

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M.A No.40 of 2018**

1. Smt. Shaheda Bai W/o Late Abide Ali Aged About 57 Years R/o Badribag, Plot No. E 1, Block No. G, Mohhmadi Maskan, Indore (M.P.) (Plaintiff), District : Indore, Madhya Pradesh

---- Appellant

Versus

1. Smt. Hussaina Bai W/o Late Shakeer Ali R/o Gole Bazar, Madina Masjid Gali, Tahsil And District Bilaspur, Chhattisgarh, District : Bilaspur, Chhattisgarh
2. Smt. Sajeda Bai W/o Imdad Husain Aged About 52 Years Cast Bohra Musalma, R/o 5 Muhamadi Society Takli Road Dwarika Nasik Road (Maharashtra), District : Nashik, Maharashtra
3. Maleka Bai W/o Firoz Hussain Aged About 50 Years Cast Bohra Musalman, R/o 55 Sector-C, Jabalpur-Vala, Hasni Nagar, Indore (M.P.), District : Indore, Madhya Pradesh
4. Samina Bai W/o Taher Ali Aged About 42 Years Cast Bohra Musalman R/o Hakimi General Stores, J.Bhim Chowk, Shantinagar, Nagpur (Maharashtra), District : Nagpur, Maharashtra
5. Shahar Bano W/o Akbar Ali Cast Bohra Musalman R/o Budha Talab, Bohra Masjid, Raipur, Chhattisgarh, District : Raipur, Chhattisgarh
6. Turab S/o Ibrahim Bhai Aged About 34 Years R/o C.N.Tayyabi Muhalla, Atlas Road, Ujjain (M.P.), District : Ujjain, Madhya Pradesh
7. Jujar S/o Ibrahim Bhai Aged About 32 Years R/o C.N.Tayyabi Muhalla, Atlas Road, Ujjain (M.P.), District : Ujjain, Madhya Pradesh
8. Moiz S/o Saifuddin Aged About 25 Years R/o Star Hardware Store, Itwari Bazar, Seoni (M.P.), District : Seoni, Madhya Pradesh
9. Arva S/o Saifuddin Aged About 21 Years R/o Star Hardware Store, Itwari Bazar, Seoni (M.P.), District : Seoni, Madhya Pradesh
10. Bhagwat Prasad Kewat S/o Jodhan Prasad Kenwat Aged About 57 Years R/o Juna Bilaspur, District Bilaspur, Chhattisgarh, District : Bilaspur, Chhattisgarh
11. Moiz Hussain S/o Abbas Ali Aged About 43 Years Cast Bohra, R/o House No. 125 Marwadi Line, Khaparganj, Bilaspur, Chhattisgarh, District : Bilaspur, Chhattisgarh
12. Yusuff Ali S/o Ibrahim Ali Aged About 27 Years House No.23/273 Khaparganj Bohra Masjid Ke Pass, Bilaspur, Tahsil And District Bilaspur, Chhattisgarh, District : Bilaspur, Chhattisgarh
13. Mukkaddal Bhai S/o Hussain Ali Aged About 32 Years Cast Bohra, R/o Kallubada Khaparganj, Bilaspur, Tahsil And District Bilaspur, Chhattisgarh,

14. Ajit Mishra S/o Shivdarshan @ Murarilal Aged About 40 Years R/o Subhash Nagar, God Para, Bilaspur, Tahsil And District Bilaspur, Chhattisgarh.
15. Sangina Dubey D/o Mahesh Dubey Aged About 35 Years R/o Subhash Nagar, God Para, Bilaspur, Tahsil And District Bilaspur, Chhattisgarh (Defendants).

-----Respondents

For Appellant:	Shri Ajay Kumar Dwivedi, Advocate.
For Respondents No.2, 4, 10, 11 & 14:	Shri Ali Asgar, Advocate.
For Respondents No.12 & 13:	Shri Pramod Kumar Verma, Senior Advocate along with Shri Chandrashekhar Koushik, Advocate.
For Respondent No.15:	Shri Vivek Shrivastava, Advocate.

