

HIGH COURT OF CHHATTISGARH, BILASPUR

MA No. 58 of 2016

Subahu Kumar Dhadiwal S/o Late Mahavir Chand Dhadiwal, Aged
About 59 Years R/o Sadar Bazar, Raipur, Tahsil And District Raipur,
Chhattisgarh, Civil And Revenue District Raipur

---- Appellant

Versus

1. Vishal Lunkad, Aged About 47 Years, S/o Mahendra Lunkad, R/o
Regency Cosmos, A-1, 6th Floor, Flat No. 502, Baner Pune,
Maharashtra

2. Gautam Chand Dhadiwal, S/o Late Mahavir Chand Dhadiwal, Aged
About 61 Years R/o 23-24, 6th Floor, Himali, Near Dinanath
Mangeshkar Hospital, Pune, (Maharashtra)

3. Shalibhadra Dhadiwal, S/o Late Mahavir Chand Dhadiwal, Aged
About 51 Years R/o Sadar Bazar Raipur, Tahsil And District Raipur,
Chhattisgarh

4. State Of Chhattisgarh, Through The Collector, Raipur, Chhattisgarh

---- Respondents

For appellant - Shri B.P. Sharma, Advocate.
For State-Shri Ashutosh Pandey, PL

Hon'ble Shri Justice Goutam Bhaduri

Order

19/09/2018

Heard.

1. Instant appeal is against the dismissal of the application under Order
39 Rule 1 and 2 read with section 151 of CPC moved by the
appellant/plaintiff.

2. Perusal of the record would show that civil suit was filed by the
appellant/plaintiff claiming that land bearing khasra no.386/3 situated at
village Labandhi was purchased by father of the plaintiff namely Mahavir
Chand Dhadiwal in his name by sale deed dated 14/09/1963 at the time when
plaintiff was minor. It is been stated that said property though was purchased
in the name of appellant/plaintiff it was joint hindu family property. It was
further case of the plaintiff/appellant that after death of Mahavir Chand
Dhadiwal, plaintiff and his two brothers namely Gautam Chand Dhadiwal and

Shalibhadra Dhadiwal got land partitioned and were put to their respective possession. However, on 28/08/2015 a publication was made in Dainik Bhaskar newspaper by one Vyasdev Bhoi and other advocates that their client has entered into agreement for purchase of the suit property from defendant No.1 i.e. Vishal Lunkad bearing khasra No.386/3. On enquiry it revealed that name of Vishal Lunkad has been recorded in respect of the khasra no.386/3 of 0.202 hectare claiming that it has been received in partition whereas plaintiff was the owner. Plaintiff further stated that after partition the subsequent entry of the part of the khasra has not been recorded in the revenue record and defendant No.1 was not at any point of time was part of the joint hindu family or coparcener and he do not have any right over the property. It was specifically claimed that plaintiff has not sold any part of the property to defendant No.1. Further also claimed that defendant No.1 do have any right or interest or he in possession of the property to execute the sale as the property belong to the coparcener family of the Dhadiwal.

3. Defendant No.1 contended that the plaintiff is not in possession of the property and only prayer was made to cause undue influence, therefore application may be dismissed. Defendant No.3 Shalibhadra Dhadiwal brother of the plaintiff contended that defendant No.1 on the basis of wrong facts got his name mutated in the revenue records and he do not have any right to sell the same and injunction was prayed that defendant No.1 may not create third party interest in respect of the suit property.

4. Learned counsel for the appellant would submit that if third party interest is created, irreparable loss would be caused to the plaintiff and it may lead to multiplicity of the proceeding, therefore till civil suit is decided on merits, defendant No.1 may be restrained to execute any sale to create third party interest in respect of the suit property.

5. Perusal of the documents would show that sale deed was made in the name of Subahu Kumar Dhadiwal S/o Mahavir Chand Dhadiwal. Plaintiff has claimed that suit property belong to joint family as at the time of purchase he

was minor. Subsequent document would show that some partition deed has been executed, however in partition deed name of defendant No.1 do not appear. Plaintiff contended that defendant No.1 who is not at all the owner wanted to sell the part of the property which is bearing khasra no.386/32 which is part of the original khasra 386/3. The trial court in its order para 5 has observed that defendant No.1 Vishal Lunkad had stated that he is not in possession of the suit land and the suit has been filed with misconceived notion whereas court has recorded that defendant No.1 is in possession and thereafter different sale deed have been placed on record. Therefore, actual identity of the source and acquisition of the property by defendant No.1 appears to be a matter of evidence. If defendant No.1 has not been shown as to be family member then in such case by partition third party may not acquire any interest and at the same time if sale deed is executed during pendency of the suit it may lead to multiplicity of the proceeding.

6. Therefore, in the facts of this case, it is directed that till civil suit is decided on merit no third party interest shall be created in respect of the suit property by either of the parties and parties shall maintain status quo in respect of the suit property.

7. Instant order is passed without hearing the respondents. Respondents if at all is aggrieved may file review of this order and trial court is directed to dispose of the case within a further period of one year.

8. With such observation, the appeal stands disposed of.

Sd/-

(Goutam Bhaduri)

JUDGE