

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION (STAMP) NO.3949 OF 2015

Salim Umar Tamboli

.. Petitioner

Versus

Shailesh Narayan Kulthe and others

.. Respondents

Shri. Sham V. Walve, for the Petitioner.

Shri. Sanjay P. Shinde for the Respondent No.1.

CORAM : R.M. SAVANT, J.

DATE : 4th MARCH, 2015

PC.

1. There is a concurrent finding recorded against the Petitioner as regards his entitlement for the discretionary relief of temporary injunction. Both the Courts below on the basis of the material on record have come to a conclusion that the discretion cannot be exercised in favour of the Plaintiff. The Petitioner is the original Plaintiff, where as the Respondent No.1 is the original Defendant No.1. The Defendant No.1 is the lessee of the land in question from the original owners in which there is a Tea Stall which is run by the Plaintiff. It appears that there is a document in the nature of service agreement between the Plaintiff and the Defendant No.1, wherein the Plaintiff was to take care of the Tea Stall as a Servant/Manager of the Defendant No.1. It appears that after the Tea Stall had come on site the Office of the Sub Divisional Officer, Chandvad was

established by the side of the said tea stall. A notice purportedly under Section 242 of the Maharashtra Land Revenue Code came to be issued to the Plaintiff by the Sub Divisional Officer, Chandvad calling upon the Plaintiff to show-cause as to why the said Tea Stall should not be removed. It is on receipt of the said notice that the instant suit came to be filed by the Plaintiff for declaration and permanent injunction and the suit is founded on the fact that there is landlord and tenant relationship between the Plaintiff and the Defendant No.1. The Plaintiff in the said suit filed an application for temporary injunction being Exh.5 for restraining the Defendants from evicting the Plaintiff from the Tea Stall in question pursuant to the notice issued under the Maharashtra Land Revenue Code. The Defendant No.1 filed his reply to the said application Exh.5 and denied that there is any landlord and tenant relationship between the Plaintiff and the Defendant No.1. The Defendant No.1 averred in his reply that in fact there is a service agreement between the Plaintiff and the Defendant No.1 under which the Plaintiff was appointed as a Servant/Manager to look after the Tea Stall. The Defendant No.1 denied that any rent was paid by the Plaintiff to him. The Trial Court considered the said application Exh.5. The Trial Court in the light of the said service agreement produced by the Defendant No.1 held that the Plaintiff had suppressed a vital document from the Court. The Trial Court further held that the Plaintiff has not produced any evidence to show that there was

relationship of landlord and tenant between the Plaintiff and Defendant No.1. Since the Plaintiff has no right in the property in question, the Trial Court held that the discretion could not be exercised in favour of the Plaintiff and accordingly rejected the said application Exh.5.

2. The Plaintiff carried the matter in Appeal by way of Misc. Civil Appeal No.97 of 2014. The Lower Appellate Court having regard to the facts as aforestated where the document by way of service agreement under which the Plaintiff was to look after as Servant/Manager as also having regard to the well settled principles that injunction could not be granted against the owner and also having regard to the fact that the Plaintiff on one hand was denying that the Defendant No.1 was the lessee from the original owner, but at the sometime contending that a landlord and tenant relationship was existing between the Plaintiff and the Defendant No.1 and he was paying the rent of Rs.3000/- in respect of which no evidence was produced of whatsoever nature, held that the order passed by the Trial Court rejecting the application Exh.5 did not merit any interference at the hands of the Appellate Court.

3. The Learned Counsel appearing on behalf of the Petitioner Shri. Walve would seek to reiterate the case of the Plaintiff in the Trial Court and in support of the said contentions would seek to place reliance

on the judgment of the Learned Single Judge of this Court reported in 2012(3) BCJ 683 in the matter of Hansa Bhaskar Dave and another Vs. Harihar Himmatlal Mehta, wherein it has been held that even a person in wrongful possession cannot be dispossessed without following due process of law. It is therefore the contention of the Learned Counsel for the Petitioner/original Plaintiff that unless due process of law is followed the Plaintiff cannot be evicted.

4. Per contra, Learned Counsel appearing for the Respondent No.1/original Defendant No.1 would support the impugned order and would contend that in the facts of the present case the Plaintiff has not produced any documentary evidence to support any right in the suit premises. The concurrent orders passed by the Courts below should not be interfered at the hands of this Court.

5. Having heard the Learned Counsel for the parties, in my view there is no merit in the above Petition. As indicated above, both the Courts below on the basis of the material on record and especially the service agreement wherein the Plaintiff was to act as Servant/Manager to look after the Tea Stall of the Defendant No.1 as also in the absence of any evidence produced by the Plaintiff to prima-facie show existence of the jural relationship of landlord and tenant have rejected the application and

confirmed the order passed on Exh.5. In my view, no case for interdiction in the Writ Jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

[R.M. SAVANT, J]