



IN THE COURT OF DISTRICT JUDGE-1, & ASJ, GONDIA.

REG. CIVIL APPEAL NO. 46/2022
(CNR NO. MHGO010007882022)

CHETAN BAJAJ+1 -VS- MUKUNDRAO SONTAKE+12

ORDER BELOW EXH. 43

(Passed on this 05th day of March, 2026)

Appellants/original defendants of RCS No. 13/2019 has filed this application invoking order 39 rule 1 & 2 of C.P.C., 1908 claiming temporary injunction against the respondents/original plaintiffs of the said suit to the effect that pending hearing and final decision of this appeal, the respondents/original plaintiffs be restrained from creating any third party interest qua the property bearing plot No. 1069, sheet No. 61-A, area 111.5 sq. meter, situated at Fulchur Road, Gondia.

2. For the sake of brevity, parties to the present appeal are referred to as per their original status before learned trial court. In so far as, the property in question is concerned, the same is referred to as the said suit property for the sake of brevity.

3. Defendants of RCS No. 13/2009 have challenged the judgment and decree dated 05/04/2022 passed by 4th Joint Civil Judge Junior Division, Gondia by which counter claim filed by the defendants vide Exh.80 claiming title is dismissed and that claim made by plaintiff Nos. 1 to 13 is granted.

4. Defendants have mainly contending that they have disputed plaintiffs' claim of title over the suit property. In fact according to the defendants, no sale deed in respect of the said suit property was ever executed in favour of the plaintiffs on behalf of defendants and or their ancestrals. Further, the defendants have specifically contended that they are in possession of the said suit property. In fact, in that view of the matter, defendants have also pleaded theory of adverse possession. In short, plaintiffs' claim regarding possession of suit property is also disputed by the defendants.

5. In other words, according to defendants, there is cloud over the plaintiffs' title vis a vis the subject suit property. Similarly, according to defendants, plaintiffs' claim of possession is also in dispute. As such, according to the defendants, as observed in judgment of *Anathulla Sudhakar - Vs- B. Buchi Reddy (Dead) by LRs and others, (2008) 4 SCC 594*, the plaintiffs' ought to have prayed for declaration and

also for relief of possession over the subject suit property. In other words, defendants have sanguine hope of success in the present appeal.

6. However, in the instant case, pending this appeal, abruptly plaintiff No.1 has moved an application for deletion of plaintiff Nos. 2 to 13 vide Exh.20. The said application is disposed of on 24/04/2025. That apart, vide Exh.39 learned advocate for the defendants has pointed out that as per Order VI Rule 14(A)(3) of C.P.C., 1908, the respondents No. 4, 5, 6, 7, 8, 9, 10 & 11 are duly served at their last known registered address. Respondent Nos. 2 & 3 have expired before passing of impugned judgment and decree in RCS No. 13/2009. Learned advocate for defendants has stated that the plaintiff No.1 has filed on record pursis disclosing names of legal representative of deceased/plaintiff No.3 who died during pendency of suit itself.

7. However, according to defendants for reasons best known to the said plaintiffs, the said plaintiffs are not giving reply to application Exh.39. Further, learned advocate for defendants has also pointed out that plaintiffs are intending to create third party interest vis a vis the said suit property and therefore, by avoiding to file reply to application Exh.39 that the plaintiffs are intending to create third party interest qua

the said suit property by prolong hearing of appeal at the stage of reply to application Exh.39. As such, very purposefully the plaintiffs have avoided to file reply to application at hand.

8. Under these circumstances, defendants have come forward with application at hand specifically stating in para No.6 that the plaintiffs are attempting to create third party interest with reference to the subject suit property. It is submitted that in the event such third party interest is created, it will lead to multiplicity of litigation and that the same will also result in causing irreparable injury to the present defendants.

9. On careful perusal of record and proceeding of appeal at hand will demonstrate that prima facie, the plaintiffs are avoiding to file reply to application Exh.39. Further, it is to be noted that on 02/03/2026 though say of plaintiffs, was called upon on application at hand (Exh.43), today reply is not filed. In fact, plaintiff No.1, his advocate and also other plaintiffs are not present in the court. Rather, the said plaintiff No.1 has filed on record application for adjournment for filing reply to application Exh.39.

10. As such, at this stage it appears that plaintiffs are

intentionally prolonging to file reply to application Exh.39 and also application at hand. Prima facie, therefore, it can be seen that apprehension expressed by the defendants that plaintiffs intend to complicate the matter by creating third party interest at this stage seems to be well founded. In that view of the matter, prima facie it appears that defendants have demonstrated existence of prima facie case in their favour and also urgency that if ad-interim protection as is pressed in to service as on today on the basis of not filing of reply by the plaintiffs, is not granted then defendants will suffer irreparable injury. As such, it is necessary to issue fresh notice of hearing of application Exh.43 at hand to the plaintiffs. Similarly, in view of urgency demonstrated by the advocate for the defendants, interim protection as is pressed in to service by the defendants is also necessary till the returnable date. Hence, the following order.

ORDER

Issue notice of hearing of application Exh.43 at hand to the respondents/original plaintiffs, made returnable on 18/03/2026.

2. Till the returnable date, respondents/original plaintiffs will not create any third party interest qua the subject suit property and further will maintain the existing status quo as on today.

3. Accordingly, fix this matter for hearing on 18/03/2026.
4. Further, defendants/appellants are directed to comply with Rule 3 of Order 39 of C.P.C., 1908 and accordingly file affidavit.

Gondia.
Dated: 05.03.2025.

(A. S. Pratinidhi)
District Judge-1 & ASJ,
Gondia.