

(2018) 09 CHH CK 0207
Chhattisgarh High Court
Case No: MA No. 31 Of 2017

Suraiya Begum And
Ors

APPELLANT

Vs

Abdul Halim Khan And
Ors

RESPONDENT

Date of Decision: Sept. 12, 2018

Acts Referred:

- Code Of Civil Procedure 1908 - Order 39 Rule 1, Order 39 Rule 2

Hon'ble Judges: Goutam Bhaduri, J

Bench: Single Bench

Advocate: K.A. Ansari, Vipin Singh, Manoj Paranjpe, Vikram Dixit, Aditya Tiwari, Ashutosh Pandey

Final Decision: Disposed Of

Judgement

Goutam Bhaduri, J

1. Heard.

2. The present appeal is against the order dated 06.01.2017 whereby an application filed by the plaintiffs/appellants under Order 39 Rule 1 & 2 CPC

was dismissed. It has been claimed that the appellants are the widow, son and daughter of the late Rafique Ahmed Khan and respondent No.1 Abdul

Halim Khan is the son of the cousin brother of Rafique Ahmed Khan through whom the plaintiffs are claiming their share. It is stated that Rafique

Ahmed Khan was resident of Nagpur and was looking after his agricultural land through his agent. It is stated that respondent No.1 got his name

mutated in some of the land, executed sale deed in favour of the respondent No.2 & 3, therefore, a suit was filed for cancellation of the sale deed and

declaration that they are the owner of the suit land.

3. Learned counsel for the appellants would submit that if the other third party interest is created in respect of the land, it would lead to multiplicity of the proceedings and in such case, the parties shall suffer irreparable injury if the suit is decreed in his favour and they would be deprived of their right.

4. Learned Court below has dismissed the application under Order 39 Rule 1 & 2 CPC by holding that the non-applicant No.1 Abdul Halim Khan was also a co- sharer as such possession of one co-sharer is treated as possession of other co-sharers. Learned Court below has further observed that the co-sharer has all the right to transfer his undivided interest under Transfer of Property Act, 1882 and refused the injunction. The facts, pleadings and the documents shows that both the parties i.e. the plaintiffs/appellants and the respondents are claiming right over the property to be the exclusive owner. The sale deed is admitted to be executed in favour of respondent No.2 & 3 Arjita Singh and Smt. Reena Gupta. Both the parties claim to be in possession of the land and in civil suit no possession is claimed. The fact of possession is to be adjudicated after the evidence is led on this issue. At this stage, considering the pleading of the parties and the documents, it is directed that the parties shall maintain status quo in respect of the suit property till the civil suit is decided on merits.

5. With such observation, the appeal stands disposed of.