

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SHRI JUSTICE G. S. AHLUWALIA

ON THE 2nd OF AUGUST, 2024

MISC. PETITION No. 4060 of 2023

AHAMAD KHAN AND OTHERS

Versus

BHASKAR DDATT PANDEY AND OTHERS

Appearance:

Shri Shitla Prasad Tripathi- Advocate for petitioners.

ORDER

This petition under Article 227 of Constitution of India has been filed seeking the following reliefs:-

“(1) यह कि अपील न्यायालय द्वारा पारित आलोच्य आदेश दि.18.04.2023 दस्तावेज क्र. पी-26 एवं विचारण न्यायालय द्वारा पारित आदेश दि.3.11.2022 दस्तावेज क्र. पी-24 पूर्णरूपेण अपास्त किया जाए एवं तदानुसार यह याचिका पूर्णरूपेण सव्यय स्वीकार की जाए।

(2) यह कि प्रकारण की परिस्थितियों के अनुसार याचिकाकर्तागण के पक्ष में एवं प्रत्यर्थागण/वादीगण के विरुद्ध अन्य उचित आदेश पारित किए जाएं।

(3) यह कि प्रत्यर्थागण/वादीगण से याचिकाकर्तागण को याचिका व्यय दिलाया जाए।”

2. It is submitted by counsel for petitioners that by order dated 18.4.2023 passed in Miscellaneous Civil Appeal No. 200/2022, the 4th District Judge Rewa has affirmed the order dated 03.11.2022 passed by 9th Civil Judge Junior Division Rewa in C.S. No. 302A/2015 by which the petitioners have been restrained from raising a construction over the land purchased by them.

3. It is submitted by counsel for petitioners that the suit was instituted by respondents in the year 2012 for declaration of title, partition, permanent injunction as well as for declaration of Will dated

20.04.2002 and 20.12.2011 as null and void as well as for declaration of mutation on the basis of Will is bad. Furthermore, to declare the sale-deed dated 10.05.2012, executed by defendants No. 1 and 2 namely Smt. Vandana Pandey and Smt. Sudha Pandey in favour of Mohd. Sahid Ansari on 10.05.2012 as null and void and also for declaration of mutation on the basis of sale-deed as null and void. It is submitted by counsel for petitioners that Mohd. Sahid Ansari executed a sale-deed in respect of part of land in dispute in favour of Jagat Pal Singh on 20.10.2015. Thereafter, Jagat Pal Singh executed a sale-deed in respect of petitioner No. 1 on 01.06.2021. Thereafter, petitioner No. 1 executed a sale-deed in favour of petitioner No. 2 on 06.12.2021. Similarly, petitioner No. 1 also executed a sale-deed in favour of petitioner No. 3 on 06.02.2022. It is submitted by counsel for petitioners that since petitioners No. 2 and 3 are the *bonafide* purchasers, therefore, restraining them from raising construction over their own piece of land would cause irreparable loss to them and thus both the Courts below committed a material illegality by passing an order of temporary injunction, thereby, restraining the petitioners for raising the construction. It is further submitted by counsel for petitioners that earlier by order dated 15.05.2014, the 6th Civil Judge Class-II, Rewa issued a temporary injunction order which was to remain in force for a period of one year or till the final disposal of the suit, whichever is earlier and the defendants were restrained from creating a third party right interest. Thereafter, as the temporary injunction order was not extended, therefore, Mohd. Sahid Ansari, executed a sale-deed in favour of Jagat Pal Singh on 20.10.2015. It is submitted that at that time no temporary injunction was there because the temporary injunction order dated 15.05.2014 was not extended and had over lived its life of one year.

Thereafter, on 12.01.2016, a fresh temporary injunction order was issued which was to remain in force for a period of six months. On 01.06.2021, Jagatpal Singh executed a sale-deed in favour of Ahmad Khan and subsequently Ahmad Khan executed different sale-deeds in favour of petitioners No. 2 and 3. Thus, it is submitted that the sale transactions took place when the temporary injunction order was not in force, therefore, the petitioners cannot be restrained from raising construction. It is further submitted that the important question which require adjudication is as to whether the temporary injunction order would automatically get extended or in absence of any extension order, the temporary injunction order which had a limited life would automatically come to an end.

