

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

BEFORE

HON'BLE SHRI JUSTICE SANJAY DWIVEDI

ON THE 17th OF JUNE, 2025

MISC. APPEAL NO.9049/2024

SANDEEP SONI

VS.

SMT CHANDRA KANTA VYAS & OTHERS

Appearance:

Appellant by Shri Satish Kumar Shrivastava – Advocate.

Respondents No.1, 2 and 5 by Shri Manoj Sanghi – Advocate.

Respondents No.3 and 4 by Shri S.N. Tiwari - Advocate.

Respondent No.7 by Shri Ajay Ojha – Government Advocate.

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MISC. APPEAL NO.9050/2024

KU CHANDRAKANTA DUBEY

VS.

SMT CHANDRAKANTA VYAS & OTHERS

Appearance:

Appellant by Shri Amit Dave – Advocate.

Respondents No.1, 2 and 5 by Shri Manoj Sanghi - Advocate.

Respondent No.4 by Shri S.N. Tiwari - Advocate.

Respondent No.7 by Shri Ajay Ojha – Government Advocate.

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Reserved on: 13.03.2025

Pronounced on: 17.06.2025

JUDGMENT

With the consent of learned counsel for the parties, the matters were finally heard on 13.03.2025 and today the order is being pronounced.

2. These are two separate miscellaneous appeals filed under Order XLIII Rule 1(r) of CPC challenging the order dated 07.01.2024 passed by the Court below in a pending Civil Suit bearing RCS No.1077-A/2024 whereby an application for temporary injunction has been allowed.

3. Challenging the said order, two separate appeals have been filed by defendant No.1 and 2. Since the parties are same in the civil suit and in both the appeals same order is assailed by the appellant, therefore, both the appeals are heard and decided analogously by a common order. Although for the purpose of convenience the facts of M.A.No.9049/2024 are being taken note of.

4. As per the facts of the case, the plaintiffs (respondents No.1 to 5) filed a civil suit registered as RCS No.1077-A/2024 against the defendants (present appellant and respondent No.6) for declaration and permanent injunction. An application for grant of temporary injunction has also been filed under Order XXXIX Rule 1 and 2 of CPC. As per the claim set-up by the plaintiffs in their plaint and also in the application for grant of temporary injunction, they jointly purchased the suit property with Indubala Sharma D/o. Ravi Shankar Sharma with the

plaintiffs. The suit land bearing Khasra No.306 comprised with total area 5.15 acres situated in village Maharajpur Patwari Halka No.664 Patwari Circle No.20 Tehsil Adhartal, District Jabalpur vide registered sale-deed dated 22.05.1967. Thereafter the name of plaintiff No.1 got mutated on the land of Khasra No.306/1 area 4.15 acres which is the disputed land in the instant suit. The plaintiff No.1 has claimed that from the date of purchase, the land is in her possession and she has been cultivating the same i.e. area 4.15 acres.

5. To substantiate her title, she filed a document showing that earlier she filed a suit bearing C.S. No.185-A/2011 against Raj Kumar Yadav and in the said suit, the Court i.e. First Civil Judge, Class-II, Jabalpur has granted a temporary injunction vide order dated 23.12.2011. Although the name of father of plaintiff was wrongly shown as Ramchandra but by moving an application before the Naib Tehsildar it got changed as Ram Charan but later on that order of Naib Tehsildar in an appeal has been set aside and the name of Ramchandra was restored.

6. However, it is averred in the plaint that the defendant/respondent No.6 herein by taking undue benefit of recording the name of defendant No.1 executed a sale-deed in favour of defendant No.2 on 19.09.2024 and she impersonated herself to be a true owner and as such defendant No.2 (present appellant) started threatening the plaintiffs to take possession of the suit land. A suit has been filed claiming temporary injunction. In the suit a declaration has also been sought that sale-deed dated 19.09.2024 executed by defendant No.1 (respondent No.6 herein) in favour of present appellant (defendant No.2) be declared null & void and a decree of permanent injunction has also been claimed.

