

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**W.P.(227) No. 475 of 2021****Order Reserved on 07.10.2021****Order Delivered on 27.10.2021**

1. Nohar Prasad Pandey S/o Late Sutichhan Prasad Pandey, Aged About 61 Years R/o Village Rivasrar, P.H.No.2, P.S. And Tahsil Kasdol, District Baloda Bazar Bhatapara (Chhattisgarh)
2. Mordhwaj Pandey, S/o Late Sutichhan Prasad Pandey, Aged About 52 Years R/o Village Rivasrar, P.H.No.2, P.S. And Tahsil Kasdol, District Baloda Bazar Bhatapara (Chhattisgarh)
3. Ravi Prakash Pandey, S/o Late Sutichhan Prasad Pandey, Aged About 50 Years R/o Village Rivasrar, P.H.No.2, P.S. And Tahsil Kasdol, District Baloda Bazar Bhatapara (Chhattisgarh)
4. Dushyant Kumar Pandey, S/o Late Sutichhan Prasad Pandey, Aged About 44 Years R/o Village Rivasrar, P.H.No.2, P.S. And Tahsil Kasdol, District Baloda Bazar Bhatapara (Chhattisgarh)

---- Petitioners**Versus**

1. Paras Pandey S/o Late Sutichhan Prasad Pandey, Aged About 59 Years R/o Village Rivasrar, P.H.No.2, P.S. And Tahsil Kasdol, District Baloda Bazar Bhatapara (Chhattisgarh)
2. State Of Chhattisgarh Through Collector, Baloda Bazar, District Baloda Bazar Bhatapara (Chhattisgarh)

---- Respondents

For the Petitioners	:	Shri Ravindra Sharma, Advocate.
For Respondent No.1	:	Shri Shobhit Koshta, Advocate.
For Respondent No.2/ State	:	Shri Alok Nigam, G.A.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**CAV ORDER**

Heard.

1. This petition has been brought under Article 227 of the Constitution of India being aggrieved by the order dated 1.9.2021, passed by the Third Additional District Judge, Baloda Bazar, District Baloda Bazar, Bhatapara,

Chhattisgarh in Miscellaneous Civil Appeal No. 12 of 2019, by which the appeal was allowed; the order of the trial Court dated 26.8.2019 was set aside and respondent No.1 was granted relief under Order XXXIX Rule 1 & 2 of the CPC.

2. The petitioners have filed a civil suit praying for reliefs of declaration of title, permanent injunction, partition and possession, on the basis of the pleading that the suit property is a joint family property. The petitioners and respondent No.1 are the sons of late Sutichhan Pandey. Respondent No.1 is contesting the suit on the ground that the partition has already taken place between the parties. Respondent No.1/ defendant filed an application under Order XXXIX Rule 1 & 2 read with Section 151 of the CPC praying that he is in possession of the land in the partition in which the petitioners/ plaintiffs are interfering. Hence, on this basis, his possession may be protected by the interim injunction. The petitioners/ plaintiffs opposed the application. Learned trial Court by order dated 26.8.2019 has dismissed the application. The appeal preferred has been allowed by the Appellate Court and temporary injunction has been granted to respondent No.1, directing the petitioners not to interfere in the possession of respondent No.1 over the suit property.

3. It is submitted by counsel for the petitioners that late Sutichhan Pandey had, during his life time partitioned the property among his sons and the suit property had fallen in the share of the petitioners. Respondent No.1 had to purchase a tractor on loan, for which on the basis of the consent letter of the family members including the petitioners, the name of respondent

No.1 was allowed to be mutated in the revenue records with respect to the suit property. The suit property continued in possession of the petitioners. It was an understanding between the parties that after the repayment of loan the whole property will be partitioned again. It is pleaded in the plaint by the petitioners that respondent No.1 was interfering in their peaceful possession because of which, civil suit has been filed praying for the reliefs of declaration, injunction, partition and possession.

