

HIGH COURT OF CHHATTISGARH, BILASPUR
WP227 No.967 of 2018

1. Rameshwar S/o Ramratan, aged about 50 years,
 2. Tapeswar, S/o Ramprasad, aged about 35 years,
 3. Parmatma, S/o Ramprasad, aged about 25 years,
 4. Aatma S/o Ramprasad, aged about 30 years,
All of residence of village Bakirma, P.S. Gandhinagar, Tahsil – Ambikapur, District – Surguja (CG)
 5. Sunita D/o Ramprasad, aged about 22 years, W/o Ujit, Residence of Darripura, Ambikapur, Tahsil – Ambikapur, District - Surguja (CG)
- Petitioners

Versus

1. Samal Say, S/o Mansay, aged about 70 years, residence of village Bakirama, Tahsil – Ambikapur, P.S. Gandhinagar, District – Surguja (CG)
 2. Parmeshwari D/o Sarthi W/o Thakur Das, aged about 50 years, Residence of Darripura, Ambikapur, Tahsil – Ambikapur, District Surguja (CG)
 3. State of Chhattisgarh, through Collector, Surguja – Ambikapur (CG)
- Respondents

For Petitioners : Mr.Sunil Tripathi, Advocate
For Respondent No.3: Mr.Ashish Surana, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

28.11.2018

1. The plaintiffs instituted a suit for declaration of title, partition and possession against the defendants. They have also filed an application under Order 39 Rule 1 and 2 of the CPC for temporary injunction. That application was rejected by the trial Court and upheld by the Misc. Appeal Court in Misc. Appeal preferred under Order 43 Rule (1) (r) of the CPC. Questioning that order, this writ petition has been preferred.
2. Learned counsel for the petitioners would submit that both the Courts below are absolutely unjustified in rejecting the application

under Order 39 Rule 1 and 2 of the CPC by recording a finding which is perverse and liable to be set aside.

3. I have heard learned counsel for the petitioners/plaintiffs on the question of admission of the writ petition.
4. Both the Courts below have held that the plaintiffs and defendants No.1 and 2 are co-owners/co-shares of the suit land and further held that a co-owner cannot seek injunction in respect of enjoyment of common property as under the law, possession of one sharer is possession of all sharer. The said finding recorded by the trial Court duly affirmed by the Appeal Court is finding of fact based on evidence available on record. It is neither perverse nor contrary to record.
5. I do not find any perversity in the impugned order. The writ petition deserves to be and is accordingly dismissed. A copy of this order be sent to the concerned trial Court for compliance and information. No cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge

B/-