

1
**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR
BEFORE**

HON'BLE SHRI JUSTICE RAJENDRA KUMAR-IV

ON THE 4th OF JANUARY, 2024

MISC. PETITION No. 7769 of 2023

BETWEEN:-

SNEHA JAIN D/O SHRI SANJAY JAIN, AGED ABOUT 20 YEARS, OCCUPATION: STUDENT, R/O OPPOSITE OF GUPTA JEWELLERS, SADAR BAZAAR BHIND, TEHSIL AND DISTRICT BHIND (MADHYA PRADESH)

.....PETITIONER

(SHRI N. K. GUPTA, SENIOR ADVOCATE WITH SHRI Y.P.S. RATHORE - ADVOCATES)

AND

- 1. LAXMINARAYAN JAIN S/O LATE SHRI RAMSWAROOP JAIN, AGED ABOUT 70 YEARS, R/O GUPTA JEWELLERS, SADAR BAZAR BHIND, TEHSIL AND DISTRICT BHIND (MADHYA PRADESH)**
- 2. ANIL KUMAR JAIN, S/O SHRI LAXMINARAYAN JAIN, AGED ABOUT 50 YEARS, R/O GUPTA JEWELLERS, SADAR BAZAR, BHIND (MADHYA PRADESH)**

.....RESPONDENTS

(NONE)

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This petition coming on for hearing this day, the court passed the following:

ORDER

Heard learned counsel for petitioner and perused the record.

Challenge is made to the order dated 30.11.2023 passed by First District Judge, Bhind in MCA/40/2023 & also to the order dated 25.04.2023 passed by First Civil Judge Class-I, Bhind M.P. in Civil Suit No.230-A/2022.

Brief facts giving rise to present petition are as under :-

Plaintiff/petitioner herein filed a Civil suit No. 230-A/22 against defendants/respondents for seeking declaration and permanent injunction over the property in question alleging that property in question is the ancestral property and it is the property of the Joint Hindu Family. She has equal right in the property with defendant no.3 Sanjay Jain and being his daughter, she claims that defendants/respondents no.1 & 2 be restrained from alienating the property and interfering in her peaceful possession.

The application under Order 39 Rule 1 & 2 of CPC was also filed by her for ad-interim relief.

Suit was contested by the defendants/respondents no.1 & 2 by mainly submitting that a case No.41/2014 (Sanjay Kumar Jain Vs. Laxmi Narayan Jain) has been decided on 12.01.2015 on the basis of compromise and consented decree was passed and property has already been divided among the share holders. It was also contended that property in question was no longer the joint property after partition and plaintiff was at liberty to get the division from her father's land. It was further contended in objection that house in question is very old and in dilapidated condition and it can fall at any time.

It is further stated in the objection that defendant/respondents are not going to dispose of the property. Since, father of the petitioner Sanjay Kumar Jain is a dis-honest/fraud person that is why he made her daughter to file the suit on the wrong and false grounds. Plaintiff has no prima facie title in his favour and balance of convenience and irreparable loss is not in favour of the plaintiff.

Learned counsel for petitioner submits as under :-

"1.) That, petitioner has filed exhibit-P/6 order passed in civil suit no.41/2014 which shows that a collusive suit was filed by Sanjay Kumar Jain on 14.10.2014

against his father and two brothers and the parties submitted compromise application before the trial Court on 27.11.2014 and the learned trial court passed the compromise decree on 12.01.2015. Mere perusal of the memorandum of family arrangement wherein it is admitted by the parties in line no.3 that the property in dispute is the ancestral property of the parties. In this compromise plaintiff was not party and once it is admitted fact that the property in dispute is the ancestral property, the plaintiff being Class-I heir of defendant no.3 Sanjay Jain is having right by birth in the property and she cannot be ousted or debarred from the share in the property hence, the rejection of application for grant of temporary injunction by both the courts below is without considering the admitted fact between the parties that the property is ancestral property in the hands of Laxminarayan i.e grandfather of the plaintiff and the plaintiff being Class-I heir/coparcener is having right by birth.

2.) Relying upon the decision of the Baital Singh and others Vs. Shrilal and others, 2007(4) MPLJ, 477, he submits that plaintiff was not party to the compromise decree, she is not bound by the same and one coparcener cannot alienate his interest without consent of other coparcener.

3.) That, in the memorandum of family arrangement which is filed in civil suit no.41A/2014 which is part of the decree of the trial court as per compromise application page -62 para- 3(c) and as per decree page-60, mere perusal of the document last para at page-66 it is evident that it was agreed upon between the parties I,J,K,L portion at first floor was given Sanjay Jain and further rider was put that this portion cannot be alienated as the parties were residing jointly in the same house. This also shows that all the members are residing in the house and the same cannot be dismantled and further cannot be alienated in part by either party hence, the courts below committed error of law while

rejecting the application for grant of temporary injunction which is liable to be set aside."

Court below, in its order dated 25.4.2023 returned its finding that an agreement filed by defendants/respondents reveals that petitioner's father Sanjay Jain executed an agreement to sale in favour of defendants/respondents, taking 12 Lakhs rupees. Execution of that agreement to sale has not been denied. Court did not find prima facie case in favour of the plaintiff/petitioner. Balance of convenience and irreparable loss were also not found in her favour. Trial Court dismissed the application filed by plaintiff/petitioner under Order 39 Rule 1 & 2 CPC. There against plaintiff filed Miscellaneous Civil Appeal before District Judge, Bhind which came to be transferred and decided by First District Judge, Bhind by its order dated 30.11.2023. Miscellaneous Civil Appeal No.40/23 has also been dismissed by First District Judge, Bhind. Both the orders are impugned in the present petition.

Perusal of record shows that Mr. Sanjay Jain, father of plaintiff/petitioner Sneha Jain, had filed the suit against the respondents which came to be decided on the basis of compromise and father of petitioner got the property of his share. He executed an agreement to sale after taking 12 Lakh rupees in favour of the respondents, now he has to execute a sale-deed in favour of the respondents, but he did not want to execute a sale-deed and he made her daughter to file the suit for declaration and injunction. If the plaintiff has any right in the property, she has to get the property from her father. Plaintiff has no prima facie case in her favour. If, injunction is not granted, she will not suffer any irreparable loss.

Court below and Lower Appellate Court rightly dismissed the application under Order 39 Rule 1 & 2 CPC and Miscellaneous appeal of plaintiff/appellant

respectively.

I do not find any good ground to grant indulgence in the matter.

In view of the above, Miscellaneous Petition fails and accordingly it is dismissed at admission stage.

**(RAJENDRA KUMAR-IV)
JUDGE**

Rohit

