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HIGH COURT OF CHHATTISGARH, BILASPUR

First Appeal No.87 of 2024

*(Arising out of judgment and decree dated 23-3-2024 passed by the 1st
Additional District Judge, Durg in Civil Suit No.37-A/2021)*

Smt. Bharti Gupta, W/o Late Vijay Singh Gupta, aged about 72 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 A/32, Cross Street No.5, Smriti
Nagar, Bhilai, Tahsil & District Durg (CG)
(Plaintiff)
2. Maa Karma Properties (PAN No.ABPF4730R), Office Address: Opposite
BJP Office, Near Tahsil Office, Durg, through its Partner Dwarka Pallava
Sahu, R/o Milpara Ward No.38, Durg, Tahsil & District Durg (CG)
(Def. No.1)
3. State of Chhattisgarh, through the Collector/Ex-officio Secretary, Durg,
Tahsil & District Durg (CG)
4. Rajendra Sahu, S/o Dwarika Sahu, aged 54 years, R/o Milpara, Durg,
Tahsil & District Durg (CG)
5. Rahul Sharma, S/o Late Shankarlal Sharma, aged about 33 years, R/o
Ganjpara, Durg, Tahsil & District Durg (CG)
(Def. No.3 to 5)
---- 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.

AND

First Appeal No.137 of 2024

1. Maa Karma Properties, PAN No.ABPF4730R, In front of BHAJPA Office,
Near Tahsil Office, Partner Dwarika Pallav Sahu, S/o Dilip Kumar Sahu,

(F.A.Nos.87/2024 & 137/2024)

aged about 27 years, R/o Milpara Ward No.38, Durg, Tahsil & District Durg (CG)

(Defendant No.1)

2. Rajendra Sahu, S/o Dwarika Prasad Sahu, aged about 54 years, R/o Milpara, Durg, Tahsil & District Durg (CG)

(Defendant No.4)

3. Rahul Sharma, S/o Late Shankarlal Sharma, aged about 33 years, R/o Ganjpara, Durg, Tahsil & District Durg (CG)

(Defendant No.5)

---- Appellants

Versus

1. Dr. Sonali Tawar (Nalini Gupta), aged about 51 years, D/o Late Ajit Singh Gupta, W/o Dr. Mohit Tawar, R/o A/32, Cross Street No.5, Smriti Nagar, Bhilai, Tahsil & District Durg (CG)

(Plaintiff)

2. Smt. Bharti Gupta, Wd/o Late Vijay Singh Gupta, aged about 72 years, R/o Beside of Dainik Bhaskar Office, Kachahari Road, Behind Old Police Station, Durg, Tahsil & District Durg (CG)

(Defendant No.2)

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

(Defendant No.3)

---- Respondents

For Appellants / Defendants No.1, 4 & 5:-

Mr. S.C. Verma, Senior Advocate with Ms. Neelam Jaiswani, Advocate.

For Respondent No.1 / Plaintiff: -

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

For Respondent No.2 / Defendant No.2:-

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

(F.A.Nos.87/2024 & 137/2024)

Order 41 Rule 5 of the CPC filed in both the appeals.

2. Since the aforesaid two appeals have arisen from the same impugned judgment and decree, they have been clubbed together and heard together and common order is being passed in the applications under Order 41 Rule 5 of the CPC filed in both the appeals.
3. F.A.No.87/2024 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 29-7-2021 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 defendants No.4 & 5 that, if defendants No.4 & 5 have obtained possession pursuant to the sale deed dated 29-7-2021, it be returned back to the plaintiff.
4. Similarly, F.A.No.137/2024 has been filed by the purchasers / defendants No.1, 4 & 5.
5. In these appeals, applications under Order 41 Rule 5 of the CPC have 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

(F.A.Nos.87/2024 & 137/2024)

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.

6. 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.
7. 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.
8. 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, by the impugned judgment & decree 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

(F.A.Nos.87/2024 & 137/2024)

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 and also for staying effect and operation of the impugned decree.

9. 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 / respondent No.1 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 / respondent No.1 will not alienate the suit property till the final disposal of this first appeal.
10. So far as decree for mandatory injunction is concerned, the trial Court has granted conditional decree that if defendants No.4 & 5 have obtained possession, then they will return the possession to the plaintiff. Since this relief is conditional upon the defendants being in possession of the subject land, defendants No.4 & 5 would be at liberty to move a fresh application for staying the decree if the application for execution is filed by the plaintiff stating that she is not in possession and other defendants are in possession.
11. In the aforesaid terms, the applications under Order 41 Rule 5 of the CPC in both the appeals stand finally disposed of.

Sd/-
(Sanjay K. Agrawal)
Judge

Sd/-
(Sanjay Kumar Jaiswal)
Judge