

HIGH COURT OF CHHATTISGARH, BILASPUR**M.A No.82 of 2018****Reserved on 21.09.2020****Pronounced on 28.09.2020**

1. Hazi Mohammad Nafees S/o Late Hazi Abdul Gaffar, Aged About 66 Years Profession Business, R/o Mitra Vihar Colony, Shrikant Verma Marg, Bilaspur, Tehsil And District Bilaspur Chhattisgarh.
2. Mohammad Irfan, S/o Late Mohammad Rafeek, Aged About 38 Years Profession Business, R/o House No. 15, Dongaji Colony, G.E. Road, Near Rajkumar College, Police Station Sarswati Nagar, Tehsil And District Raipur Chhattisgarh
3. Mohammad Akram, S/o Late Mohammad Rafeek, Aged About 34 Years Profession Business, R/o House No. 15, Dongaji Colony, G.E. Road, Near Rajkumar College, Police Station Sarswati Nagar, Tehsil And District Raipur Chhattisgarh
4. Mohammad Shahid, S/o Late Mohammad Rafeek, Aged About 30 Years Profession Business, R/o House No. 15, Dongaji Colony, G.E. Road, Near Rajkumar College, Police Station Sarswati Nagar, Tehsil And District Raipur Chhattisgarh
5. Smt. Rajiya Bano, W/o Late Mohammad Rafeek, Aged About 60 Years Profession Housewife, R/o House No. 15, Dongaji Colony, G.E. Road, Near Rajkumar College, Police Station Sarswati Nagar, Tehsil And District Raipur Chhattisgarh

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1. Smt. Rehana Bano D/o Late Hazi Abdul Karim, W/o Shri Nadeem Lakhani, Aged About 44 Years Profession Housewife, R/o Mohammad Corner-5, Near Garden East Aga Khan School, Karanchi, Pakistan, At Present Bukhari Niwas, Ahead Bagicha, Link Road, Mitra Vihar, Bilaspur, Ps Civil Line, Bilaspur, Tehsil And District Bilaspur Chhattisgarh
2. Nazeer Mohammad, S/o Late Hazi Abdul Karim, Aged About 42 Years Profession Business, R/o Bukhari House, Link Road, Bilaspur, Ps Civil Line, Bilaspur, Tehsil And District Bilaspur Chhattisgarh.
3. Mohammad Shabbir, S/o Late Hazi Abdul Karim, Aged About 34 Years Profession Business, R/o Bukhari Service Station, Link Road, Bilaspur, Ps Civil Line, Bilaspur, Tehsil And District Bilaspur Chhattisgarh.
4. Smt. Roshan Ara, W/o Late Hazi Abdul Karim, Aged About 68 Years R/o Bukhari Niwas, Ahead Bagicha, Link Road, Mitra Vihar, Bilaspur, Ps Civil Line, Bilaspur, Tehsil And District Bilaspur Chhattisgarh.
5. Smt. Rana Bano, W/o Late Aftab Ahmed, Aged About 38 Years Profession Housewife, R/o Bukhari House, Link Road, Bilaspur, Ps Civil Line, Bilaspur, Tehsil And District Bilaspur Chhattisgarh.
6. Mohammad Saiyad, W/o Late Aftab Ahmed Aged About 18 Years R/o Bukhari House, Link Road, Bilaspur, Ps Civil Line, Bilaspur, Tehsil And District Bilaspur Chhattisgarh

7. Safa Bano, S/o Late Aftab Ahmed, Aged About 15 Years R/o Bukhari House, Link Road, Bilaspur, Ps Civil Line, Bilaspur, Tehsil And District Bilaspur Chhattisgarh
 8. State Of Chhattisgarh Through The Collector, Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh
- Respondents**

For Appellants:	Shri Amit Soni, Advocate.
For Respondent No.1:	Shri Yashwant Tiwari, Advocate.
For Respondent No.2:	None, though served.
For Respondents No.3 to 7:	Notices have not been issued vide order dated 24.07.2019
For Respondent No.8/State:	Shri Gagan Tiwari, Dy. Govt. Advocate.

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

C A V Order/Judgment

1. This Miscellaneous Appeal has been preferred by the plaintiffs under Order 43 Rule 1(r) of the Code of Civil Procedure, 1908 (for short 'the CPC') questioning the order dated 03.05.2018 passed by the 1st Additional District Judge, Bilaspur in Civil Suit No.64-A/2016, whereby the trial Court, while rejecting the application filed by the plaintiffs under Order 39 Rules 1 & 2 of the CPC and by allowing the defendants' application of similar nature, has restrained them (plaintiffs) from interfering in their peaceful possession and from creating any third party interest during the pendency of the suit. 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 plaintiffs instituted a suit by submitting *inter alia* that their predecessor in interest namely Md. Rafiq had purchased the land bearing Khasra No.588/1 area 3,720 sq.ft from one Asha Singh under the registered deed of sale dated 21.09.1988, which was renumbered at the time of its mutation in his name (Md. Rafiq) as Khasra No.588/5. Likewise, he (Md. Rafiq) had purchased a part of land bearing Khasra No.589/4 area 0.11 acres and part of Khasra No.599/1 area 0.01 acres total admeasuring 0.12 acres of land from one Gopi Prasad under the registered deed of sale dated 26.10.1973 and at the time of mutation, both these lands

were recorded in his name as Khasra No.589/6 and 599/3.

