

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M.A. No. 53 of 2018**

Mohd. Ishak Khan Late Kharullaha Khan, Aged About 63 Years Caste-Muslim, Resident Of Loco Colony, Ward No. 1, Manendragarh, Police Station And Tahsil- Manendragarh, District Koriya, Chhattisgarh.

---- Appellant**Versus**

1. Ramesh Kumar Agrawal Late Shri Mangeram Agrawal, Aged About 58 Years R/o Bhaiyathan Road, Surajpur, Post, P. S. And Tahsil- Surajpur, District Surajpur, Chhattisgarh.
2. Sunil Kumar Agrawal, Late Shri Mangeram Agrawal, Aged About 40 Years R/o Bhaiyathan Road, Surajpur, Post, P. S. And Tahsil- Surajpur, District Surajpur, Chhattisgarh.
3. (A) Asiaya Bibi, D/o Late Kharullaha Khan, Aged About 70 Years W/o Khalik Awan, R/o Mohalla Rasulpur, P. S. And Tahsil- Ambikapur, District Surguja, Chhattisgarh.
 3.(B) - Rabiya Bibi, D/o Late Kharullaha Khan, Aged About 65 Years, R/o Mohalla Rasulpur, P. S. And Tahsil- Ambikapur, District Surguja, Chhattisgarh.
 3.(C) - Hushn Bano, D/o Late Kharullaha Khan, Aged About 58 Years, R/o Mohalla Rasulpur, P. S. And Tahsil- Ambikapur, District Surguja, Chhattisgarh.
4. Mohd. Kuddus, S/o Late Kharullaha Khan, Aged About 56 Years R/o Quarter No. 1, B-242, Near SECL, Hospital, City Bishrampur, P. S. Bishrampur, Tahsil And District Surajpur, Chhattisgarh.
5. Mohd. Shafik Driver, S/o Kharullaha Khan, Aged About 54 Years R/o Mines Colony, Bhatgaon, P. S. Bhatgaon, Tahsil- Bhaiyathan, District Surajpur, Chhattisgarh.
6. Mohd. Rafeek Driver, S/o Kharullaha Khan, Aged About 52 Years R/o Mines Colony, Bhatgaon, P. S. Bhatgaon, Tahsil- Bhaiyathan, District Surajpur, Chhattisgarh.
7. Mohd. Ismail Khan, S/o Kharullaha Khan, Aged About 72 Years R/o Nawapara, Behind Madras Hotel, Surajpur, P. S., Tahsil And District- Surajpur, Chhattisgarh.
8. State Of Chhattisgarh, Through The Collector, District Surajpur, Chhattisgarh.

---- Respondents

For Appellant:

Shri D. N. Prajapati, Advocate.

For State/Respondent No. 8:

Shri V. B. Singh, PL.

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

05.07.2018

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 (hereinafter referred to as the 'CPC') against the order dated 14.05.2018 passed by 3rd Additional District Judge, Surajpur, District- Surajpur in Civil Suit No. 15-A/2016, by which, the trial Court has rejected the application filed under Order 39 Rules 1 & 2 of CPC.
3. Shri D. N. Prajapati, counsel for the Appellant, submits that the order impugned has been passed without considering the right of Shuffa as alleged by the plaintiff in his claim and since the property in question was sold by his father to defendants No. 1 and 2 illegally by ignoring his right of Shuffa, therefore, the plaintiff has been constrained to file the suit in the instant nature claiming right of Shuffa for purchasing the property in question. According to Shri Prajapati, the plaintiff's grandfather Sahbaz Khan was settled in relation to the suit property in the year 1932-33 and had made a *kaccha* house (built with thatched tiles) and upon his death his father Khairullaha Khan started living in the said house along with his family members as he was the eldest son of said Sahbaz Khan. According to his further contention, the plaintiff has a preferential right to purchase the same and without giving the said right, his father has illegally sold the property to defendants No. 1 and 2. It is contended further that after purchasing the property in question, defendants No. 1 and 2 have started raising construction over the suit property, therefore, an application enumerated under Order 39 Rule 1 and 2 of CPC was made for issuance of temporary injunction in this regard on 04.05.2018.

4. I have considered the submission of Shri Prajapati and noted to be rejected as from perusal of the record annexed with this appeal, it is clear that the property in question was given on lease to plaintiff's father Khairullaha Khan in the year 1961. Perusal of the record would show further that plaintiff's father sold the same to defendants No. 1 and 2 by executing a registered deed of sale on 14.05.2015. The right, title and interest over the suit property was thus conferred upon them. Besides, it is the settled principles of law that for issuance of temporary injunction the plaintiff was required to establish the three essential ingredients for it. However, prima-facie, as reflected from the record, the interest over the suit property was conferred upon the defendants No. 1 and 2 on the strength of the said registered deed of sale. After purchasing the property in question as such, the defendants have started raising construction over it and the application in the instant nature for issuance of temporary injunction was made much after the filing of the suit. In such an eventuality, it is difficult to hold at this stage that any of the ingredients required for issuance of temporary injunction are in his favour. The Courts below have, therefore, rightly turned down his application for issuance of temporary injunction. As a consequence of it, I do not find any infirmity in the order impugned so as to call for any interference. The order impugned is, therefore, deserves to be and is hereby affirmed.

5. In view of the foregoing discussions, I do not find any substance in this appeal. The appeal is accordingly dismissed at motion hearing stage itself. No order as to costs.

Sd/-
(Sanjay Agrawal)
JUDGE