



HIGH COURT OF CHHATTISGARH, BILASPUR
Order Sheet

FA No. 74 of 2021

1. Krishna Kumar Gupta S/o Late Thakurdin Gupta, Aged About 68 Years (wrongly mentioned as 65 years in Cause Title) R/o. Schoolpara Ward, Baikunthpur, District Korea Chhattisgarh.
2. Ritesh Kumar Gupta, S/o Krishna Kumar Gupta, Aged About 44 Years (not mentioned by plaintiffs in cause title), R/o. Schoolpara Ward, Baikunthpur, District Korea Chhattisgarh, at present R/o. Kanpur (Uttar Pradesh).

---- Appellants/Defendants No. 1 & 2

Versus

1. Durga Prasad Gupta S/o Late Thakurdin Gupta, Aged About 60 Years R/o Schoolpara Ward, Baikunthpur, District Korea Chhattisgarh.
2. Hetram Gupta, S/o Late Thakurdin Gupta, Aged About 58 Years R/o. Schoolpara Ward, Baikunthpur, District Korea Chhattisgarh.
3. State Of Chhattisgarh Through Collector, Korea, District Korea Baikunthpur Chhattisgarh.

----Respondents/Plaintiffs

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15.09.2021	Shri Bhaskar Payashi, counsel for the Appellants. Shri Hari Agrawal appears on behalf of Respondent No.2, on caveat. Smt. Smita Jha, P.L. for the State/Respondent No.3. Heard on admission. Admit. Issue notice to Respondent No.1 only, on payment of P.F., as per rules. Also heard on I.A. No.01/2021, an application filed under Order 41 Rule 5 read with Section 151 of the Code of Civil Procedure, 1908, praying for staying the effect and operation of the impugned judgment and decree dated 24.08.2021 passed by the Additional District Judge, Korea, Baikunthpur, District Korea (C.G.) in Civil Suit No.1-A/2019 pending decision of this appeal and, praying further that the Respondents be directed to maintain the status quo with regard to the property in question and also for issuance of direction restraining the Respondents No. 1 and 2 from creating third party interest with regard to the suit property. Learned counsel for the Appellants submits that by virtue of the registered deed of sale dated 26.03.2012, registered on 30.06.2012, Defendant No.2-



Ritesh Kumar Gupta acquired his interest over the property in question bearing Khasra No.157, admeasuring 0.971 hectare and Khasra No.165, admeasuring 0.344 hectare, which has, however, been declared as null and void by the trial Court by observing, *inter-alia*, that the registered deed of Power of Attorney, dated 13.09.1985 based upon which the alleged sale was executed, was cancelled subsequently on 03.01.1989, and therefore, Defendant No.1-Krishna Kumar Gupta was not authorised to alienate the same. However, no written communication regarding the cancellation of alleged Power of Attorney was given to the said defendant, i.e., Krishna Kumar Gupta. Further contention of him is that the alleged finding of the trial Court has been recorded without considering the oral and documentary evidence led by the parties in its proper manner, and therefore, if the property in question is alienated, pending decision of this appeal on the strength of the impugned judgment and decree, it would cause irreparable injury to the Appellant No.2/Defendant No.2-Ritesh Kumar Gupta as he acquired his valid interest by virtue of the aforesaid registered deed of sale.

On the other hand, Shri Hari Agrawal, learned counsel appearing for Respondent No.2/Plaintiff No.2-Hetram Gupta, submits that since the registered Power of Attorney executed on 13.09.1985 based upon which the alleged sale was executed, was however cancelled in the year 1989, much prior to the execution of the alleged sale and, was informed to the Defendant No.1-Krishna Kumar Gupta, and therefore, the trial Court has rightly arrived at a conclusion that Defendant No.2-Ritesh Kumar Gupta has not acquired any interest by virtue of the alleged registered deed of sale, as executed in his favour by said defendant-Krishna Kumar Gupta.

Considering the aforesaid contentions of the parties, considering further that although the registered deed of sale as executed in favour of Defendant No.2-Ritesh Kumar Gupta has been held to be null and void, but, during the pendency of this appeal, the interest of him, is required to be protected, else in the event of alienation of the property in question pending decision of this appeal on the strength of the impugned judgment and decree, would certainly cause an irreparable injury to him. In view thereof, it is directed that none of the parties shall create third party interest with regard to the property in question pending decision of this appeal.

With the aforesaid observations, the said application marked as I.A. No.01/2021 is disposed of.



Call for the record of the court below.

Post this matter after 5 weeks for further orders.

Sd/-

(Sanjay S.Agrawal)
JUDGE

vivek

