

HIGH COURT OF CHHATTISGARH, BILASPUR**MA No. 31 of 2017**

1. Smt. Suraiya Begum W/o Late Rafique Ahmed Khan Aged About 72 Years
(Wrongly Typed As Rafik In The Order Sheet)
2. Zuber Ahmed Khan S/o Late Rafique Ahmed Khan Aged About 54 Years
3. Sameer Ahmed Khan S/o Late Rafique Ahmed Khan Aged About 49 Years

All Agriculturist Village Kharkena, Tahsil- Takhatpur, District- Bilaspur,
Chhattisgarh,

R/o Flat No. 113, Utkarsh Nirman Infront Of Mangalwari Bazar, Sadar, Nagpur,
Maharashtra

4. Smt. Kulsum Vikar W/o Akil Ahmed Aged About 56 Years D/o Late Rafique
Ahmed Khan, R/o Plot No. 30 Ayappa Nagar, Bhilai Nagar, District- Durg,
Chhattisgarh

---- Appellants

Versus

1. Abdul Halim Khan S/o Late Abdul Hakim Khan R/o Akbar Khan's Chaal, In
Front Of Mission Hospital, Tahsil And District Bilaspur, Chhattisgarh
2. Arjita Singh W/o Sanjeet Singh Aged About 29 Years R/o Green Garden Colony,
In Front Of Petrol Pump Mungeli Raod Bilaspur, Tahsil And District Bilaspur,
Chhattisgarh
3. Smt. Reena Gupta W/o Shri Narendra Gupta Aged About 33 Years R/o
Tikrapara Near Mama Bhanja Pond Bilaspur, Tahsil And District Bilaspur,
Chhattisgarh
4. State of Chhattisgarh Through Collector, Bilaspur, Chhattisgarh

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For Appellants	:	Shri K.A. Ansari, Sr. Adv. With Shri Vipin Singh, Advocate
For Respondent No.1	:	Shri Manoj Paranjpe, Advocate with Shri Vikram Dixit, Advocate
For respondents No.2 & 3	:	Shri Aditya Tiwari, Advocate
For Respondent/State	:	Shri Ashutosh Pandey, PL for the State

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

12/09/2018

1. Heard.
2. The present appeal is against the order dated 06.01.2017 whereby an application filed by the plaintiffs/appellants under Order 39 Rule 1 & 2 CPC was dismissed. It has been claimed that the appellants are the widow, son and daughter of the late Rafique Ahmed Khan and respondent No.1 Abdul Halim Khan is the son of the cousin brother of Rafique Ahmed Khan through whom the plaintiffs are claiming their share. It is stated that Rafique Ahmed Khan was resident of Nagpur and was looking after his agricultural land through his agent. It is stated that respondent No.1 got his name mutated in some of the land, executed sale deed in favour of the respondent No.2 & 3, therefore, a suit was filed for cancellation of the sale deed and declaration that they are the owner of the suit land.
3. Learned counsel for the appellants would submit that if the other third party interest is created in respect of the land, it would lead to multiplicity of the proceedings and in such case, the parties shall suffer irreparable injury if the suit is decreed in his favour and they would be deprived of their right.
4. Learned Court below has dismissed the application under Order 39 Rule 1 & 2 CPC by holding that the non-applicant No.1 Abdul Halim Khan was also a co-sharer as such possession of one co-sharer is treated as possession of other co-sharers. Learned Court below has further observed that the co-sharer has all the right to transfer his undivided interest under Transfer of Property Act, 1882 and refused the injunction. The facts, pleadings and the documents shows that both the parties i.e. the plaintiffs/appellants and the respondents are claiming right over the property to be the exclusive owner. The sale deed is

admitted to be executed in favour of respondent No.2 & 3 Arjita Singh and Smt. Reena Gupta. Both the parties claim to be in possession of the land and in civil suit no possession is claimed. The fact of possession is to be adjudicated after the evidence is led on this issue. At this stage, considering the pleading of the parties and the documents, it is directed that the parties shall maintain status quo in respect of the suit property till the civil suit is decided on merits.

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

Sd/-

Goutam Bhaduri
Judge

Ashu