

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M.A. No. 41 of 2020**

- Ashok Shukla S/o Late Mahesh Prasad Shukla, Aged About 55 Years R/o Village Mahmand, Police Station Torwa, Tahsil And District Bilaspur Chhattisgarh.....Plaintiff.

---- Appellant**Versus**

1. Smt. Anita Bai W/o Shri Lalaram Rajak, Aged About 49 Years R/o Village Mahmand, Police Station Torwa, Tahsil And District Bilaspur Chhattisgarh.
2. Manharan Lal Nirmalkar, S/o Late Budhram, Aged About 57 Years R/o Village Mahmand, Police Station Torwa, Tahsil And District Bilaspur Chhattisgarh.
3. Smt. Neeta Nirmalkar, W/o Late Dilharan Nirmalkar, Aged About 45 Years R/o Village Mahmand, Police Station Torwa, Tahsil And District Bilaspur Chhattisgarh.
4. Dipendra Nirmalkar, S/o Late Dilharan Nirmalkar, Aged About 24 Years R/o Village Mahmand, Police Station Torwa, Tahsil And District Bilaspur Chhattisgarh.
5. Aanchal Nirmalkar, D/o Late Dilharan Nirmalkar, Aged About 22 Years R/o Village Mahmand, Police Station Torwa, Tahsil And District Bilaspur Chhattisgarh.
6. Alka Nirmalkar, D/o Late Dilharan Nirmalkar, Aged About 19 Years R/o Village Mahmand, Police Station Torwa, Tahsil And District Bilaspur Chhattisgarh.
7. Naveen Nirmalkar, S/o Late Dilharan Nirmalkar, Aged About 15 Years Through Next Friend Mother Smt. Neeta Nirmalkar, Aged About 45 Years, W/o Late Dilharan Nirmalkar, R/o Village Mahmand, Police Station Torwa, Tahsil And District Bilaspur Chhattisgarh.....Defendants.
8. Smt. Katika Nirmalkar, D/o Late Budhram, Aged About 53 Years W/o Mayaram, R/o Village Amsena, Tahsil Takhatpur, District Bilaspur Chhattisgarh.
9. State Of Chhattisgarh Through Collector Bilaspur, District Bilaspur Chhattisgarh.

---- Respondents

For Appellant:	Shri Ratnesh Kumar Agrawal, Advocate.
For Respondent No.1 to 8:	Shri Akash Shrivastava, Advocate.
For State/Respondent No.9:	Shri Udhaw Sharma, G.A.

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

Order on Board

22.01.2021

1. This appeal has been preferred by the Plaintiff under Order 43 Rule 1(r) of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'CPC') questioning the propriety of the order dated 03.11.2020 passed by Second Additional District Judge, Bilaspur(C.G.) in Civil Suit No.28-A/2020, whereby the learned trial Court has rejected the Plaintiffs' application for grant of temporary injunction filed under Order 39 Rule 1 & 2 read with Section 151 of CPC. The parties to this appeal shall be referred hereinafter as per their description in the trial Court.

2. Briefly stated the facts of the case are that the Plaintiff instituted a suit claiming specific performance of contract along with the relief of general partition by submitting *inter alia* that an agreement to sale was executed in his favour by defendant No.1 on 31.03.2016 agreeing to alienate him one third of her interest of the property in question bearing Khasra No.88 and 87 admeasuring 0.409 hectare and 0.287 hectare situated at Mahmand Tehsil and District Bilaspur, which are recorded in the joint name of her along with her brothers Manharan and Dilharan, the predecessor-in-interest of Defendants No.3 to 7. It was agreed to be sold at the rate of Rs.20,000/- per decimal upon receiving the earnest amount of Rs.1,50,000/-. According to the Plaintiff, the said defendant has received further sum of Rs.10,000/- from him in pursuance of the alleged agreement to sale on 31.04.2017, while Rs.40,000/- on 03.05.2019. Further contention of him is that since it was recorded in the joint name, therefore, a partition proceeding enumerated under Section 178 of the Chhattisgarh

Land Revenue Court, 1959, was initiated by her before the Court of Tehsildar, Bilaspur registered as Revenue Case No.48/A-27/2013-14 so as to alienate her specific one third share of it. In the said proceeding, an order was passed on 04.12.2018 by the Tehsildar directing for recording the suit land in the name of her brothers, namely, Manharan, Dilharan and Dileshwar. It is contended further by the Plaintiff that an appeal preferred against it by defendant No.1 was withdrawn in order to frustrate the claim of him. Therefore, he has been constrained to institute the suit in the instant nature, along with an application for grant of temporary injunction restraining the defendants from creating any third party interest with regard to the land in question pending decision of the suit.

3. In reply to the aforesaid application, defendants No.1 to 7 have denied the execution of the alleged agreement to sale by submitting *inter alia* that defendant No.1 has taken a loan amount from him and for its security, the plaintiff has obtained her signature/thumb impression on blank stamp papers and despite the refund of loan amount it has not been returned and by creating a forged document, the claim in the instant nature has been made.

4. The trial Court, after considering the prima facie materials available on record, observed that since the property in question is the joint family property, therefore, if the injunction with regard to one third share of defendant No.1 is granted, then in the said event, it would cause an inconvenience to the defendants. It observed further that in absence of any material showing that defendants are trying to alienate the same since the date of the execution of the alleged agreement to sale, it cannot be said that the three essential ingredients are in his favour, so as to entitle a

temporary injunction and, in consequence rejected the said application.

5. Learned counsel for the Appellant submits that the trial Court has erred in rejecting the plaintiffs' application filed under Order 39 Rule 1 & 2 by observing *inter alia* that if injunction has been granted with regard to one third share of defendant No.1 in respect of the joint family property then in the said condition, it would cause inconvenience to the defendants for the utilisation of their interest over the joint family property, is apparently contrary to law. While referring to the alleged agreement to sale dated 31.03.2016 and 03.05.2019, it is contended by him that defendant No.1 has received the considerable amount from him in pursuance of those agreements, therefore, in the event of its alienation pending decision of the suit would cause an irreparable injury to him.

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

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

8. From perusal of the record, it appears that the plaintiff's claim as made was based upon the alleged agreement to sale dated 31.03.2016, purported to have been executed in his favour by defendant No.1 with regard to the undivided one third of her interest. However, in view of the nature of the property, unless and until, partition is effected, the plaintiff, being a stranger, cannot set up his interest merely based upon the same. That apart, the execution of the alleged agreement to sale has been denied by the defendants. According to them, the signature/thumb impression of defendant No.1 was obtained by the plaintiff on blank stamp papers on the pretext to secure the loan amount which she had received

from him. The alleged agreement to sale has, thus, been denied specifically by the defendants and in order to establish the execution of it, affidavit of one of its attesting witnesses Mr. Bahoran was filed by the Plaintiff, but he has not stated anything regarding the execution of it. As such, it cannot be said at this stage that it was an agreement to sale as alleged by the Plaintiff. In view of such circumstances, I do not find any prima facie case which exists in his favour so as to restrain the defendants from creating any third party interest with regard to the joint family property, pending decision of the suit. The trial Court has, therefore, not committed any illegality in rejecting the said application.

9. In view of above, I do not find any substance in this appeal. The appeal is accordingly dismissed at admission stage itself. No order as to costs.

Sd/-

(Sanjay S. Agrawal)
JUDGE