4. It is submitted by counsel for the petitioners that learned trial Court has held that respondent No.1 has not filed any counter-claim, therefore, *prima facie* the balance of convenience is not in his favour and the application was fit to be rejected. On the application filed by respondent No.1, the family members have been arrayed as a party in the civil suit, however, the claim of respondent No.1 on the suit property is not absolute, which can be seen on the basis of the consent letter dated 13.9.2000, according to which, all the family members including respondent No.1 had consented that the suit property shall be mutated in favour of respondent No.1 which shall continue as the joint property. Hence, any form of injunction cannot be granted against co-owner.

Reliance has been placed on the judgment of this Court in the case of **Smt. Sanju Devi Kashyap and Others vs. Smt. Uma Bai and Others**, reported in **AIR 2019 C.G. 56**, in which it has been held that a defendant is not entitled for grant of temporary injunction, hence, the impugned order is unsustainable. It is prayed that this petition be allowed and the impugned

order be set aside.

5. Learned counsel for respondent No.1 opposes the petition and the submissions made by the petitioners' counsel. It is submitted that according to the pleadings in the plaint itself, it is clear that there had been a partial partition and the claim of the petitioners that the suit property has fallen in their share is a false statement, as admittedly there had been an oral partition effected by the father of the parties. The petitioners/ plaintiffs have claimed relief of the possession in their plaint which also shows that respondent No.1 is in possession of the suit property. The application for temporary injunction under Order XXXIX Rule 1 & 2 of the CPC has been filed by respondent No.1 for a prayer under Order XXXIX Rule 1(a) of the CPC under which a defendant can claim such interim relief in a civil suit, therefore, the impugned order is not covered under Order XXXIX Rule 1(c) of the CPC.

Relying on the judgment of Patna High Court in the case of **Smt. Indrawati Devi vs. Bulu Ghosh and Ors.**, reported in **AIR 1990 Patna 1**, it is submitted that the Court has inherent power to grant injunction is not res integra. The question has been authoritatively decided by the Supreme Court in the case of **Manohar Lal Chopra vs. Rai Bahadur Rao Raja Seth Hiralal**, reported in **AIR 1962 SC 527** holding that the Courts have inherent jurisdiction to issue temporary injunctions in circumstances which are not covered by the provisions of Order XXXIX of the CPC. It is also submitted that it has also been held in the case of **Smt. Shakunthamma and Ors. vs. Smt. Kanthamma and Ors.**, reported in **(2015) AIR (Karnataka) 13**, that in case where the plaintiff's act is detrimental to the interest of the defendant

in the subject matter of the suit by allowing it to be wasted or damaged or alienated and in such an event, the defendant can take recourse by making application under Order XXXIX, Rule 1(a) of the CPC.

Relying on the judgment of Karnataka High Court in the case of **Ramalah vs. Gowdappa**, reported in **ILR 1989 KAR 962**, the judgment of Madhya Pradesh High Court in the case of **Jagannath vs. Prahlad**, reported in **1986 vol (1) M.P.W.N. 175** and the judgment of Supreme Court in the case of **M/s Gujarat Bottling Co. Ltd. and Ors. vs. Coca Cola Company and Others**, reported in **AIR 1995 SC 2372**, it is further submitted that respondent No.1 has never executed the consent letter and his signature on that consent letter on which the petitioners are relying is forged, which is being contested by him in the civil suit and further, the revenue record shows the entries in favour of respondent No.1, hence, he has a *prima facie* case in his favour and if the Court considers that the case is not covered under Order XXXIX of the CPC, then the impugned order can be considered to have been passed in exercise of inherent jurisdiction under Section 151 of the CPC. Hence, this petition is not sustainable, which may be rejected.

6. Heard learned counsel for the parties and perused the documents present on record.

7. Considered on the submissions. It is admitted fact that the suit property is recorded in the name of respondent No.1 in the revenue records. The pleadings of the petitioners/ plaintiffs that the suit property had fallen into their share of partition and that it is on the basis of consent given by them., the name of respondent No.1 has been entered in the revenue records is

being contested by respondent No.1, therefore, the pleading made by the petitioners is required to be proved and their statement alone is not a *prima facie* case. Further, the petitioners have also prayed for relief of possession after partition. The claim of the petitioners that they are in possession is not supported with any document whereas, the claim of respondent No.1 regarding his possession is supported with document of revenue Khasra Panchshala, therefore, the finding of Appellate Court that respondent No.1 has *prima facie* case in his possession, has no infirmity.