3. It is pleaded further by the plaintiffs that their predecessor in interest namely Hazi Abdul Gaffar, who was the father of said Md. Rafiq had purchased a part of land bearing Khasra No.589/7 admeasuring 0.26 acres from one Mahendra Singh under the registered deed of sale dated 08.01.1987 and at the time of mutation, it was recorded in his (Hazi Abdul Gaffar) name as Khasra No.589/14. Likewise, by virtue of a registered deed of sale dated 13.02.1982, he purchased a part of Khasra No.511/2 area 2,000 sq.ft and also a part of said Khasra No.511/2 area 2,500 sq.ft. total admeasuring 4,500 sq.ft, from one Jogender Arora in the name of his own firm, known as "Firm Bukhari Enterprises" which were renumbered at the time of mutation as Khasra No.511/26 admeasuring 0.022 hectares and Khasra No.511/27 admeasuring 0.018 hectares.

4. Further contention of the plaintiffs is that for the expansion of the business, said Md. Rafiq went to Raipur and in his absence, his brother Hazi Abdul Karim, the predecessor in interest of the defendants had succeeded in obtaining the revenue papers recorded in his name alone in connivance with the revenue authorities and pleaded further that the defendants have obtained a decree in Civil Suit No.153-A/2015 from the Lok Adalat even without impleading them and the said facts were revealed when they enquired from the revenue authorities in the month of October, 2015, giving rise to the institution of the suit claiming declaration of title with regard to the property in question bearing Khasra Nos.588/5, 589/6 and 599/3, while claiming one-third share and separate possession with regard to the rest of the land purchased by their predecessor in interest namely Hazi Abdul Gaffar.

5. Along with the aforesaid claim, an application enumerated under Order 39 Rules 1 & 2 of the CPC has been made seeking issuance of temporary injunction restraining the defendants from creating any third party interest and/or from creating tenancy as defendant No.1 Smt Rehano Bano is bent upon to an illegal act in order to defeat the plaintiffs' interest over the property in question.

6. The defendants have contested the claim and raised a counter claim along with moving a separate application under Order 39 Rules 1 & 2 of the CPC seeking for issuance of temporary injunction by alleging *inter alia* that the plaintiffs are neither in possession over the suit land nor the revenue papers are in their names nor said Md. Rafiq, the predecessor in interest of the plaintiffs had raised any objection during his lifetime. It is contended further that they are in possession over the suit land by virtue of the decree passed on 21.06.2015 by the Lok Adalat in Civil Suit No.153-A/15 and that after the death of said Md. Rafiq, the plaintiffs have relinquished their right in favour of their predecessor in interest namely Hazi Abdul Karim and as such, if the plaintiffs have not been restrained from interfering in their peaceful possession, then in the said event, it would cause an irreparable loss to them.

7. The trial Court, after considering the contentions of the parties, observed that the decree passed by the Lok Adalat in Civil Suit No.153-A/2015 is passed in favour of the defendants, who are not only in possession over the suit properties, but the revenue papers are also in their names and if their possessions are interfered by the plaintiffs, then it would cause an irreparable loss to them. As a consequence, it was observed by the trial Court that the three essentials for issuance of temporary injunction are in favour of the defendants and accordingly, while rejecting the plaintiff's application for grant of injunction, restrained them from creating any third party interest over the property in

question and/or from interfering in peaceful possession of the defendants.

8. According to Shri Amit Soni, learned Counsel appearing for the plaintiffs, the trial Court ought to have seen that by virtue of the two registered deeds of sale dated 21.09.1988 and 26.10.1973, the property in question bearing Khasra Nos.588/5, 589/6 and 599/3 was purchased by their predecessor in interest namely Md. Rafiq, while rest by Hazi Abdul Gaffar and therefore, merely on the ground that the revenue papers are recorded in their names would not be sufficient to observe that the plaintiffs have failed to establish their *prima facie* case or the three essentials required for issuance of temporary injunction are not in their favour.

9. On the other hand, Shri Yashwant Tiwari, learned Counsel appearing for the respondent No.1/defendant No.1 has supported the order impugned as passed by the trial Court.

