NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M.A No.29 of 2020

Reserved on 01.12.2020
Pronounced on 08.12.2020

Hari Ram Sahu S/o Kalika Prasad Aged About 45 Years R/o Mudapar, Tahsil Nawagarh, Janjgir Champa Chhattisgarh.

---- Appellant

Versus

1. Bed Ram Sahu S/o Dadu Ram Aged About 75 Years R/o Village - Kesla, Tahsil Nawagarh, (Shivarinarayan), District Janjgir Champa Chhattisgarh.
2. State Of Chhattisgarh Through Collector, District Janjgir Champa Chhattisgarh.

------Respondents

For Appellant:	Shri Anup Majumdar, Advocate.
For Respondent No1:	Shri Manoj Paranjpe along with Shri Shubhank Tiwari, Advocates.
For State/Respondent No.2:	Shri Sameer Sharma, Deputy Government Advocate.

Single Bench:Hon'ble Shri Sanjay S. Agrawal, J

C A V Order

1. This Miscellaneous Appeal has been preferred by Defendant No.1-Hari Ram under Order 43 Rule 1(r) of the Code of Civil Procedure, 1908 (for short 'the CPC') questioning the propriety of the order dated 29.02.2020 passed in Civil Suit No.20-A/2019 whereby, the learned trial Court has allowed the application filed by the Plaintiff- Bed Ram Sahu under order 39 Rules 1 & 2 of the CPC. The parties to this Appeal shall be referred hereinafter as per their description in the Court below.

2. Briefly stated, the facts of the case are that the Plaintiff- Bed Ram Sahu instituted a suit claiming declaration of title and injunction submitting *inter alia* that the land in question admeasuring 7.2170 hectares described in

Plaint Schedule – 'A' situated at village Kesla, Tehsil – Nawagarh, District – Janjgir Champa and the house in question constructed over Khasra No. 854/2 area 0.1130 hectares as described in Plaint Schedule – 'B' are the ancestral properties and were recorded in the joint names of him and his brother Kala Ram. According to the Plaintiff, the said Kala Ram died on 09.04.2019, while his wife Ganga Bai on 23.04.2019 issueless and after their sad demise, revenue papers were muted in his name. Further contention of the Plaintiff is that Defendant No. 1 – Hari Ram, while claiming to be the legatee of said Ganga Bai based upon the Will dated 10.04.2019, succeeded to get the revenue papers mutated along with the Plaintiff on 08.11.2019 and by taking undue advantage of it, started interfering in his peaceful possession by threatening to cut the crops sown by him. The Plaintiff has, therefore, been constrained to institute the suit in the instant nature along with an application enumerated under Order 39 Rules 1 and 2 CPC praying for issuance of temporary injunction against the said Defendant from interfering in his peaceful possession pending decision of the suit.

3. While contesting the claim and by filing the reply to the said application, a counter claim has been raised by Defendant No.1 by submitting therein that the alleged ancestral properties have got partitioned around 40-42 years ago between the Plaintiff and his brother Kala Ram, who, in turn, had executed the registered deed of Will on 19.08.2017 in favour of his wife Ganga Bai bequeathing all his movable and immovable properties of village Kesla. It is pleaded further that said Ganga Bai has executed a deed of Will on 10.04.2019 in his favour whereby, she bequeathed four acres of agricultural land, out of the share of her husband (Kala Ram), which she got by virtue of the said Will dated 19.08.2017 and the house of Kudri Tikra constructed over the area of 0.20 acres as described in Schedule – 'A' attached with the counter claim. It is pleaded further that his name was

mutated along with the Plaintiff as co-owner based upon the alleged Will dated 10.04.2019 vide order dated 08.11.2019 passed in Revenue Case No.38/A-06/2018-19 by Tahsildar, Shvirinarayan. Further contention of him is that the Plaintiff's brother Kalaram, on the basis of the alleged oral partition, had initiated the partition proceedings on 14.06.2017 before the Tahsildar, Shivrinarayan registered as Revenue Case No.17/A-27/2016-17, which was, however, dismissed on 16.07.2019 owing to the sad demise of him and his widow Ganga Bai.

