

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 16-08-2019

Passed on 30-8-2019

MA No. 78 of 2015

1. Bharat Lal Das S/o Late Sanatan Das Aged About 38 Years R/o Village and Post Sankara, P.S. Sariya, Tahsil Baramkela, District Raigarh Chhattisgarh.
2. Sushma W/o Late Sanatan Das Aged About 70 Years R/o Village and Post Sankara, P.S. Sariya, Tahsil Baramkela, District Raigarh Chhattisgarh.
3. Subhashini D/o Late Sanatan Das W/o Shri Pradeep Das Aged About 45 Years R/o Village Kutharpali, Post Amabhaina Tahsil Bhathali, District Bargarh Orissa.
4. Tara Mishra W/o Ashok Mishra Aged About 40 Years R/o Village Bhojpuri, Tahsil Saraipali, District Mahasamund Chhattisgarh.

---- Appellants/plaintiffs

Versus

1. Netranand Sahu S/o Chhote Lal Sahu Aged About 25 Years R/o Village and Post Sankara, Tahsil Baramkela, District Raigarh Chhattisgarh.
2. Urmila W/o Late Sanatan Das Aged About 75 Years R/o Village And Post Dhumalpali, P.S. And Tahsil Bhathali, District Bargarh Orissa.
3. Meera Kar D/o Late Sanatan Das W/o Shri Nityanand Kar Aged About 43 Years R/o Village Milarabad, Tahsil Basna, District Mahasamund Chhattisgarh.
4. State of Chhattisgarh Through The Collector Raigarh, District Raigarh Chhattisgarh.

---- Respondent/defendants

For appellants	:	Mr. Raghavendra Pradhan, Advocate.
For respondents No. 1 and 2.	:	Mr. Govind Ram Miri, Advocate.
For respondent No.4/ State	:	Mr. Ravish Verma, Govt. Advocate.

SB: Hon'ble Shri Justice Ram Prasanna Sharma
CAV ORDER

1. This appeal is preferred under Order 43 Rule 1 (r) of the Code of Civil Procedure, 1908 against the order dated 23-6-2015 passed by the Additional District Judge, Sarangarh, District Raigarh (CG) in Civil Suit No. 06-A/2015 wherein the application under Order 39 Rule 1 & 2 read with Section 151 of CPC filed by the respondent was rejected.

2. A suit for declaration of title and permanent injunction was filed by the appellants/plaintiffs before the trial court regarding land bearing survey No. 381/1 area 56 decimal and survey No. 717/3 area 36 decimal situated at village Sankara, Revenue Circle Sariya, Tahsil Baramkela, District Raigarh on the ground that the land was purchased by late Sanatan Das in the year 1965 but name of respondent No.2 was mentioned as purchaser in the sale deed as she is wife of Sanatan Das. The land was allotted to appellants by Sanatan Das in partition but property in question was sold by respondent No.2 in favour of respondent No.1 who tried to possess the land that is why suit was filed and an application for temporary injunction was also filed as mentioned above, but the trial court dismissed the same contrary to legal aspect of the matter.

3. Learned counsel for the appellants would submit that the property in question was purchased by Sanatan Das. Though sale was executed in the name of Urmila Bai the owner is Sanatan Das and appellants are legal heirs of Sanatan Das and they are title holders of the property by operation of law. In the proceeding under Sections 145 & 146 of the Code of Criminal Procedure, 1973 Sub Divisional Magistrate delivered possession of the land in question to one Bharat Lal, therefore, possession of respondent No.1 namely Netranand Sahu is not established prima facie. The order passed by the trial Court is liable to be reversed.

4. On the other hand, learned counsel appearing for the respondents No. 1 and 2 would submit that the suit was filed in the year 2014 and the trial court had to decide who was in possession of the suit land. On the date of filing of the suit, Urmila Bai who was owner of the land alienated the property in favour of respondent No.1 Netranand who is in possession of the land. He would further submit that as per record Urmila Bai is owner of the property and she had all the right to alienate the property in question. After execution of sale deed in favour of Natranand, said Netranand is title holder of the property and he is in possession of the property. The trial Court is right in holding that injunction cannot be granted in favour of the appellants. He placed reliance in the matter of **Ramesh Vajabhai Rabari vs. Pratiksha Real Estate Private**

Limited and others¹, Unique Alliance Industries, Goa vs. Anupama Agencies, Trichur and another², National Airport Authority and others vs. Vijayadutt³, Best Sellers Retail (India) Private Limited vs. Aditya Birla Nuvo Limited and others⁴ and M/s. Shivalik Power and Steel Pvt. Ltd., Raipur vs. M/s. Aujasya Agro Power Pvt. Ltd., Hyderabad⁵.

5. I have heard learned counsel for the parties and perused the record of court below including the judgment and decree.

6. Admittedly, Urmila Bai was recorded owner of the property in question, who executed the sale deed in favour of respondent No.1 Natrenand. Affidavit was filed by Netranand and Chintamani. As per affidavit Netranand is in possession of the land in question. In support of affidavit he filed document regarding sale of paddy in Kisaan society which shows that Netranand was in actual physical possession of the land in question and sown paddy in the said land and after ripening the paddy he sold the same in Kisaan society. In rebuttal of the same, appellants side did not file any document as to which kind of crop they sown in the field for establishing their actual physical possession.

7. Looking to the registered sale deed the trial court opined that prima facie case is in favour of Netranand and looking to the

¹(2014) 12 SCC 190

²AIR 1995 Kerala 52

³AIR 1990 MP 326

⁴(2012) 6 SCC 792

⁵2006(4) MPHT 73 (CG).

affidavit and other relevant documents of cropping the paddy, the trial court recorded finding that Netranand is in possession of property in question that is why the trial court declined to grant injunction in favour of the appellants. The trial Court discussed the entire oral and documentary evidence and finding of the trial Court is based on relevant material placed on record and same is not based on irrelevant or extraneous material. After re-assessing the entire evidence, this court has no reason to record a contrary finding.

8. Accordingly, the appeal is liable to be and is hereby dismissed.

Sd/-

(Ram Prasanna Sharma)

JUDGE

Raju