4. Heard learned counsel for petitioner.

5. During the course of arguments, two queries were raised to the counsel for petitioners i.e.

1. Whether the provisions of Section 52 of Transfer of Property Act would apply to the sale-deeds which were executed during the pendency of the suit; and

2. Whether a specific piece of land forming part of allegedly Joint Hindu Family property can be alienated?

6. It is submitted by counsel for petitioners that both the queries are irrelevant and whereas the fact of the case is that there was no temporary injunction order on the day when the sale-deeds were executed, therefore, the balance of convenience is in favour of the petitioners and in case, if they stopped from raising construction, then they would not be able to enjoy the valuable fruits of their property.

7. Section 52 of Transfer of Property Act reads as under:-

"52. Transfer of property pending suit relating

thereto.—During the pendency in any Court having authority within the limits of India excluding the State of Jammu and Kashmir or established beyond such limits by the Central Government of any suit or proceedings which is not collusive and in which any right to immoveable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose."

8. From the plain reading of this section it is clear that if any property is alienated during the pendency of the suit, then said sale-deed would not be a void sale-deed but the effect of the provision is that the purchaser of the property sold during the pendency of the suit would be bound by the decree irrespective of the fact whether he was later on impleaded as a party or not. In the nutshell it can be said that the purchaser of the property during the pendency of the suit cannot claim that he is a necessary party in the pending suit.

9. Thus, if any sale-deed has been executed by petitioner No. 1 in favour of petitioners no. 2 and 3 during the pendency of the suit, and even if there was no temporary injunction order, still the said sale-deeds would be subject to the provisions of section 52 of Transfer of Property Act.

10. Now the only question for consideration is as to whether a specific piece of land of a property which is allegedly a Joint Hindu Family Property can be alienated or not?

11. According to the petitioner the property in dispute was the self acquired property of Vindeshwari Prasad Pandey. During his life time, Vindeshwari Prasad Pandey executed a Will in favour of his second

wife, who in her turn executed a Will in favour of Vandana Pandey and Smt. Sudha Pandey, defendants No. 1 and 2. Smt. Vandana Pandey and Smt. Sudha Pandey, alienated a part of the property to Shri Mohd. Sahid Ansari by sale deed dated 10.05.2012.

12. It is the case of the plaintiffs / respondents that the property in dispute is the ancestral property and no partition has taken place, therefore, each legal heir of Shri Vindeshwari Prasad Pandey has equal share in the property. The sale-deed executed by Smt. Vandana Pandey and Smt. Sudha Pandey in favour of Mohd. Sahid Ansari is also under challenge in the Civil Suit.

13. It is not out of place to mention here that Shri Mohd. Sahid Ansari alienated the property which has been ultimately purchased by the petitioners. If the suit is decided and if it is held that Wills executed by Shri Vindeshwari Prasad Pandey in favour of his second wife and the Will executed by second wife in favour of defendants No. 1 and 2 namely Smt. Vandana Pandey and Smt. Sudha Pandey are null and void and if it is held that the property in dispute is Joint Hindu Family Property or Co-parcenary property, then a different situation would arise. Although a coparcener or co-sharer can alienate to the extent of his share but he cannot alienate any specific piece of land. Therefore, at the most the petitioners can be said to have purchased a share of coparceners/Co-sharer still they are not entitled for any specific piece of land.

14. Under these circumstances, both the courts below have restrained the petitioners from raising construction over the disputed piece of land, therefore, it cannot be said that the Courts below have committed any material illegality by passing such a temporary injunction order.

15. As no jurisdictional error was committed by the trial Court as well

as the Appellate Court, accordingly, no case is made out warranting interference.

16. The petition fails and is hereby **dismissed**.

(G.S. AHLUWALIA)
JUDGE

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