



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

BEFORE

**HON'BLE SHRI JUSTICE G. S. AHLUWALIA
ON THE 14th OF OCTOBER, 2024
MISC. PETITION No. 5590 of 2024**

PUSHPARAJ SINGH AND OTHERS

Versus

RAJ RAKHAN SINGH AND OTHERS

Appearance:

Shri Ashok Kumar Jain- Advocate for petitioners.

ORDER

This petition under Article 227 of Constitution of India has been filed against order dated 05.09.2024 passed by 1st Additional District Judge, Sidhi, District Sidhi in MCA No. 89/2024 as well as order dated 23.07.2024 passed by 3rd Civil Judge Senior Division, Sidhi in RCSA No. 1000322/2012 by which the application filed by respondents for grant of temporary injunction was allowed and the petitioners have been restrained from raising any construction over the land in dispute as well as from interfering in possession of the plaintiff either by himself or through his agents.

2. Challenging the orders passed by the Courts below, it is fairly conceded by counsel for petitioners that petitioners have purchased the undivided share of their vendor.

3. It is submitted that so far as injunction with regard to construction is concerned, the petitioners have no grievance but since the petitioners were placed in possession of specific piece of land, therefore, the Courts



below have committed a material illegality by restraining the petitioners from interfering with the possession of the respondents.

4. By referring paragraph 27 of the order passed by the trial Court, it is submitted that the trial Court has held that the petitioners are raising construction over the land in dispute which clearly indicates that the petitioners were placed in possession. It is submitted that once it was found that the petitioners are in possession of the land in dispute, then issuing a temporary injunction order thereby restraining the petitioners from enjoying the fruits of the property which is in their possession is unwarranted, therefore, prayed for setting aside the orders passed by the trial Court as well as by the Appellate Court.

5. Considered the submissions made by counsel for petitioners.

6. Undisputedly, the property is an undivided property. A co-sharer can alienate his undivided share but the possession of the specific piece of land cannot be handed over to the vendee unless and until the properties is partitioned by metes and bounds either amicably or through mutual settlement or by a decree of Court.

7. The Supreme Court in the case of **Ramdass Vs. Sitabai and Others**, reported in (2009) 7 SCC 444 has held as under:-

“16. It is settled law under the Transfer of Property Act, 1882 that a purchaser cannot have a better title than what his vender had. The possession which is claimed by Defendant 3 Ramdas (the appellant herein) in respect of the entire land bearing Gat No. 19 area admeasuring 2.56 H of Mouza Padoli was also illegal and without proper sanction of law. So long as the property is joint and not partitioned, Defendant 3 Ramdas (the appellant herein) is not entitled to get possession of the said land. Even otherwise, the appellant herein having purchased the



land from Defendant 1 Sudam could be entitled to be declared at the most to the extent of half-share of the said piece of land having stepped into the shoes of his vendor and could not have asked for and claimed ownership and possession over the entire land of Gat No. 19 admeasuring 2.56 H.

17. Without there being any physical formal partition of an undivided landed property, a co-sharer cannot put a vendee in possession although such a co-sharer may have a right to transfer his undivided share. Reliance in this regard may be placed to a decision of this Court in *M.V.S. Manikayala Rao v. M. Narasimhaswami* [AIR 1966 SC 470] wherein this Court stated as follows : (AIR p. 473, para 5)

“5. ... Now, it is well settled that the purchaser of a coparcener's undivided interest in joint family property is not entitled to possession of what he has purchased. His only right is to sue for partition of the property and ask for allotment to him of that which on partition might be found to fall to the share of the coparcener whose share he had purchased.”

18. It may be mentioned herein that the aforesaid findings and the conclusions were recorded by the Supreme Court by placing reliance upon an earlier judgment of this Court in *Sidheshwar Mukherjee v. Bhubneshwar Prasad Narain Singh* [(1953) 2 SCC 265 : AIR 1953 SC 487] wherein this Court held as under : (AIR p. 491, para 11)

“11. ... All that [vendee] purchased at the execution sale was the undivided interest of the coparceners in the joint property. He did not acquire title to any defined share in the property and was not entitled to joint possession from the date of his purchase. He could work out his rights only by a suit for partition and *his right to possession would date from the period when a specific allotment was made in his favour.*”



(emphasis added)

19. In view of the aforesaid position there could be no dispute with regard to the fact that an undivided share of co-sharer may be a subject-matter of sale, but possession cannot be handed over to the vendee unless the property is partitioned by metes and bounds amicably and through mutual settlement or by a decree of the court.

