

HIGH COURT OF CHHATTISGARH, BILASPUR**MA No. 33 of 2017**

Shiv Kumar S/o Raghubir Sahu, Aged About 43 Years R/o Village
Birejhar, Tahsil Kurud, District Dhamtari, Chhattisgarh

---- Appellant

Versus

1. Irfan Surya S/o Abdul Rajjak Surya, Aged About 24 Years R/o
Laxmi Nagar, Pachpedi Naka Raipur, Tahsil And District Raipur,
Chhattisgarh

2. Harakhchand Jain, H.U.F. Karta Shri Harakhchand Jain, S/o
Bhawarlal Pugaliya, R/o Shailendra Nagar, Raipur, Tahsil And
District Raipur, Chhattisgarh

3. Smt. Arpita Jain W/o Yogesh Valyani, Aged About 21 Years R/o
Shailendra Nagar, Raipur, Tahsil And District Raipur, Chhattisgarh,

4. Yogesh Valyani S/o Ramesh Valyani, Caste Sindhi, R/o
Shailendra Nagar, Raipur, Tahsil And District Raipur, Chhattisgarh,

5. Mohd. Rijwan Surya S/o Abdul Rajjak Surya, R/o Laxmi Nagar,
Pachpedi Naka, Raipur, Tahsil And District Raipur, Chhattisgarh,

6. The State Of Chhattisgarh, Through The Collector, Dhamtari,
District Dhamtari, Chhattisgarh

--- Respondents

For appellant- Shri V.K. Sharma, Advocate.

For respondents No.1 to 5-Shri Kashif Shakeel, Advocate.

For State/respondent No.6-Shri Aditya Sharma, PL.

Hon'ble Shri Justice Goutam Bhaduri**Order**

08/10/2018

Heard.

1. Instant appeal is against the order dated 7/02/2017 whereby an application under Order 39 Rule 1 and 2 of CPC whereby injunction was claimed for by the plaintiff was dismissed.

2. Case of the plaintiff was that plaintiff owns land bearing khasra No.243 admeasuring 0.35 hectare and khasra No.245/2 admeasuring 0.16 hectare at village Birejhar which is situated at Dhamtari-Raipur highway. It was contended that defendant No.1 Irfan Surya called the plaintiff as he was negotiating for some sale and got power of attorney

executed on 26/03/2014 by playing fraud by projecting that he requires certain document to get income tax clearance. It was stated that subsequently defendant No.1 Irfan Surya executed sale deed in favour of Harakchand Jain and Arpita Jain defendants No.2 and 3 on 30/03/2014 wherein defendants No.4 and 5 stood as attesting witness to the sale deed. It was further pleaded that defendant No.1 agreed that he would be given certain land in lieu of the said sale through one Ganeshiya Bai of 2.80 acres, however said transaction was never acted upon. Therefore, by playing fraud on the plaintiff sale deed was got executed in favour of defendants No.2 and 3. It was pleaded that suit was filed for declaration and injunction and in the meanwhile if further alienation is been made in respect of the property, then it will lead to defeating of the suit. Consequently, learned counsel submits that defendants be restrained to create any third party interest in respect of the suit property.

3. Learned counsel for respondents No.1 to 5 opposes the argument and would submit that plaintiff himself has received the entire sale consideration and in order to have extra bargain and enrichment the measure have been adopted. It was stated that on the basis of power of attorney and sale agreement subsequent sale deed was executed, therefore no question of non payment of sale consideration would arise and the order of the court is well merited.

4. Perused the judgement as also the documents connected to the petition. Power of attorney has been placed which is registered one and the sale deed is also placed wherein Shiv Kumar has acted through his power of attorney holder to execute the sale in favour of Harakhchand Jain and Arpita Jain in respect of the suit property. In the said sale deed defendants No.4 and 5 are attesting witness. An agreement is also placed on record in between Shiv Kumar and Irfan Surya in whose favour alleged

sale deed exist wherein contents shows that with respect to the subject matter, registry of land bearing khasra No.243, 245/2 i.e. the suit land has been made. It prima facie contains that in respect of sale only Rs.5 lakhs has been paid. Said agreement is dated 16/06/2014 whereas sale deed is dated 30/03/2014. Prima facie as appears that admission was made by defendant No.1 about non payment of entire sale consideration. It is a matter of evidence to be adjudicated before the trial court as to whether entire sale consideration was actually received by the plaintiff or not. In the meanwhile, if sale deed is executed in respect of the suit property and further alienation is made, it may lead to multiplicity of the proceeding and in such eventuality naturally it will cause irreparable injury to the plaintiff and balance of convenience also lies in favour of the plaintiff. After perusal of the documents specially agreement it appears that prima facie case exist as such order dated 7/02/2017 passed by the court below is set aside. Defendants are directed not to create any third party interest in respect of the suit property till final adjudication of the suit.

5. With such observation, the appeal stands disposed.

Sd/-

(Goutam Bhaduri)

JUDGE