Single Bench: Hon'ble Shri Sanjay Agrawal, J
Order On Board

12.07.2018

1. Heard on admission.
2. This Miscellaneous Appeal has been preferred by the Plaintiff under Order 43 Rule 1(r) of the Code of Civil Procedure, 1908 (for short 'the CPC') questioning the order dated 27.04.2018 passed by the Additional District Judge, Bilaspur in Civil Suit No.13-A/2014 by which the Plaintiff's application praying for issuance of temporary injunction under order 39 Rules 1 & 2 of the CPC has been refused.
3. Facts leading to this Appeal are that the Plaintiff-Shadedai Bai instituted a suit claiming joint ownership over the suit property and also praying for declaration that the registered deeds of sale executed by Defendant No.1 in favour of Defendants be declared as null and void. It is pleaded in the Plaint that property in question was originally held by her father namely Shakeer Ali and after his death, his wife Hussaina Ali has obtained the revenue papers mutated in her name alone without her

knowledge. It is pleaded further that after obtaining the revenue papers recorded in her name as such, said Hussaina Ali (Defendant No.1) sold the suit property to Defendants by executing registered deeds of sale in their favour. It is pleaded further that since Plaintiff's right was also involved in the suit property, therefore, she is entitled to be declared as joint ownership in relation to the property in question and also entitled to get the alleged registered deeds of sale to be declared as null and void.

4. Along with the aforesaid claim, an application enumerated under Order 39 Rules 1 & 2 CPC has been made praying for restraining Defendants No.12 & 13 from raising any construction over the property in question pending decision of the suit. The said application was objected by the Defendants saying that they have acquired their valid title by virtue of the registered deed of sale dated 19.12.2013 and since the suit house is in a dilapidated condition, therefore, it is necessary to repair the same. They submit further that the plaintiff has no prima facie case, therefore, the application for issuance of temporary injunction deserves to be rejected.

5. After considering the rival submissions of the parties, the trial Court, by its impugned order dated 27.04.2018, has refused to grant her the temporary injunction by observing that the three essential ingredients as required for issuance of the same are not in favour of the Plaintiff and as the registered deeds of sale have already been executed by defendant No.1 even prior to the institution of the suit and while observing as such, the trial Court has rejected the said application for issuance of temporary injunction.

6. Being aggrieved, the Plaintiff has preferred this Appeal. Shri Ajay Kumar Dwivedi, learned Counsel for the Appellant submits that the

order impugned as passed by the trial Court, is apparently contrary to law. He submits that after purchasing the part of the suit property illegally from her mother (defendant No.1), Defendants No.12 & 13, on the strength of the alleged sales started altering the nature of the suit property and without considering this fact in its proper manner, the trial Court has committed an illegality in refusing to entertain the application filed under Order 39 Rules 1 & 2 CPC.

7. On the other hand, Shri Pramod Kumar Verma, learned Senior Advocate while supporting the order impugned submits that the trial Court after considering the registered deeds of sale as executed in their favour by said defendant No.1 has rightly come to its prima facie conclusion that they (defendants No. 12 and 13) acquired their valid title upon it and as such no prima facie case is there in favour of the Plaintiff so as to get the said interim relief.

8. I have heard learned Counsel for the parties and perused the entire relevant papers annexed with this Appeal carefully.

9. The Plaintiff's suit is based mainly on the ground that the property in question was originally held by her father Shakeer Ali and after his death, she is also entitled to inherit the same, however, her mother – Hussaina Ali (Defendant No.1), has obtained the revenue papers mutated in her name alone without her knowledge and that by taking undue advantage of entries made in revenue papers, sold a part of the suit property by executing the registered deed of sale on 19.12.2013 in favour of Defendants No.12 & 13. Based upon the said averments, the question that would arise for determination in the suit is as to whether plaintiff's mother was entitled to alienate the property as such or not, could be determined

only at the time of trial. Prima-facie, as reflected from a bare perusal of the record it shows that defendants No. 12 & 13 have already acquired their right, title and interest over the alleged part of the suit property even prior to the institution of the suit. In such an eventuality, it is difficult to hold at this stage, particularly, when both the parties have yet to commence their evidence, that the Plaintiff has any prima facie case so as to get the order of temporary injunction as claimed by her. In order to get the order of temporary injunction, the Plaintiff has to establish the three essential ingredients required for issuance of it, which is completely missing in her claim as observed, at this stage. The trial Court has, therefore, rightly come to the conclusion that in absence of the essential ingredients, the Plaintiff is not entitled to get the said interim relief. The order impugned, therefore, does not require to be interfered.

10. In view of the foregoing discussions, I do not find any illegality in the order impugned rejecting the Plaintiff's application for grant of temporary injunction. The Appeal is accordingly dismissed at admission stage itself. There shall be no order as to costs.

Sd/-
(Sanjay Agrawal)
JUDGE

Priya