

HIGH COURT OF CHHATTISGARH, BILASPUR**MA No. 104 of 2018**

1. Anil Kumar S/o Late Mehattar Lal Aged About 32 Years,
 2. Lokendra Kumar S/o Late Mehattar Lal Aged About 25 Years,
- Both R/o Village Amavash, P.H.No.30, Revenue Circle
Mahasamund, Tahsil And District - Mahasamund Chhattisgarh.

---- Appellants

Versus

1. Sunil Khandelwal S/o Ram Avatar Khandelwal Aged About 47 Years,
 2. Smt. Sandhya Khandelwal W/o Sunil Khandelwal Aged About 43 Years,
- Both R/o 04, Farishta Complex, Raipur, Tahsil And District - Raipur Chhattisgarh.
3. Rajendra Nirmalkar S/o Late Fadukram Nirmalkar Aged About 55 Years R/o Mandir Hasaud Tahsil Arang, District - Raipur Chhattisgarh.
 4. State Of Chhattisgarh, Through The Collector Mahasamund, District - Mahasamund Chhattisgarh.

---- Respondents

For appellants- Shri N.K. Chatterjee and Shri B.L. Sahu, Advocates.
For State-Shri Dilman Rati Minj, Dy.G.A.

Hon'ble Shri Justice Goutam Bhaduri**Order**

3/12/2018

Heard.

1. Instant appeal is against the order dated 4/09/2018 passed by the court below whereby the Additional District Judge has passed the injunction on an application filed on behalf of defendant No.3 namely Rajendra Nirmalkar holding that he is in possession.
2. The facts would reveal that a suit was filed by Anil Kumar and Lokendra Kumar claiming that they have obtained the loan from Sunil Khandelwal who was arrayed as defendant No.1 for Rs.2 lakhs and general power of attorney was executed and on the basis of general power of attorney sale deed was executed by Sunil Khandelwal in favour

of Sandhya Khandelwal. Subsequently, Sandhya Khandewal had executed a sale deed in favour of the defendant No.3 Rajendra Nirmalkar. It is contended that the said sale deed was sham and bogus. It was not intended to be acted upon as such cannot be given effect to. Therefore, the injunction order passed in favour of the defendant No.3 against plaintiff and other person are completely illegal as no case is made out by defendant No.3.

3. Learned counsel for the appellants would submit that the order is completely passed on assumption and presumption, there is no proof of the fact that the plaintiff has caused any injury and court has observed that in case plaintiff is able to succeed then in such case plaintiff would be entitled to possession.

4. Perused the impugned order. Perusal of the impugned order shows that defendant No.3 who filed an injunction application has stated that he had purchased the land for Rs.28,50,000/- from Sandhya Choudhary who was arrayed as defendant No.2. As per finding of the revenue record by the appellate court defendant No.3 was found to be in possession has acquired the land by registered sale deed and plaintiffs were not holding possession of the land. Prima facie after evaluating the sale deed and the revenue document defendant No.3 was held to be in possession and as such court has passed an injunction order in favour of the defendant No.3 by which plaintiffs are aggrieved.

5. Considering the order and documents annexed to this petition, it appears that the plaintiffs though have stated that sham and bogus general power of attorney was executed in favour of defendant No.1 Sunil Khandelwal and on that basis he has executed the sale deed which is matter of evidence. Eventually as on date registered sale deed exist in paper in favour of defendant No.3 and the trial court has observed that on

the basis of revenue record defendant No.3 was held to be in possession.

6. In view of this, no interference is required in exercise of power by this court. Appeal has no merit and it is dismissed.

Sd/-

(Goutam Bhaduri)

JUDGE