

HIGH COURT OF CHHATTISGARH, BILASPUR

First Appeal No.77 of 2024

*(Arising out of judgment and decree dated 23-3-2024 passed by the 1st
Additional District Judge, Durg in Civil Suit No.38-A/2021)*

Smt. Bharti Gupta, W/o Late Vijay Singh Gupta, aged about 73 years,
R/o Kachari Road, Behind Dainik Bhaskar Office, Behind Old Police
Station Durg, Tahsil & District Durg (CG)

(Def. No.2)
---- Appellant

Versus

1. Dr. Sonali Tanwar (Nalini Gupta), D/o Late Ajit Singh Gupta & wife of Dr.
Mohit Tanwar, aged about 51 years, R/o Smriti Nagar, Bhilai, Tahsil &
District Durg (CG)

(Plaintiff)

2. Sriram Developers, through its proprietor Smt. Kamla Bai Sahu, W/o
Shri Tamradhwaj Sahu, aged about 69 years, R/o Meenakshi Nagar,
Potiyakala, Durg, Tahsil & District Durg (CG)

(Def. No.1)

3. State of Chhattisgarh, through the Collector/Ex-officio Secretary, Durg,
Tahsil & District Durg (CG)

(Def. No.3)
---- Respondents

For Appellant / Defendant No.2:-

Mr. B.P. Sharma and Mr. M.L. Sakat, Advocates.

For Respondent No.1 / Plaintiff: -

Mr. Ashish Surana, Mr. Chetan Singh Chauhan and
Mr. Prashant Gupta, Advocates.

For Respondent No.3 / State: -

Mr. Vivek Mishra, Panel Lawyer.

Division Bench: -

Hon'ble Shri Sanjay K. Agrawal and
Hon'ble Shri Sanjay Kumar Jaiswal, JJ.

Order On Board
(16/07/2024)

Sanjay K. Agrawal, J.

1. This order shall govern the disposal of I.A.No.1/2024, application under

Order 41 Rule 5 of the CPC.

2. This first appeal under Section 96 of the CPC has been preferred by the appellant herein / defendant No.2 being the seller questioning the impugned judgment & decree passed by the trial Court by which the decree for declaration of title has been passed in favour of the plaintiff / respondent No.1 herein and further it has also been held that the sale deed dated 8-9-2021 executed by defendant No.2 in favour of defendant No.1 is null and void and orders of the revenue court passed by the Sub-Divisional Officer, Durg & the Commissioner, Durg Division, Durg dated 8-3-2021 & 2-9-2021 have also been declared null and void and not binding, and the defendants are restrained from construction / mutation in their name and interference with the possession of the plaintiff. In addition to the above, it has also been held in favour of the plaintiff and against defendant No.1 that, if defendant No.1 has obtained possession pursuant to the sale deed dated 8-9-2021, it be returned back to the plaintiff.
3. In this appeal, an application under Order 41 Rule 5 of the CPC has also been filed on behalf of the appellant herein / defendant No.2 stating that the plaintiff / respondent No.1 herein has made an application for mutation of her name in respect of the suit property and notice has been issued to the defendants and a prayer has been made for directing parties to maintain status quo in relation to the suit property till the final disposal of appeal.
4. The plaintiff / respondent No.1 herein has filed reply to the application under Order 41 Rule 5 of the CPC stating that she has rightly been declared owner and title holder of the suit property and even if mutation

is done by the Tahsildar, no harm will be caused to the defendants. Further, in para 7 of the reply, it has been stated that the plaintiff is not alienating the suit property, it is defendant No.2 who has transferred the suit property by different transfer deeds, different area to different persons during the pendency of revenue proceedings before the revenue court and therefore prayer has been made to reject the application.

5. We have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record carefully and thoroughly as well.
6. At the outset, it is pertinent to mention here that during the pendency of suit, on the application filed by respondent No.1 herein / plaintiff, an order of temporary injunction was passed in her favour by order dated 10th August, 2022 restraining the defendants from construction / mutation / transfer and any interference with respect to the suit land which remained in operation during the pendency of suit. The trial Court after appreciating oral and documentary evidence on record held that the plaintiff is the title holder of the suit property and consequential orders have also been passed restraining construction / transfer / interference with the possession of the plaintiff. The submission of the appellant herein / defendant No.2 is that the plaintiff has made application for mutation on the basis of decree in her favour, the notice of which has been received as Annexure 'A', and prayed for staying the decree as well as maintenance of status quo.
7. After having heard learned counsel for the parties and after going through the record, since appeal has been admitted and pending

consideration, the order of mutation, if any, shall be subject to the final outcome of this appeal. However, as per the statement made by the plaintiff that she is not alienating the suit property, as stated in para 7 of her reply to the application under Order 41 Rule 5 of the CPC, it is directed that the plaintiff will not alienate the suit property till the final disposal of this first appeal.

8. In the aforesaid terms, the application under Order 41 Rule 5 of the CPC stands finally disposed of.

Sd/-
(Sanjay K. Agrawal)
Judge

Sd/-
(Sanjay Kumar Jaiswal)
Judge