20. Our attention was also drawn to the grounds taken by the appellant in his memorandum of appeal before the High Court wherein the appellant himself got framed a question of law to the following extent:

“Whether the learned first appellate court has not committed perversity in holding that the registered sale deed dated 19-3-1980 (Ext. 248) executed without obtaining the permission of Smt Sitabai, present Respondent 1 (the original plaintiff) and thus null and void in its entirety and not binding on her at least to the extent of the share of executant (deceased Defendant 1)?”

21. Therefore, what the appellant has claimed is only half-share of the said property. The said issue has been considered at length by the High Court in its impugned judgment. The High Court has recorded the statement made by the counsel appearing for Defendant 3 Ramdas (the appellant herein) that the action of the Additional District Judge in declaring that the said sale deed as null and void was not proper to the extent of the shares of plaintiff Sitabai in Gat No. 19 area admeasuring 2.56 H of Mouza Padoli. Therefore, the fact that the plaintiff Sitabai was entitled to her half-share in the aforesaid property is an admitted position and on that basis the consent decree was passed. Even otherwise, we are of the considered opinion that the appellant herein having purchased only undivided share in the aforesaid property could not have purchased, owned and claimed for more than half-share in the said property nor the appellant could have claimed possession in respect of the entire property.”



8. The Supreme Court in the case of **M.V.S. Manikayala Rao Vs. M. Narasimha Swami and others**, reported in **AIR 1966 (SC) 470** has held as under:-

“**18.** Before dealing with the question as to which Article of the Limitation Act applies to the present case it is necessary to examine the legal position of persons like Sivayya who purchase shares of some of the coparceners of the Hindu joint family. It is well settled that the purchaser does not acquire any interest in the property sold and he cannot claim to be put in possession of any definite piece of family property. The purchaser acquires only an equity to stand in the alienor's shoes and work out his rights by means of a partition. The equity depends upon the alienation being one for value and not upon any contractual nexus. The purchaser does not become a tenant in common with the other members of the joint family. He is not entitled to joint possession with them. The alienee's suit for partition must be one for partition of the entire property and not for the partition of any specific item of, or interest in, the family property. Such a suit, however, will not be technically on a par with a suit for partition filed by a coparcener. Such a suit would not have the necessary effect of breaking up the joint ownership of the members of the family in the remaining property nor the corporate character of the family. (*Mayne's Hindu Law*, Eleventh Edn., p. 489).

9. Thus it is clear that except filing the suit for partition, the purchaser of an undivided share has no other option. The purchaser does not become a tenant in common with the other members of the joint family and he is not entitled to joint possession with them.



10. Thus, it is clear that after having purchased an undivided share from the vendor, the petitioners have stepped into the shoes of the vendor. Now the only option available with the petitioners is to seek a partition and unless and until the property is partitioned, the petitioners are not entitled for possession of any specific piece of land. It is true so far as the sale deed executed in favour of the petitioners in respect of undivided share of the vendor is concerned, the same cannot be held to be bad but the sale deed in respect of a specific piece of land forming part of an undivided property cannot be executed. What cannot be done as per law can also not be done by executing a sale deed. If a person is permitted to take possession of a specific piece of land forming part of the undivided share, then it would certainly frustrate the law of the land and, therefore, no one can be permitted to bypass the statutory provisions by executing a sale deed.

11. Under these circumstances, this Court is of considered opinion that both the Courts below did not commit any mistake by granting a temporary injunction against the petitioners thereby restraining them from raising any construction over the land in dispute as well as from interfering with the possession of the plaintiffs.

12. Accordingly, no case is made out warranting interference.

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

(G.S. AHLUWALIA)
JUDGE

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