

(2019) 08 CHH CK 0210

Chhattisgarh High Court

Case No: MA No. 78 Of 2015

Bharat Lal Das And Ors

APPELLANT

Vs

Netranand Sahu And Ors

RESPONDENT

Date of Decision: Aug. 30, 2019**Acts Referred:**

- Code Of Civil Procedure 1908 - Section 151, Order 39 Rule 1, Order 39 Rule 2, Order 43 Rule 1(r)
- Code Of Criminal Procedure, 1973 - Section 145, 146

Hon'ble Judges: Ram Prasanna Sharma, J**Bench:** Single Bench**Advocate:** Raghavendra Pradhan, Govind Ram Miri, Ravish Verma**Final Decision:** Dismissed

Judgement

Ram Prasanna Sharma, J

1. This appeal is preferred under Order 43 Rule 1 (r) of the Code of Civil Procedure, 1908 against the order dated 23-6-2015 passed by the Additional

District Judge, Sarangarh, District Raigarh (CG) in Civil Suit No. 06-A/2015 wherein the application under Order 39 Rule 1 & 2 read with Section 151

of CPC filed by the respondent was rejected.

2. A suit for declaration of title and permanent injunction was filed by the appellants/plaintiffs before the trial court regarding land bearing survey No.

381/1 area 56 decimal and survey No. 717/3 area 36 decimal situated at village Sankara, Revenue Circle Sariya, Tahsil Baramkela, District Raigarh on

the ground that the land was purchased by late Sanatan Das in the year 1965 but name of respondent No.2 was mentioned as purchaser in the sale

deed as she is wife of Sanatan Das. The land was allotted to appellants by Sanatan Das in partition but property in question was sold by respondent

No.2 in favour of respondent No.1 who tried to possess the land that is why suit was filed and an application for temporary injunction was also filed as

mentioned above, but the trial court dismissed the same contrary to legal aspect of the matter.

3. Learned counsel for the appellants would submit that the property in question was purchased by Sanatan Das. Though sale was executed in the

name of Urmila Bai the owner is Sanatan Das and appellants are legal heirs of Sanatan Das and they are title holders of the property by operation of

law. In the proceeding under Sections 145 & 146 of the Code of Criminal Procedure, 1973 Sub Divisional Magistrate delivered possession of the land

in question to one Bharat Lal, therefore, possession of respondent No.1 namely Netranand Sahu is not established prima facie. The order passed by

the trial Court is liable to be reversed.

4. On the other hand, learned counsel appearing for the respondents No. 1 and 2 would submit that the suit was filed in the year 2014 and the trial

court had to decide who was in possession of the suit land. On the date of filing of the suit, Urmila Bai who was owner of the land alienated the

property in favour of respondent No.1 Netranand who is in possession of the land. He would further submit that as per record Urmila Bai is owner of

the property and she had all the right to alienate the property in question. After execution of sale deed in favour of Natranand, said Netranand is title

holder of the property and he is in possession of the property. The trial Court is right in holding that injunction cannot be granted in favour of the

appellants. He placed reliance in the matter of Ramesh Vajabhai Rabari vs. Pratiksha Real Estate Private Limited and others (2014) 12 SCC 190,

Unique Alliance Industries, Goa vs. Anupama Agencies, Trichur and another AIR 1995 Kerala 52, National Airport Authority and others vs.

Vijayadutt AIR 1990 MP 326, Best Sellers Retail (India) Private Limited vs. Aditya Birla Nuvo Limited and others (2012) 6 SCC 792 and M/s.

Shivalik Power and Steel Pvt. Ltd., Raipur vs. M/s. Aujasya Agro Power Pvt. Ltd., Hyderabad 2006(4) MPHT 73 (CG)..

5. I have heard learned counsel for the parties and perused the record of court below including the judgment and decree.

6. Admittedly, Urmila Bai was recorded owner of the property in question, who executed the sale deed in favour of respondent No.1 Natrenand.

Affidavit was filed by Netranand and Chintamani. As per affidavit Netranand is in possession of the land in question. In support of affidavit he filed

document regarding sale of paddy in Kisaan society which shows that Netranand was in actual physical possession of the land in question and sown

paddy in the said land and after ripening the paddy he sold the same in Kisaan society. In rebuttal of the same, appellants side did not file any

document as to which kind of crop they sown in the field for establishing their actual physical possession.

7. Looking to the registered sale deed the trial court opined that prima facie case is in favour of Netranand and looking to the affidavit and other

relevant documents of cropping the paddy, the trial court recorded finding that Netranand is in possession of property in question that is why the trial

court declined to grant injunction in favour of the appellants. The trial Court discussed the entire oral and documentary evidence and finding of the trial

Court is based on relevant material placed on record and same is not based on irrelevant or extraneous material. After re-assessing the entire

evidence, this court has no reason to record a contrary finding.

8. Accordingly, the appeal is liable to be and is hereby dismissed.