8. The pleading in the plaint is this that there had been an oral partition made by Sutichhan Pandey, the father of both the parties. Subsequent to which, all the brothers entered into the possession of their shares. In the execution of consent letter, late Sutichhan Pandey was not a party. The consent letter is the reliance of the petitioners which is claimed to be forged by respondent No.1, therefore, this ground based on consent letter being a private document does not establish any *prima facie* case in favour of the petitioners. The pleading of the petitioners that all the property is a joint family property which has no support of any document and at present, except the consent letter which is subject to proof. The observation of the Patna High Court in the case of **Smt. Indrawati Devi vs. Bulu Ghosh and Ors.** (supra) in paragraph 9 is referable:

'9. The question as to whether the Court has any inherent power to issue an injunction is not res integra. The question has been authoritatively decided by the Supreme Court of India, in the case reported in AIR 1962 SC 527. In that case, the Supreme Court noticed the difference of opinion between the High Court on this

point. The view consistently followed by the Madras High Court was that the Court could not issue an order of temporary injunction unless the circumstances fell within the provisions of Order 39 [of the Code](#) of Civil Procedure. The opposite view was taken by the Allahabad and the Calcutta High Courts to the effect that a Court can issue an interim injunction under situations which are not covered by Order 39 [of the Code](#) if the Court was of opinion that the interest of justice requires issue of such interim injunction. The Supreme Court while agreeing with the latter view observed as follows (at p. 532 of AIR):-, "We are of opinion that the latter view is correct and that the Courts have inherent jurisdiction to issue temporary injunctions in circumstances which are not covered by the provisions of Order XXXIX C.P.C. There is no such expression in [Section 94](#) which expressly prohibits the issue of a temporary injunction in circumstances not covered by Order XXXIX or by any rules made under [the Code](#). It is well settled that the provisions [of the Code](#) are not exhaustive, for the simple reason that the Legislature is incapable of contemplating all the possible circumstances which may arise in future litigation and consequently for providing the procedure for them. The effect of the expression 'if it is so prescribed' is only this that when the rules prescribe the circumstances in which the temporary injunction can be issued, ordinarily the Court is not to use its inherent powers to make the necessary orders in the interest of justice but is merely to see whether the circumstances of the case bring it within the prescribed rule. If the provisions of [Section 94](#) were not there in [the Code](#), the Court could still issue temporary injunctions, but it could do that in the exercise of its inherent jurisdiction. No party has a right to insist on the Court's exercising that jurisdiction and the Court exercises its inherent jurisdiction only when it considers it

absolutely necessary for the ends of justice to do so. It is in the incidence of the exercise of the power of the Court to issue temporary injunction that the provisions of [Section 94](#) of the Code have their effect and not in taking away the right of the Court to exercise its inherent power.'

Reliance of the petitioners in the case of **Smt. Sanju Devi Kashyap and Ors.** (supra) is not applicable to this case according to the facts and circumstances that are present. The question present in that case was whether it is a case under Order XXXIX Rule 1(c). The ratio laid down in **Smt. Sanju Devi Kashyap and Ors.** case is that the application of the defendant under Order XXXIX of the CPC is not maintainable. Order XXXIX Rule 1(a) of the CPC is not clearly applicable to the situation present in hand. However, in such circumstances, looking to the necessity for grant of relief the civil courts have the jurisdiction to exercise of inherent powers under Section 151 of the CPC., as held in **Indrawati Devi's** case (supra), therefore, I do not find any error in the impugned order, hence, the petition is dismissed and disposed off.

9. Accordingly, the present petition is dismissed and disposed off.

Sd/-

(Rajendra Chandra Singh Samant)
Judge