

HIGH COURT OF CHHATTISGARH, BILASPUR**WP (227) No. 214 of 2017**

1. Sharif Khan, S/o. Late Hafiz Khan, aged about 39 years,
2. Nasib Khan, S/o. Late Hafiz Khan, aged about 37 years,
3. Najib Khan, S/o. Late Hafiz Khan, aged about 29 years,
4. Hitesh Yadav, S/o. Padman Yadav, aged about 39 years,
5. Rajkishore Das, S/o. Basant Kumar Das, aged about 42 years,
6. Ranjan Kumar Das, S/o Basant Kumar Das, aged about 32 years,
7. Shahdat Husain, S/o Naumen Husain, aged about 44 years,
8. Sanni Notwani (wrongly typed Motwani), S/o. Mahesh Notwani (wrongly typed as Motwani), aged about 30 years,
- 9.

All above are R/o Saraipali, Police Station Saraipali, District Mahasamund (CG)

Hafiz Khan, S/o. Ajruddin Khan, aged about 62 years (Since Died) legal representatives i.e. petitioner No.1 to 3 are already on record

---- Petitioners

Versus

1. Krishi Upaj Mandi Samiti Saraipali, through Secretary, Krishi Upaj Mandi, Saraipali, District Mahasamund (CG)
2. Yusuf Khan S/o. Rahim Khan, aged about 62 years,
3. Ramavtar, S/o. Prahlad Rai, aged about 60 years,
4. Pradeep S/o. Bhajanal Agrawal, aged about 48 years,
5. Vijay s/o. Navrang Lal Agrawal, Aged about 48 years,
6. Maksud Khan, S/o. Mahmood Khan, aged about 33 years
- 7.

Respondent No.2 to 6 are R/o. Saraipali, Police Station Saraipali, District Mahasamund (CG)

---- Respondents

For Petitioners	: Mr.Manoj Paranjape, Advocate
For Respondent No.1	: None present though served

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

05/05/2017

1. The petitioners/plaintiffs filed a suit for permanent injunction and restraining respondent No.1-Krishi Upaj Mandi Samiti Saraipali

from evicting them from suit premises claiming that they are in possession in the suit shops since 1964, therefore, they are entitled for permanent injunction. They have filed an application under Order 39 Rule 1 & 2 of the CPC for temporary injunction, which was rejected by the trial Court and affirmed by the Appellate Court, against which, this writ petition under Article 227 of the Constitution of India has been filed.

2. Learned counsel for the petitioners would submit that both the Courts have failed to notice that the petitioners are in possession of the suit shops constructed on the suit land and and if they are evicted and Krishi Upaj Mandi Samiti Saraipali is allowed to construct new building on the suit premises, then position will be irreversible and they will suffer irreparably, if ultimately suit is decreed in their favour. This fact has been ignored by two Courts below and therefore, application for temporary injunction has been rejected by the trial Court which has been affirmed by the Appellate Court.
3. None present for respondent No.1 though served.
4. I have heard learned counsel for the petitioners and perused the impugned order.
5. It is well settled law that in order to consider the application for temporary injunction, the plaintiff has to prove prima-facie case in his favour and also to establish that balance of convenience also lies in his favour and if injunction is not granted he will suffer irreparable loss which cannot be compensated in terms of money.

6. In the matter of Dalpat Kumar and another Vs. Prahlad Singh and others¹, the Supreme Court has held that the plaintiff has to establish by evidence that there is prima-facie case in his favour which needs adjudication at the trial. It has further been held that prima facie case is not to be confused with prima facie title which has to be established, on evidence at the trial. Only prima facie case is a substantial question raised, bona fide, which needs and a decision on merits. It was observed as under:-

“5. Therefore, the burden is on the plaintiff by evidence aliunde by affidavit or otherwise that there is "a prima facie case" in his favour which needs adjudication at the trial. The existence of the prima facie right and infraction of the enjoyment of his property or the right is a condition for the grant of temporary injunction. Prima facie case is not to be confused with prima facie title which has to be established, on evidence at the trial. Only prima facie case is a substantial question raised, bona fide, which needs investigation and a decision on merits. Satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The Court further has to satisfy that non-interference by the Court would result in "irreparable injury" to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, namely one that cannot be adequately compensated by way of damages. The third condition also is that "the balance of convenience" must be in favour of granting injunction. The Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties, if the injunction is refused and compare it with that it is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the Court considers that pending the suit, the subject-matter

1 AIR 1993 SC 276

should be maintained in status quo, an injunction would be issued. Thus the Court has to exercise its sound judicial discretion in granting or refusing the relief of ad interim injunction pending the suit.

6.....The phrases "prima facie case"; "balance of convenience" and "irreparable loss" are not rhetoric phrases for incantation, but words of width and elasticity, to meet myriad situations presented by man's ingenuity in given facts and circumstances, but always is hedged with sound exercise of judicial discretion to meet the ends of justice. The facts are eloquent and speak for themselves. It is well nigh impossible to find from facts prima facie case and balance of convenience. The respondents can be adequately compensated on their success."

7. Keeping in view the principle of law laid down by the Supreme Court in the above-stated judgment (supra), if the facts of the present case are examined, it is apparent that it is the case of the petitioners that they are in possession of the suit shops since 1964 which according to respondent No.1-Krishi Upaj Mandi Samiti, Saraipali they are encroachers. Both the Courts below have held that the petitioners are encroachers.
8. Since the petitioners have claimed that they are not encroachers and they are owners of the suit shops given by ex-proprietor of the land and have raised triable question that they are owners of the suit land and in fact, it is not in dispute that they are in possession and nature of possession is in dispute, in the considered opinion of this Court they are entitled for protection till the suit is decided finally.
9. Therefore, in the facts and circumstances of the case, it is directed to the trial Court to conclude the trial within a period of four months from the date of receipt of copy of this order and till then, the

petitioners shall not be evicted from the suit premises.

10. With the aforesaid observation, the writ petition finally stands disposed of. No order as to cost(s).

Sd/-

(Sanjay K. Agrawal)
JUDGE

B/-