7. The application for temporary injunction was replied by the defendant (present appellant) on the ground that the plaintiff did not come

with clean hands and good conscience to get the equitable relief of declaration and injunction and also denied their possession over the suit land. It is also stated that plaintiff Chandrakanta is not having title or lawful possession over the suit land or house situated over the area 230 square feet. It is also stated in the reply that the plaintiff is trying to usurp the suit property by impersonating herself as a true owner on the basis of resemblance of her name with defendant No.1 and also of the coincidence describing the name in the registered sale-deed dated 22.05.1967. The title over the suit land claimed by the plaintiff has been denied. The application was also sought to be dismissed on the ground that claiming injunction by the plaintiff is nothing but an attempt to curtail the right of the present appellant who validly purchased the land by way of registered sale-deed and having ownership rights coupled with physical possession and he purchased the same from true, real and ostensible owner namely Chandrakanta Dubey daughter of Shri Ram Charan Dubey. It is also stated that the sale-deed executed by a true owner on a proper sale consideration amounting to Rs.2.58 Crores and having no interest, title or right over the property, the suit has been filed.

8. The Court below considered the application of temporary injunction and reply to the same, decided the application granting injunction in favour of the plaintiff observing therein that the parties shall maintain the order of *status quo* in respect of the suit land and over the disputed land i.e. khasra No.306/1 area 4.15 acres Mauja Maharajpur, Patwari Halka Maharajpur, Tehsil Adhartal, District Jabalpur no third party right shall be created.

9. Learned counsel for the appellant has submitted that the Court below has committed grave illegality in considering the required ingredients for granting injunction and also the fact that no *prima facie* case was made out in favour of the plaintiff whereas the defendant is

owner of the suit land and got right by virtue of a registered sale-deed dated 19.09.2024 and as such injunction should not have been granted. He has further submitted that the trial court in its order itself has observed that in the revenue record, the name of Chandrakanta daughter of Ram Charan Dubey is shown to be the bhumiswami of the land but in a suit on which the plaintiff has relied upon has been filed in the name of Chandrakanta Vyas w/o Late Daya Shankar Vyas. The Court below has also observed that there was nothing on record to indicate as to how the surname of plaintiff got changed and there was no pleading in that regard and as such the court found that it is difficult to give any opinion about the possession over the suit land. The court has further observed that it is undisputed that the suit land belonged to Chandrakanta daughter of Ram Charan Dubey but the plaintiff since raised a question with regard to identity of defendant No.1 namely Chandrakanta Dubey and that question is yet to be determined by the court during trial, therefore, the court granted temporary injunction.

10. As per the learned counsel for the appellant, the reasoning given by the court below to grant temporary injunction is unacceptable and unreasonable. The court failed to consider that no *prima facie* case is made out in favour of the plaintiff whereas the right of defendant (present appellant) as she paid Rs.2.58 Crore and purchased the suit land by registered sale-deed from true, real and ostensible owner, cannot be curtailed in such a manner by granting injunction in favour of the plaintiff. He also relied upon a decision in the case of **Jamila Begum v. Shami Mohd. 2019(3) MPLJ 406**, in which the Supreme Court taking note of Section 49 of the Registration Act has observed that the presumption goes to the holder of the registered document presuming that it was validly executed. The relevant paragraph is reproduced hereinunder:-

“14. Sale deed dated 21-12-1970 in favour of Jamila Begum is a registered document and the registration of the sale deed

reinforces valid execution of the sale deed. A registered document carries with it a presumption that it was validly executed. It is for the party challenging the genuineness of the transaction to show that the transaction is not valid in law. In *Prem Singh v. Birbal* [*Prem Singh v. Birbal*, (2006) 5 SCC 353], it was held as under: (SCC pp. 360-61, para 27)

“27. There is a presumption that a registered document is validly executed. A registered document, therefore, *prima facie* would be valid in law. The onus of proof, thus, would be on a person who leads evidence to rebut the presumption. In the instant case, Respondent 1 has not been able to rebut the said presumption.”

