

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**S.A. No. 578 of 2015**

Kamal Soni, S/o. Sagarmal Soni, aged about 58 years, R/o. Bhahma Road, Ambikapur, District-Sarguja (C.G.)

----Appellant**Versus**

1. Ayodhya Prasad Gupta, S/o. Late Devnath Prasad,
 2. Hemant Gupta, S/o. Late Devnath Prasad,
- Both, R/o. Sadar Road, Ambikapur, District-Sarguja (C.G.)
3. Smt. Kunti Devi, W/o. Nathuni Prasad, R/o. Mahamaya Road, Bhrama Road, Ambikapur, District-Sarguja (C.G.)

----Respondents.

For Appellant	: Mr. Nishi Kant Sinha, Advocate
For Respondents	: Mr. Vivek Tripathi, Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****01/04/2016**

Heard on admission.

1. This is an appeal against the order dated 09.10.2015, passed by the IVth Additional District Judge, Ambikapur (Sarguja), in Civil Appeal No.27-A/2015. By such appellate order, the judgment and decree dated 08.07.2015, passed by Fifth Civil Judge, Class-II, Ambikapur, whereby the objection raised under Order 21 Rule 97 of C.P.C. was rejected has been affirmed.
2. The instant appeal is by the objector, Kamal Soni.

3. Brief facts of this case are that the original plaintiff, late Devnath Prasad Gupta had instituted a civil suit bearing Civil Suit No.135-A/1994 on 25.01.1990 against father of the appellant/objector herein to obtain vacant possession of the suit house, situated at Brahma Road, Ambikapur. The said suit was allowed by the judgment and decree dated 02.01.1996 by the First Civil Judge, Class-II, Ambikapur and it was directed the tenant, Sagarmal Soni (the father of objector) to handover the vacant possession of the suit house within a period of two months. Against such judgment and decree, first appeal was preferred bearing F.A.No.143-A/2001 by the tenant, Sagarmal Soni, which was allowed. Against such judgment and decree, second appeal was preferred before the High Court and the High Court vide judgment and decree dated 28.03.2014, in S.A. No.437/2002, passed the decree for eviction against the tenant.
4. During the pendency of the second appeal, the original decree holder, Devnath Prasad Gupta died and his legal heirs i.e. Ayodhya Prasad Gupta, Hemant Gupta and Smt. Kunti Devi were brought on record.
5. After the case was finally decided by the High Court in second appeal, execution case No.135-A/1994 was filed to execute the decree dated 02.01.1996. While the decree was in the stage of execution, the present objector i.e. Kamal Soni, who is son of the original tenant, Sagarmal Soni filed an objection under Order 21 Rule 97 of C.P.C. stating that his father Sagarmal Soni had handed over the possession of the suit accommodation to him before

seven years of the institution of the original suit and contended that he is in actual possession of the said suit property and is running a medical store under the name and style as Sangam Medical Store. It was further stated that the said fact was known to the original plaintiff, however, he failed to implead the objector as a defendant.

6. The respondents in their reply had stated that appellant was residing alongwith his father and the decree which was challenged by the father of the appellant was affirmed up to the High Court and while the execution was being taken out, objection has been preferred by son to frustrate the decree. The executing Court rejected the objection by the order dated 08.07.2015 on the ground that objector is the son of original judgment debtor and it was filed only to frustrate the decree of eviction. Against such dismissal, first appeal was preferred, which was also dismissed. Therefore, this second appeal.
7. Learned counsel appearing on behalf of the appellant would submit that the objection so raised under Order 21 Rule 97 of C.P.C. by the objector should have been decided on merits by framing issues and after recording evidence. It is stated that no opportunity has been granted to the appellant and at the threshold the objection having been dismissed, the provisions of Order 21 Rule 97 of C.P.C has not been properly followed and prayed for admission of the second appeal.
8. Perused the documents and the records. Considering the facts of this case it would be clear that appellant herein is the son of judgment debtor, the tenant, Sagarmal Soni. The appellant/objector in his

objection averred that suit accommodation was handed over by his father to him before seven years of filing of the suit. The suit was filed on 25.01.1990, thereby according to the objector, the he was in possession of the suit accommodation from the year 1984. This fact is not in doubt that father of the objector participated in the litigation before the trial Court then Appellate Court, which travelled up to the High Court from 1990 and in the High Court the case was decided on 28.03.2014. Evaluating the facts would indicate that from 1990 to till 2014 for 24 years the father of the objector contested the suit, the first appeal and the second appeal eventually died. During such prolonged litigation no whisper was made either by father of objector or the present objector that possession of the accommodation was handed over to the son i.e. the objector herein.

9. The finding of fact in the earlier litigation, it is clear that Sagarmal Soni, the father of the objector was tenant of landlord i.e. late Devnath Prasad Gupta. In such case even if the appellant/objector was placed in possession on the suit accommodation without the implicit consent and authority of the landlord, no right could have been created in favour of the Kamal Soni. Further more considering inter-se relation between the parties and evaluating the facts this can be easily presumed that after eviction decree which the landlord could avail after litigation of 24 years, and when the execution was preferred, the original in order to frustrate the decree of eviction confronted his son with an objection that suit premises was in his possession. Even if the objector is in possession of the suit accommodation his status can not be more

than that of encroacher. Following the dictum reported in *AIR 1998 SC 1754, Silverline Forum Pvt. Ltd. Vs. Rajiv Trust*, no legal question arises for determination of the objection raised under Order 21 Rule 97 of C.P.C. In the admitted facts of this case prima-facie it appears that the objection so preferred is lack of bonafide has only been filed to frustrate the decree of eviction.

10. In a result no substantial question of law arises for consideration in this second appeal.
11. Accordingly, the appeal is dismissed at admission stage itself.

Sd/-
(Goutam Bhaduri)
JUDGE