

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 919 of 2017

Agasiya Bai Since Dead through Legal Heir Jethin Bai Wife of
Shiv Kumar Aged About 40 Years R/o Village Bhanpuri Tahsil
Gurur , District Balod Chhattisgarh. , Chhattisgarh

--- Petitioner

Versus

1. Mithlesh S/o Murha Ram Sahu Aged About 23 Years Caste Teli, Aged About 23 Years, R/o Ward No. 13 , Loding Quarter, Near Gandhi Chowk Dallirajhara Tahsil Dondilohara , District Balod Chhattisgarh.
2. State of Chhattisgarh Through The Collector Balod District Balod Chhattisgarh. , District : Balod, Chhattisgarh
3. Shakun Bai W/o Murha Ram Sahu R/o Village Kodewa , Tahsil Gunderdehi District Balod Chhattisgarh.
4. Pusau Ram Chandrakar S/o Late Itwari Ram Aged About 41 Years R/o Village Sikosa , Tahsil Gunderdehi District Balod Chhattisgarh.

---- Respondents

For the Petitioner	:	Mrs. Hamida Siddiqui, Advocate
For the State	:	Mr. Sangharsh Pandey, Panel Lawyer

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

25.04.2018

1. The instant petition is against the order dated 17th November, 2017 passed by the First Addl. District Judge, Balod, Distt. Balod (C.G) in Civil Appeal No.02/2017 whereby the order dated 20.02.2017 passed by the Civil Judge, Class-I, Gunderdehi, Distt. Balod (C.G) rejecting the application filed under Order 39 Rule 1 & 2 of CPC, has been affirmed.
2. Learned counsel for the petitioner submits that the suit for declaration of title and permanent injunction was filed with a

prayer that the sale deed dated 12.05.1998 be declared null and void and the plaintiff Jethin Bai is the owner of the property by virtue of will dated 30.12.2011. It is stated that the suit was initially filed by Agasiya Bai (since dead) who had two daughters namely Jethin Bai and Shakun Bai. It is contended that Agasiya Bai during her life time has filed application for partition. It reveals that a suit land was sold in favour of Mithilesh (defendant) son of Shakun Bai by registered sale deed dated 12.05.1998 and thereafter the suit was filed. During the pendency of the suit, Agasiya Bai died and Jethin Bai stepped into her shoes on the ground that the property in question bequeathed in her favour. Subsequently the sale was again executed in favour of one Pusau Ram Chandrakar by sale deed dated 23.03.2016 though the plaintiff claims that she is in possession. It is stated that an application under Order 39 Rule 1 & 2 was moved and the same was dismissed without appreciating the fact that the plaintiff is in possession of the land, therefore, the orders of both the courts below cannot be allowed to sustain.

3. A perusal of the orders of the courts below would show that prima facie it has been recorded by the court below that the defendant was shown to be in possession on the basis of revenue records. Therefore, when the said suit is already pending, in the opinion of this court, third party interest shall not be created in respect of the suit property and the factum of possession can only be decided by the trial below after taking into consideration the evidence and facts.
4. Since the factum of possession of the suit property is yet to

be decided after evaluating the evidence, accordingly the trial Court is directed to dispose of the suit within a further period of one year from the date of receipt of this order.

5. With the observation, this petition stands disposed of.

**Sd/-
GOUTAM BHADURI
JUDGE**

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