The above judgment in *Prem Singh* case [*Prem Singh v. Birbal*, (2006) 5 SCC 353] has been referred to in *Vishwanath Bapurao Sabale v. Shalinibai Nagappa Sabale* [*Vishwanath Bapurao Sabale v. Shalinibai Nagappa Sabale*, (2009) 12 SCC 101.]

He also relied upon a judgment in the case of **Abdul Rahim and others v. SK. Abdul Zabar and others 2009(4) MPLJ 81** in which the Supreme Court has further dealt with Section 17 of the Registration Act and Section 114 of the Evidence Act and observed about presumption of law, as under:-

“14. Indisputably, the deed of gift is a registered one. It contains a clear and unambiguous declaration of total divestment of property. A registered document carries with it a presumption that it was validly executed. It is for the party questioning the genuineness of the transaction to shown that in law the transaction was not valid. We have noticed hereinbefore that Razak had been receiving rent from the tenants. In fact, the respondent No.1 in his suit claimed a decree for apportionment of rent. We would presume that Razak had been collecting rent from the tenants during the life time of his father. The agency to collect rent, however, came to end as soon as an order of mutation was passed in his favour. Apart from the fact that the Razak was allowed to continue to collect rent which having regard to the declaration made in the deed of gift must be held to be on his own behalf and not on behalf of the donor.”

He also placed reliance on a decision in the case of **Prem Singh and others v. Birbal and others 2007(1) MPLJ 1**, in which, the Supreme

Court in respect of filing a suit of cancellation of a document and that is governed with Article 59 of the Limitation Act sought cancellation on the ground of fraud and mistake, observed that when said document can be ordered to be cancelled.

“14. A suit for cancellation of instrument is based on the provisions of Section 31 of the Specific Relief Act, which reads as under:

“31. When cancellation may be ordered.—(1) Any person against whom a written instrument is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding may cause him serious injury, may sue to have it adjudged void or voidable; and the court may, in its discretion, so adjudge it and order it to be delivered up and cancelled. (2) If the instrument has been registered under the Indian Registration Act, 1908 (16 of 1908), the court shall also send a copy of its decree to the officer in whose office the instrument has been so registered; and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation.”

15. Section 31 of the Specific Relief Act, 1963 thus, refers to both void and voidable documents. It provides for a discretionary relief.

16. When a document is valid, no question arises of its cancellation. When a document is void ab initio, a decree for setting aside the same would not be necessary as the same is non est in the eye of the law, as it would be a nullity.

17. Once, however, a suit is filed by a plaintiff for cancellation of a transaction, it would be governed by Article 59. Even if Article 59 is not attracted, the residuary article would be.

18. Article 59 would be attracted when coercion, undue influence, misappropriation or fraud which the plaintiff asserts is required to be proved. Article 59 would apply to the case of such instruments. It would, therefore, apply where a document is prima facie valid. It would not apply only to instruments which are presumptively invalid. (See *Unni v. Kunchi Amma* [ILR (1891) 14 Mad 26] and *Sheo Shankar Gir v. Ram Shewak Chowdhri* [ILR (1897) 24 Cal 77] .)

19. It is not in dispute that by reason of Article 59 of the Limitation Act, the scope has been enlarged from the old Article 91 of the 1908 Act. By reason of Article 59, the provisions contained in Articles 91 and 114 of the 1908 Act had been combined.

20. If the plaintiff is in possession of a property, he may file a suit for declaration that the deed is not binding upon him but if he is not in possession thereof, even under a void transaction, the right by way of adverse possession may be claimed. Thus, it is not correct to contend that the provisions of the Limitation Act would have no application at all in the event the transaction is held to be void.

On the above premise, learned counsel for the appellant has criticized the order of the Court below saying that the Court below has decided the application adopting a completely wrong, incorrect and illegal approach ignoring the statutory presumption which is applicable and was in favour of present appellant/defendant.

11. In contrast, learned counsel for the respondents supported the order of the court below and submitted that to avoid multiplicity or to consider the existing actual factual aspect when identity of defendant No.1 is in question, it was appropriate for the Court below to grant injunction. According to the learned counsel, there is nothing illegal and the appeals are misconceived, therefore, deserve to be dismissed.