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

11. From perusal of the record, it appears that the property in question bearing Khasra No.588/5 admeasuring 3,720 sq.ft, Khasra No.589/6 area 0.11 acres and Khasra No.599/3 area 0.01 acres were purchased by said Md. Rafiq, who was the predecessor in interest of the plaintiffs under the registered deed of sale dated 21.09.1988 and 26.10.1973, while rest by Hazi Abdul Gaffar by virtue of registered deeds of sale dated 08.01.1987 and 13.02.1982, who was the predecessor in interest of both the parties. It, thus, appears *prima facie* that the property in question purchased by Md. Rafiq under the said deeds of sale was devolved upon the plaintiffs upon the sad demise of said Md. Rafiq with their exclusive ownership, while the rest i.e., the properties purchased by said Hazi Abdul Gaffar under the above mentioned sale deeds by way of inheritance. The

interest of the plaintiffs as accrued in their favour cannot be disowned at this stage either on the basis of the revenue papers or based upon the said decree passed by the Lok Adalat on 21.06.2015 in Civil Suit No.153-A/2015.

12. It is true that the revenue papers are in the names of the defendants and the decree passed in Civil Suit No.153-A/2015 by the Lok Adalat vide judgment dated 21.06.2015 is also in their favour and they are admittedly in possession over the suit land, but merely on these basis, it cannot be held that the three essentials for issuance of temporary injunction are not in favour of the plaintiffs.

13. It is the settled principle of law that the mutation of the property in the revenue record does not create or extinguish title nor has it any presumptive value on title as held by the Supreme Court in the matter of H. Lakshmaiah Reddy and others vs. L. Venkatesh Reddy reported in the matter of **AIR 2015**

Supreme Court 2499, wherein at paragraph-9, it has been held as under:-

"9.....The assumption on the part of the High Court that as a result of the mutation, 1st defendant divested himself of the title and possession of half share in suit property is wrong. The mutation entries do not convey or extinguish any title and those entries are relevant only for the purpose of collection of land revenue. The observations of this Court in Balwant Singh's case (*AIR 1997 SC 2719*) are relevant and are extracted below :

"21. We have considered the rival submissions and we are of the view that Mr Sanyal is right in his contention that the courts were not correct in assuming that as a result of Mutation No.1311 dated 19-7-1954, Durga Devi lost her title from that date and possession also was given to the persons in whose favour mutation was effected. In Sawarni vs. Inder Kaur (1996) 6 SCC 223: (*AIR 1996 SC 2823*), Pattanaik, J., speaking for the Bench has clearly held as follows: (SCC p. 227, para 7) : (*SC P. 2825*)"

"7. ... Mutation of a property in the revenue record does not create or extinguish title nor has it any presumptive value on title. It only enables the person in whose favour mutation is ordered to pay the land revenue in question. The learned Additional District Judge was wholly in error in coming to a conclusion that mutation in favour of Inder Kaur conveys title in her favour. This erroneous conclusion has vitiated the entire judgment."

22. Applying the above legal position, we hold that the widow had not divested herself of the title in the suit

property as a result of Mutation No.1311 dated 19-7-1954. The assumption on the part of the courts below that as a result of the mutation, the widow divested herself of the title and possession was wrong. If that be so, legally, she was in possession on the date of coming into force of the [Hindu Succession Act](#) and she, as a full owner, had every right to deal with the suit properties in any manner she desired.

In the circumstances, we are of the opinion that the High Court erred in concluding that the 1st defendant by his conduct had acquiesced and divested himself of title of his half share in suit property and the said erroneous conclusion is liable to be set aside.

14. In the present case, as observed herein above, Md. Rafiq, the predecessor in interest of the plaintiffs had acquired the property in question i.e. Khasra No.588/5, 589/6 and 599/3 under the above referred sales, while the rest by Hazi Abdul Gaffar, the predecessor in interest of both the parties. In such a situation, it appears *prima facie* that the plaintiffs interests are there in the suit properties. According to the defendants, the plaintiffs have relinquished their right by execution of deed of *ikrarnama* dated 11.10.2004 is, however, a matter of evidence that whether the plaintiffs' interests have been extinguished as such by virtue of alleged *ikrarnama* or not. In so far as the decree passed by the Lok Adalat on 21.06.2015 in Civil Suit No.153-A/2015 is concerned, it however appears that the plaintiffs are admittedly not the parties in the said suit and its effect would, therefore, be required to be determined at the time of trial.

15. Considering the above facts and circumstances of the case, considering further the interest of the plaintiffs as accrued to them through their predecessors in interest namely Md. Rafiq and Md. Abdul Gaffar, all the three essentials for issuance of temporary injunction are in their favour and if the property in question is alienated pending decision of the suit, then it would certainly cause an irreparable loss to them.

16. Consequently, the appeal is allowed and the order passed by the trial Court on 03.05.2018 in Civil Suit No.64-A/2016 is hereby set aside and the defendants No.1 & 2 are accordingly restrained by way of temporary injunction from creating any third party interest over the property in question pending decision of the suit.

17. It is, however, made clear that any of the observations of mine would not come in the way of disposal of the suit and the trial Court shall decide the same in accordance with law. No order as to costs.

Sd/-
(Sanjay S. Agrawal)
JUDGE

Priya