4. After considering aforesaid contention of the parties, it was observed by the trial Court that in absence of the division of the joint family property, the Plaintiff appears to have been shown *prima facie* the owner of the suit properties described in Plaint Schedule – 'A' & 'B' and observed further that merely on the basis of the entries made in the revenue papers, it cannot be said that Defendant No.1 has acquired his ownership. As a consequence of it, allowed the said application by restraining Defendant No.1 from interfering in peaceful possession of the Plaintiff described in Plaint Schedule 'A' & 'B' pending decision of the suit. This is the order, which has been impugned by way of this Appeal.

5. Shri Anup Majumdar, learned Counsel for the Appellant/Defendant No.1 submits that the Court below, while allowing the application for grant of injunction, has committed an illegality in observing that the Plaintiff is, *prima facie,* shown to be the owner of the suit properties by disbelieving the deed of Will dated 10.04.2019, purported to have been executed by the said Ganga Bai in favour of her brother's son Hari Ram. It, however, ought to have seen that Defendant No.1 has acquired his valid right and interest on the basis of the alleged Will and his name was entered into the revenue papers along with the Plaintiff vide order dated 08.11.2019 by the Tahsildar, Shivrinarayan and as such, the claim of him ought not to have been discarded by observing that

the alleged entries would not be sufficient to hold the ownership of said Hari Ram Sahu.

6. On the other hand, Shri Manoj Paranjpe, learned Counsel for Respondent No.1/Plaintiff has supported the order impugned as passed by the trial Court.

7. I have heard learned Counsel for the parties and perused the entire relevant papers annexed with this Appeal carefully.

8. Admittedly, the properties in question described in Plaint Schedule 'A' & 'B' are the ancestral properties which were acquired by Plaintiff Bed Ram Sahu and his brother Kala Ram jointly by way of inheritance. It appears that Kala Ram died on 09.04.2019 while his widow Ganga Bai on 23.04.2019 issueless. Their interests are thus, devolved upon the Plaintiff and he acquires his ownership with regard to the properties in question. What is pleaded by Defendant Hari Ram is that an oral partition with regard to the said ancestral properties had taken place around 40-42 years ago and the share which came in favour of Kala Ram was bequeathed by him to his wife Ganga Bai by executing a registered deed of Will dated 19.08.2017. According to him, he acquired four acres of agricultural land, out of the share of said Kala Ram and the house of village Kudri Tikra attached with Schedule 'A' of the counter claim under the deed of Will dated 10.04.2019, said to have been executed by Ganga Bai immediately upon the sad demise of her husband and the revenue papers were mutated based upon it along with the Plaintiff vide order dated 08.11.2019 in Revenue Case No. 38/A-06/2018-19 by the Tahsildar, Shivrinarayan. However, a bare perusal of it would show that there is no any reference of alleged oral partition as alleged by the Defendant either in the Will executed by said Kala Ram or the Will executed by his wife Ganga Bai in favour of him. That apart, according to the Defendant, a partition proceeding was initiated by the Plaintiff's brother Kala Ram based upon the

alleged oral partition before the Tahsildar, Shivrinarayan registered as Revenue case No.17/A-27/2016-17, which was dismissed on 16.07.2019 due to the sad demise of Kala Ram and his wife Ganga Bai. But, despite of that, no action was initiated by Defendant Hari Ram for his substitution in his place on the strength of the alleged Will dated 10.04.2019 in order to carry on the said partition proceeding nor the affidavit of any of its attesting witnesses was produced. In view of the said background, the trial Court has rightly arrived at its *prima facie* conclusion that the Plaintiff has acquired his ownership over the property in question described in Plaint Schedule 'A' & 'B' and in the event of his disturbance by the said Defendant Hari Ram, it would certainly cause an irreparable loss to him and I do not find any infirmity in the same.

9. The Appeal, being devoid of any merit, is accordingly dismissed. There shall be no order as to costs.

10. It is, however, made clear that I have not entered into the merits of the case while deciding this Appeal and the trial Court shall not be influenced by any of the observations of mine and shall decide the suit in accordance with law.

Sd/-
(Sanjay S. Agrawal)
JUDGE

Priya