

HIGH COURT OF CHHATTISGARH, BILASPUR**MA No. 39 of 2020****Reserved on 15.09.2021**
Pronounced on 21.09.2021

- Ashok Kumar Verma S/o Late Ganesh Ram Verma Aged About 62 Years
R/o Banspara Tor, Post Barbanda, District Raipur, Chhattisgarh.,

---- Appellant/Plaintiff**Versus**

- Sanjay Kumar Verma S/o Late Ganesh Ram Verma Aged About 56 Years
R/o Banspara Tor (wrongly mentioned as Oor), Post Barbanda, District
Raipur Chhattisgarh.,
- Heerachand Verma @ Vijay Kumar Verma S/o Late Ganesh Ram Verma
Aged About 53 Years R/o Madhu Fancy Stores, Main Road, Mowa, Beside
Hanuman Temple, Post Saddhu, District Raipur Chhattisgarh.,
- Ajay Kumar Verma S/o Late Ganesh Ram Verma Aged About 50 Years R/o
D 14, Lic Colony, In Front Of House Of Raj Bahadur Singh, Mowa, Raipur-
4, District Raipur Chhattisgarh.,
- State Of Chhattisgarh Through Collector, Raipur, District Raipur
Chhattisgarh.,

---- Respondents/Defendants

For Appellant	: Shri Vaibhav Anant Goverdhan, Advocate.
For Respondents No. 1 to 3	: Shri A.D.Kuldeep, Advocate.
For Respondent No.4/State	: Shri Sanjeev Kumar Agrawal, P.L.

Hon'ble Shri Justice Sanjay S. Agrawal**C.A.V. Order**

1. This Miscellaneous Appeal has been preferred by the Plaintiff-Ashok Kumar Verma under Order 43 Rule 1 (r) of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'CPC') questioning the legality and propriety of the order dated 21.09.2020 passed in Civil Suit No.13-A/2020, whereby the learned trial Court has rejected the application for issuance of temporary injunction. The parties to this Appeal shall be referred hereinafter as per their description before the Court below.

2. Brief facts of the case are that the Plaintiff instituted a suit claiming

partition and injunction based upon the deed of partition dated 25.05.2015 by submitting, inter alia, that the ancestral properties situated at various villages, such as, at Tor, Mandhar, Mowa, Bhansuri and Karenjiya, as described detailed in paragraph 4 of the plaint were got effected and based upon which, the properties described in plaint paragraphs 12 to 15 were distributed to him and his brothers, who are Defendants No. 1 to 3. According to the Plaintiff, he and his brothers were in peaceful possession of their respective shares for about 5 years and no dispute arose with regard to the shares, as allotted under the alleged deed of partition dated 25.05.2015. It is pleaded further that despite the alleged partition, names of his brothers are shown in revenue papers with regard to the properties allotted to him and by taking undue advantage of it, they started interfering in his peaceful possession by disowning the same, giving rise to the institution of the suit along with an application for grant of temporary injunction restraining the defendants from creating any third party interest or obtaining the possession from him.

3. In reply to the said application, it is stated by the Defendants that the partition of the joint family property has been effected much prior to 25.05.2015 and contended further that after the said partition, they acquired the properties from their own income and revenue papers are accordingly recorded in their respective names and the Plaintiff has no right over the properties in question based upon the alleged deed of partition as it was cancelled on 08.06.2020.

4. After considering the contentions of the parties, it was observed by the trial Court that the alleged deed of partition was neither registered nor any khasra numbers were shown therein and that by considering further the revenue entries, which are shown in the name of Defendants, arrived at a prima facie conclusion that the three essential ingredients required for issuance of temporary injunction are not in favour of the Plaintiff and in consequence, rejected the said application

for grant of temporary injunction which has been impugned by way of this appeal.

5. Learned counsel appearing for the Appellant submits that while disbelieving the alleged deed of partition, effected on 25.05.2015, the Court below has committed an illegality in rejecting the said application for grant of temporary injunction. According to him, it was executed amongst the parties and all of them have put their signatures on it and as such prima facie case was in favour of the Plaintiff. However, without considering the said fact in its proper manner, the Court below has erred in rejecting the said application. In support, he placed his reliance upon a decision rendered by the Supreme Court in the matter of ***Thulasidhara and another vs. Narayanappa and others*** reported in **(2019) 6 SCC 409**.

6. On the other hand, learned counsel appearing for the respondents have supported the order impugned as passed by the trial Court.

7. I have heard learned counsel appearing for the parties and perused the entire papers annexed with this appeal carefully.

8. The Plaintiff's claim for partition and injunction has been based upon the deed of partition, effected on 25.05.2015 and according to the Defendants, the partition with regard to the joint family property has been effected much prior to 25.05.2015. It is denied further on the ground that the Plaintiff has no right over the properties in question as it was cancelled on 08.06.2020. It, therefore, appears that a deed of partition was executed on 25.05.2015, in which, all the parties have put their signatures on it. Since the Plaintiff's case is based upon this document, it is, therefore, upon him to establish the fact that it was implemented. However, the said fact is not found to be established as none of the parties to the alleged document have approached the revenue authorities to get their names mutated in accordance with the same despite passing of the

considerable period. It is to be seen further that the alleged deed of partition was neither registered nor even the Khasra numbers were shown therein. In view thereof, the alleged document cannot be relied upon at this stage in order to grant the temporary injunction to the Plaintiff as prayed for.

9. In so far as the reliance of Shri Goverdhan in the matter of **Thulasidhara and another vs. Narayanappa and others** (supra) is concerned, the same is, however, noted to be distinguishable from the facts involved herein. As in the said matter, it was found after holding an enquiry that the alleged document (a deed of partition reduced in writing on 23.04.1971) was a family arrangement as Plaintiff in the said matter had admitted the oral partition which took place in the year 1971, in which, he got his share as stipulated in the said document. The said document was thus found to be a family arrangement, though unregistered, but would found to be operated as a complete estoppel against the parties to such a document, i.e., family arrangement. In the instant matter, as observed herein above, the alleged deed of partition, said to have been executed on 25.05.2015 was, however, not found to be acted upon. In view thereof, no reliance could be placed upon the said principles as laid down in the said matter being distinguishable from the facts of the present case.

10. Consequently, I do not find any substance in this appeal, which is accordingly dismissed.

11. No order as to costs.

Sd/-
(Sanjay S. Agrawal)
Judge