12. I have heard the submissions made by the learned counsel for the parties and also perused the record.

13. Indeed, as per the impugned order, it is clear that the court below has not given any specific finding about the possession in favour of the plaintiff. Conversely, it is observed in paragraph 9 of the order that no definite finding can be given in respect of the possession of the property. The Court below has observed that the sole claim of title of the plaintiff is based upon an order dated 23.12.2011 granting temporary injunction in her earlier suit i.e. C.S. No.185-A/2011 and that the name of the plaintiff in the

said order has been shown as Chandrakanta Vyas wife of Late Daya Shankar Vyas. The court below further observed that there is no pleading in the instant suit as to how the plaintiff got her surname changed. The court below has also not considered the material aspect that while granting injunction the court has to consider the material ingredients of injunction i.e. *prima facie* case, balance of convenience and irreparable injury. Despite that the court below proceeded under the presumption that since the identity of defendant No.1 is in question in the case therefore temporary injunction has to be granted because that question will be decided after conducting the trial.

14. I am not convinced with the reasoning given by the trial Court for granting injunction in favour of the plaintiff. From the plaint and averments made therein, it is clear that the suit for declaration has been filed and the valuation of the suit was made amounting to Rs.2.58 Crores and the court-fee has been paid to the tune of Rs.2000/- which is a fixed court-fee on the suit for declaration. Meaning thereby, by granting injunction the trial court has curtailed the right of valid purchaser having registered sale deed of suit land purchased by them paying adequate sale consideration i.e. Rs.2.58 Crores. The Supreme Court in the cases as quoted above relied upon by the learned counsel for the appellant, has clearly observed that in existing circumstances when the registered sale-deed is in favour of a party, presumption of validity of the document is always in favour of holder of that document. The sale-deed, as per the stand taken by the defendant, contained the delivery of possession. It is something surprising when recorded owner of the land is Chandrakanta Dubey daughter of Shri Ram Charan Dubey then as to how only because the question of identity has been raised, the court below relied upon the same ignoring the registered sale-deed and without considering the material ingredients for granting injunction, allowed the application for

temporary injunction. The court below failed to see that when the plaintiff has not produced any document in relation to her ownership of the disputed land and also about holding the land by her husband on Sikkmi and in such circumstances, the plaintiff's possession as per her claim even is nothing but as a trespasser and in such circumstance, the temporary injunction could not have been granted.

15. It is imperative to go-through the law as has been laid down by the High Court in the case of **Chandrika Prasad Tiwari v. State of M.P. 2011(1) MPLJ 106**, wherein it has been observed as under:-

8. Even otherwise, as per the concurrent findings of the Courts below, the appellant has failed to prove the legal title and possession over the disputed land and, in the absence of any evidence showing the legal possession of the appellant over the disputed land or any right in that regard, in view of the law laid down by the Apex Court in the matter of Gangu Bai Babiya Chaudhary v. Sitaram Balchandra Sukhtankar, (1983) 4 SCC 31 : AIR 1983 SC 742 which principle was also followed by this Court in the matter of Kamal Singh v. Jairam Singh, 1986 (1) MPWN 116, the suit of the plaintiff could neither be decreed for declaration nor for issuing any interim injunction, as prayed by him.

Over and above, the High Court in the case of **Gajendra Singh v. Mansingh 2000(1) MPJR 465**, has observed that granting temporary injunction curtailing the right to enjoy the property and right of ownership having valid sale-deed is nothing but putting a restriction and clog on him from further alienation. Grant of temporary injunction is not proper in a circumstance when no document showing any right over the suit property is available.

16. In view of the above discourse, I am of the opinion that the impugned order dated 07.01.2024 passed by the court below is contrary to law and no case of granting temporary injunction in view of the material ingredients for granting injunction is made out in favour of the plaintiff.

The impugned order being not sustainable in the eyes of law, therefore, it is set aside and the application of temporary injunction is hereby rejected.

17. The misc. appeals are allowed and disposed of.

(SANJAY DWIVEDI)
JUDGE