

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M.A No.44 of 2018**

1. Heeralal S/o Balaram Sahu, Aged About 52 Years Caste Teli, R/o Village Bodra (I) Tahsil Dhamtari, District Dhamtari, Chhattisgarh.Plaintiffs.,
2. Tulsi Ram Sahu, S/o Balaram Sahu Aged About 45 Years Caste Teli, R/o Village Bodra (I) Tahsil Dhamtari, District Dhamtari, Chhattisgarh.
3. Girdhari Lal S/o Balaram Sahu, Aged About 39 Years Caste Teli, Caste Teli, R/o Village Bodra (I) Tahsil Dhamtari, District Dhamtari, Chhattisgarh.
4. Balaram Sahu S/o Chaituram Sahu Aged About 80 Years Caste Teli, Caste Teli, R/o Village Bodra (I) Tahsil Dhamtari, District Dhamtari, Chhattisgarh.

---- Appellants**Versus**

1. Smt. Sukhmabai W/o Balaram Sahu Aged About 75 Years Caste Teli, R/o Village Bodra (S) Thana And Tahsil Dhamtari, District- Dhamtari, Chhattisgarh.Defendants.
2. Ku. Mamta Rajput, D/o Ghanshyam Singh Rajput, Aged About 36 Years R/o Village Sambalpur, Tahsil Dhamtari, District- Dhamtari, Chhattisgarh.
3. Arjun Singh Sahu S/o Chandulal Sahu, R/o Village Bodra, Tahsil And District- Dhamtari, Chhattisgarh.
4. Ghanshyam Singh Thakur, S/o S/o Late Latel Singh Thakur, R/o Village Sambalpur, Tahsil And District- Dhamtari, Chhattisgarh.
5. State Of Chhattisgarh, Through The Collector, Dhamtari, District- Dhamtari, Chhattisgarh.

-----Respondents

For Appellants:	Shri Sunil Sahu Advocate.
For Respondent No.5/State:	Shri Aditya Sharma, Panel Lawyer.

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

18.06.2018

1. This Miscellaneous Appeal has been preferred by the Plaintiffs under Order 43 Rule 1(r) of the Code of Civil Procedure, 1908 (for short 'the CPC') questioning the order dated 20.04.2018 passed by the

Additional District Judge, Dhamtari in Civil Suit No.15-A/2015 by which the Plaintiffs' application for issuance of temporary injunction under order 39 Rules 1 & 2 of the CPC has been refused.

2. Briefly stated, the facts of the case are that the Plaintiffs instituted a suit claiming declaration of title and injunction and prayed that the registered deed of sale dated 20.10.2015 executed in favour of Defendant No.2 by Defendant No.1 be declared as null and void. It is pleaded in the Plaint that though the suit property was purchased in the name of Defendant No.1-Smt Sukhma Bai on 07.04.1984, however, the entire sale consideration was paid by Plaintiff No.4 namely Balaram Sahu, who was her husband, therefore, he alone is the real owner of it. It is pleaded further that an agreement was executed between Plaintiff No.4 & Defendant No.1 on 25.12.1990 by which, it was agreed by Defendant No.1 that she will not alienate the property to anyone else and would be entitled to get maintenance only. Instead, she (Defendant No.1) sold the suit property to Defendant No.2 by executing a registered deed of sale on 20.10.2015. It is pleaded further that since the real owner of the suit property was Plaintiff No.4, therefore, the alleged deed as executed by his wife (Defendant No.1) in favour of Defendant No.2 be declared as null and void. Along with the said claim, an application enumerated under Order 39 Rules 1 & 2 has also been made by reiterating the fact as mentioned in the Plaint.

3. The aforesaid application for grant of temporary injunction was objected by Defendants No.2 & 4. In their reply, it was stated that Defendant No.2 has purchased the property in question from Defendant No.1 by virtue of the registered deed of sale dated 20.10.2015 and has

thus acquired the valid right, title and interest upon it. They further submit that under such circumstances, no *prima facie* case lies in favour of Plaintiffs, therefore, application as made deserves to be rejected.

4. After considering the rival submissions of the parties, the trial Court, by its impugned order dated 20.04.2018, has rejected the said application by arriving at a *prima facie* conclusion that since the registered deed of sale was executed in favour of Defendant No.1 on 07.04.1984 and, as such Defendant No.2 has obtained the valid title from her on the strength of the alleged registered deed of sale, which was executed on 20.10.2015. It observed further after considering all these *prima facie* materials that there is no *prima facie* case which lies in favour of the Plaintiffs. As a consequence of it, the trial Court has rejected the said application for grant of temporary injunction.

5. Being aggrieved, the Plaintiffs have preferred this Appeal. Shri Sunil Sahu, learned Counsel for the Appellants submits that the trial Court, without considering the deed of agreement executed on 25.12.1990 by Defendant No.1 in favour of her husband (Plaintiff No.4) in its proper perspective, has erred in rejecting the application for temporary injunction, therefore, the order impugned is liable to be set aside.

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

7. Admittedly, the registered deed of sale dated 07.04.1984 was executed in favour of Defendant No.1-Sukhmabai, though it was stated in the Complaint that it was a *benami* transaction and all the sale consideration was paid by her husband i.e. Plaintiff No.4. However, the said fact cannot be accepted at this stage while entertaining the application for grant of

temporary injunction. Perusal of further Plaint averments would show that the revenue records were also mutated in the name of Defendant No.1 based upon the alleged sale dated 07.04.1984. After acquiring the interest as such, Defendant No.1 alienated the suit property to Defendant No.2 by virtue of the alleged registered deed of sale dated 20.10.2015. Thus, *prima facie* materials would show that Defendant No.2 has acquired her valid title on the basis of the said registered sale. Besides, none of the documents were produced by the Plaintiffs in order to show that they are the owners of the property in question. In absence thereof, it cannot be said that the Plaintiffs have made out a *prima facie* case so as to obtain the discretionary relief of temporary injunction as required under Order 39 Rules 1 & 2 of the CPC.

8. It is the settled principle of law that for obtaining the discretionary relief of temporary injunction, the Plaintiffs have to establish the three essential ingredients for issuance of it. However, I do not find the same in this matter.

9. In view of the foregoing discussions, I do not find any illegality in the order impugned rejecting the Plaintiffs' application for grant of temporary injunction.

10. The Appeal is accordingly dismissed at admission stage itself. There shall be no order as to costs.

Sd/-
(Sanjay Agrawal)
JUDGE