

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 718 of 2019

1. Kameshwar Yadav, S/o Late Dadul Yadav Aged About 85 Years R/o Village Amera Tahsil and P.S.-Shankargarh, District-Balrampur-Ramanujganj, Chhattisgarh.
2. Raju Yadav, S/o Shri Kameshwar Yadav, Aged About 38 Years R/o Village - Amera, Tahsil and P.S. - Shankargarh, District- Balrampur-Ramanujganj, Chhattisgarh.
3. Balwant Yadav, S/o Shri Kameshwar Yadav, Aged About 32 Years, R/o Village Amera, Tahsil and P.S. - Shankargarh, District- Balrampur-Ramanujganj, Chhattisgarh.

---- Petitioners

Versus

1. Satyanarayan Yadav, S/o Shri Kameshwar Yadav R/o Village-Mahnaee, Tahsil And P. S. - Bagicha , District - Jashpur, Chhattisgarh.
2. Rupnarayan Yadav, S/o Shri Kameshwar Yadav Aged About 52 Years R/o Village-Mahnaee, Tahsil And P.S.- Bagicha, District- Jashpur, Chhattisgarh.
3. Gautam Yadav, S/o Shri Kameshwar Yadav, Aged About 42 Years, R/o Village- Mahnaee, Tahsil and P. S.-Bagicha, District - Jashpur, Chhattisgarh.
4. State of Chhattisgarh Through The Collector Balrampur, District-Balrampur-Ramanujganj, Chhattisgarh.

---- Respondents

For petitioners	:	Mr. Bhupendra Singh, Advocate.
For respondents	:	Mr. Ajeet Kumar Yadav, Advocate.
For respondent/State	:	Mr. Sudeep Verma, Dy. Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant
Order On Board

27/11/2019

Heard.

1. The petitioner feeling aggrieved by the order dated 9.4.2019 passed by the District Judge, Balrampur at Ramanujganj in M.A. No.6/2018 thereby upholding of the order passed by the trial Court allowing the application filed under Order 39 Rule 1 & 2 of CPC.
2. The private respondents have filed a civil suit against the petitioner praying for relief of declaration, permanent injunction and partition, submitting that the suit property is ancestral property and thus the respondents have equal rights over it and hence the reliefs, as claimed, be granted on that basis. The defendants/petitioners have filed their written statement denying the pleadings made in the plaint and submitted that the suit property was partitioned between petitioner No.1 and his brothers and subsequent to which this property has become self-acquired property of defendants/petitioners herein. The respondents, who are sons' of petitioner No.1, can make a claim, if any, only after the death of petitioner No.1. On similar grounds the application was filed by respondents under Order 39 Rule 1 & 2 of CPC which was contested by the petitioners, however, the trial Court vide order dated 1.10.2018 granted prohibitory temporary injunction in favour of the respondents and restrained the petitioners from interfering with the suit property. This order was challenged before the appellate Court and the appellate Court also upheld the order and dismissed the miscellaneous appeal.
3. It is submitted by the counsel for petitioners that the orders passed by the Courts below are illegal, arbitrary and contrary to law. The respondents have no right over the suit property during the life time of petitioner No.1, therefore, the impugned orders are liable to be set aside.
4. I have heard both the parties and perused the documents on record.
5. Claim has been made by the plaintiffs/respondents on the ground that

the suit property is ancestral property. It is pleaded that petitioner No.1 had received his share in the partition from his brothers in the year 1975-76 itself. The respondents have pleaded in the plaint that the petitioner No.1 by way of an agreement partitioned the property to the respondents and therefore on that basis they are in possession of the same.

6. On the basis of the pleadings made by the respondents, it is clear that the suit property over which the respondents are claiming right is the property which petitioner No.1 has received as his share in a partition. Partition between petitioner No.1 and the respondents can be regarded as a family arrangement. The very purpose of filing the suit also discloses that the said partition, as claimed by the respondents, has not ended the joint status of the property in question, therefore, this property is still undivided property. Hence, the status of parties would be of co-owners according to the pleadings in the plaint. There is an specific rule that no injunction can be granted to a party against the co-owners of the same property, as held in Tanusree Basu & others v. Ishani Prasad & others, reported in (2008) 4 SCC 791 by Supreme Court, which is a principle established in catena of judgments.
7. This is the case where the respondents are claiming that they are co-owners of the suit property. However, this claim is disputed by the petitioner No.1 on the ground that he is the sole owner of the suit property. The property being self-acquired by him on the basis of the partition of joint family property with his brothers in 1975-76. Therefore, the order granting temporary injunction in favor of the respondents is not sustainable being erroneous and contrary to the principles of law.
8. Accordingly, the petition is allowed at the motion stage. The impugned order and the order of the Court below both are set aside.

Sd/-
(Rajendra Chandra Singh Samant)
Judge