



2026:CGHC:13099

NAFR**HIGH COURT OF CHHATTISGARH AT BILASPUR****MA No. 165 of 2025**

1. Dr Shivendra Tripathi S/o Late Dr. Sharda Prasad Tripathi Aged About 40 Years R/o Village And Post Jevra Tahsil Bemetara District- Bemetara (C.G.)

2. Dr. Jitendra Tripathi S/o Late Sharda Prasad Trpathi Aged About 52 Years R/o Village And Post Jevra Tahsil Bemetara District- Bemetara (C.G.) Current R/o Irrigation Colony Karantola Bhanpuri District- Bastar C.G.

... Appellant(s)**versus**

Shashi Tripathi W/o Sharda Tripathi Aged About 48 Years R/o Near Collector Office Bemetara Tahsil And District- Bemetara C.G.

... Respondent(s)**(Cause title is taken from CIS)**

For Appellant(s) : Mr. Vivek Kumar Tripathi, Advocate

Hon'ble Shri Justice Bibhu Datta Guru**Judgment on Board****19/03/2026**

- The appellants/plaintiffs have preferred the present appeal under Order 43 Rule 1(r) of the Code of Civil Procedure, 1908, being aggrieved by the order dated 03.05.2025 passed by the learned 1st District Judge, Bemetara, District Bemetara (C.G.) in Civil Suit No. 01-A/2024 (Dr. Shivendra Tripathi & Ors. Vs. Shashi Tripathi), whereby the learned trial Court rejected the application filed by the appellants/plaintiffs under Order 39 Rules 1 & 2 r/w Section 151 of CPC.

2. The plaintiffs/ appellants have filed a suit for declaration and permanent injunction regarding a house constructed on land measuring 69.96 sq. meters comprised in Khasra No. 435/3-20, described in Schedule-A of the plaint. Plaintiff No.1, Dr. Shivendra Tripathi, is the son of the defendant Smt. Shashi Tripathi, and Plaintiff No.2 is her step-son. The plaintiffs contend that Plaintiff No.1 is the sole owner of the suit property and the defendant has no right or interest therein. It is alleged that the defendant was convicted under Section 302 IPC for the murder of the pregnant wife of Plaintiff No.2 and was later released after remission. The plaintiffs further plead that their father had already partitioned his properties between the two plaintiffs during his lifetime, pursuant to which mutation has been effected, and therefore the defendant has no right over the suit property. Along with the suit, the plaintiffs have also filed an application under Order 39 Rules 1 and 2 CPC seeking temporary injunction restraining the defendant from forcibly entering or interfering with the suit property during the pendency of the suit.
3. *Per contra*, the defendant has filed a written statement along with a counterclaim contending that after the death of her husband, late Sharda Prashad, she is entitled to 1/3rd share in the properties left by him, as no partition took place during his lifetime. She has alleged that the plaintiffs conspired against her and forced her to live separately in a rented house with minimal facilities, and that the house purchased in her name at Bemetara was merely a show arrangement. The defendant has further alleged that Plaintiff No.2 conspired with others to get his own wife murdered and falsely implicated the defendant in the criminal case. By way of counterclaim, the defendant has sought a

declaration of her ownership and possession over several properties including the house constructed on land measuring 69.96 sq. meters comprised in Khasra No. 435/3-20. The defendant has also filed a reply to the application under Order 39 Rules 1 & 2 CPC, reiterating the averments made in the written statement and praying for dismissal of the application for temporary injunction.

4. After hearing the parties and considering the material available on record, the learned Trial Court observed that the defendant, being the legal representative of her deceased husband Dr. Sarda Prashad Tripathi, is prima facie entitled to inherit the property left by him and there is no material on record to show that she has been deprived of such right. The Court further held that in absence of any document showing exclusive ownership or transfer of lease in favour of Plaintiff No.1, the plaintiffs failed to establish a prima facie case. It was also observed that a co-sharer cannot seek injunction against another co-sharer and the proper remedy is a suit for partition. Accordingly, the Trial Court held that no prima facie case or balance of convenience lies in favour of the plaintiffs and no irreparable loss would be caused to them. Consequently, the application under Order 39 Rules 1 & 2 CPC was dismissed.
5. Learned counsel for the appellant/plaintiffs submits that the learned Trial Court has committed a manifest error in rejecting the application filed under Order 39 Rules 1 & 2 CPC without proper appreciation of the material available on record. He further submits that Trial Court has erred in ignoring the fact of prior partition and exclusive ownership of appellant No.1. It is argued that the respondent has no right to interfere

with the suit property.

6. I have heard learned counsel for the parties, perused the record and the impugned orders with utmost circumspection.
7. Upon consideration of the record, this Court finds that the main contention of the plaintiffs is that the defendant, having been convicted for the murder of her daughter-in-law Smt. Bhavna Tripathi, is disqualified from claiming any right in the suit property. However, on perusal of Section 25 of the Hindu Succession Act, 1956, it is apparent that disqualification from inheritance applies only in respect of the property of the person murdered. In the present case, the defendant is claiming inheritance in the property left by her deceased husband Dr. Sarda Prashad Tripathi, and not in the property of the deceased daughter-in-law. Therefore, the said provision does not disentitle the defendant from claiming inheritance in the property left by her husband.
8. Further, the plaintiffs have sought a decree of declaration and injunction asserting that the suit property exclusively belongs to Plaintiff No.1 on the basis of an alleged partition during the lifetime of their father. However, no material document has been produced on record to establish such partition or to show as to how the lease or title of the suit property was transferred in favour of Plaintiff No.1. Mere mutation entries in the revenue records do not confer title, and in absence of the relevant documents, the claim of exclusive ownership remains unsubstantiated.
9. It is also a settled principle of law that where parties are co-sharers in a property, one co-sharer cannot seek injunction against another co-

sharer, and the proper remedy in such circumstances is to seek partition of the property. In the present case, the defendant being the legal representative of the deceased owner cannot prima facie be denied her right of inheritance in absence of any document showing that she has been lawfully deprived of such right.

10. Accordingly, in absence of material documents establishing exclusive title of the plaintiffs, it cannot be said that a prima facie case exists in their favour. The balance of convenience also does not lie in favour of the plaintiffs and no irreparable loss would be caused to them if injunction is refused. Therefore, the order of the learned Trial Court dismissing the application under Order 39 Rules 1 & 2 CPC does not suffer from any illegality or perversity and does not call for interference.
11. Accordingly, the instant appeal being devoid of merit is hereby **dismissed** at the motion stage itself.

Sd/-
(Bibhu Datta Guru)
Judge

Jyoti