned in the plaint would show that Ramdayal, the erstwhile owner of the suit property, has expired on 13.07.1966 and the plaintiff has failed to produce any document in order to rebut the assertion of the defendant No.3 that they (plaintiff and his brother Dinesh Kumar Keshari) were not born after the death of said Ramdayal. As a consequence, the trial Court has rightly come to its prima facie conclusion that the plaintiff is yet to establish this material fact that he is one of the co-parceners. Accordingly, the plaintiff has failed to satisfy that the three essential ingredients required for issuance of temporary injunction are in his favour. Consequently, I do not find any infirmity or illegality in the order impugned passed by the trial Court so as to call for

any interference.

13. In view of the foregoing discussions, I do not find any substance in this appeal. The appeal, being devoid of merit and substance, is liable to be and is hereby dismissed. No order as to costs.

14. It is, however, made it clear that I have not applied my mind to the merits of the issues involved in the suit and hence the trial Court would decide the same strictly in accordance with law without influenced by any of the observations of mine, which I have refrained from making on merits.

Sd/-
(Sanjay Agrawal)
Judge

Anjani