

HIGH COURT OF CHHATTISGARH, BILASPUR**MA No. 3 of 2021****Reserved on 20/10/2021****Delivered on 01/11/2021**

1. Vikas Agrawal, aged about 33 years S/o M.K. Agrawal R/o Lodhipara, Sarkanda Bilaspur, Tahsil and District Bilaspur (C.G.).
2. Prakash Shriwas, aged about 29 years, S/o Late Dilip Shriwas R/o Kududand Chandani Chowk Bilaspur, Tahsil & District Bilaspur (C.G.).

---- Appellants**Versus**

1. Smt. N. Manjula Aiyyar, aged 47 years D/o Late B. Prakash Rao, W/o R. Narayan Aiyyar, R/o Ward No.16, T-47/5th I.T.I. Compound Koni Bilaspur, District Bilaspur (C.G.).
2. Vinod Kumar Rao, aged about 49 years S/o Late B. Prakash Rao, R/o Kushabhau Thakre Ward, G-8 Engineering Colony, Jagdalpur, Bastar, District Jagdalpur (Bastar) (CG).
3. State of Chhattisgarh Through: The Collector Bilaspur, Tahsil and District Bilaspur (C.G.).

---- Respondent

For Appellants	:	Mr. Ratnesh Agrawal, Adv.
For Respondent No. 1	:	Mr. Lalit Paswan
For Respondent No.2	:	None
For State	:	Mr. D.C. Verma, Govt. Adv.

Hon'ble Shri Justice Deepak Kumar Tiwari
CAV JUDGMENT

Heard.

1. This appeal has been preferred under Order 43 Rule1 (r) of the Code of Civil Procedure 1908 (henceforth 'the CPC') against the order dated 15/01/2021 in Civil Suit No. 39-A/2020 passed by the 5th Additional District Judge, Bilaspur in the matter of Smt. N. Manjula Aiyyar v. Vikas

Agrawal and others, wherein the application filed by respondent No.1/plaintiff under Order 39 Rule 1 & 2 read with Section 151 of the CPC has been allowed and injunction order has been passed against the appellants.

2. Facts of the case in brief are that respondent No.1/plaintiff filed a civil suit for declaration of title and permanent injunction, wherein it was mentioned that part of land bearing Khasara No. 2219/2, admeasuring area 0.52 acre situated at Village Sendri, Tahsil and District Bilaspur recorded in the name of respondent No.1/plaintiff and defendant No.3. On the basis of fraud, the appellants/defendant Nos. 1 & 2 obtained power of attorney from respondent No.1/plaintiff and defendant No. 3 in respect of the suit land, and thereafter got sale-deed executed on 10/12/2019 without consideration of their names. Therefore, the sale-deed is not binding upon the respondent No.1/plaintiff. The appellants are trying to dispossess the respondent No.1/plaintiff and initiating mutation proceeding on the basis of sale-deed. Therefore, the suit had been filed in which application under Order 39 Rule 1 & 2 read with 151 of the CPC was filed. After hearing the said application, the impugned order has been passed.
3. It is undisputed that on the basis of registered power of attorney, as given by the respondent No.1/plaintiff and defendant No.3 on 08/11/2019 in favour of the appellants, the appellants have executed registered sale-deed of the suit property in their own name on 11/12/2019 and thereafter they have become both purchaser and seller.

4. Counsel for the appellants has submitted that the impugned order is bad, perverse and contrary to the facts and circumstances of the case, thus liable to be set-aside. He has further submitted that the trial Court has wrongly concluded that respondent No.1/plaintiff is in possession of the suit land. The respondent No.1/plaintiff executed registered power of attorney and thereafter obtained consideration amount in his bank account. The necessary consideration for passing the temporary injunction is not in favour of the respondent No.1/plaintiff, however, erroneous order has been passed. Therefore, it is prayed to set-aside the impugned order.
5. Counsel for the appellants has submitted that while passing the impugned order, the learned trial Court ignored the certain principles that under the power of attorney, a person is authorized to act as the agent of the person granting it and to do anything (in and with his own name and signature) by the authority of the donor of the power. Section 2 of the Power of Attorney Act, 1882 declares that everything so done 'shall be as effectual in law as if it has been done by the donee of the power in the name and with the signature of the donor thereof and as such the act committed by the holder of the power of attorney would be presumed to be an act committed by the person who gives power of attorney. The learned counsel for the appellants has placed reliance on *Smt. Shail Devi Sarav v. Smt. Janakibai Gupta*, 2001 (2) CGLJ, 493.
6. The point for determination before this Court is that whether the trial Court while passing the impugned order has properly exercised its discretionary

jurisdiction under Order 39 Rule 1 & 2 of the CPC for grant of temporary injunction.

7. I have heard learned counsel for the parties and perused the records.
8. Apparently, when the appellants on the basis of alleged registered sale-deed filed the application for mutation then on 11/11/2020, objection was raised by the respondent No.1/plaintiff that the appellants have played a fraud and cheated them, so on such pleading the learned Court gave a finding that serious question are to be tried. It is also established that the suit land is ancestral property of the respondent No.1/plaintiff. So the trial Court found that prima-facie the case exists in favour of the respondent No.1/plaintiff. The Court also considered all the aspects, balance of convenience and irreparable injury for granting temporary injunction, and passed the impugned order by exercising discretionary jurisdiction which is vested in the trial Court for passing the order under Order 39 Rule 1 & 2 of the CPC.
9. In view of the above, this Court does not find any illegality in passing the impugned order and the impugned order appears to be genuine and proper.
10. Accordingly, the appeal is deserves to be and is hereby dismissed.
11. There shall be no order as to cost.

Sd/-
(Deepak Kumar Tiwari)
Judge