

HIGH COURT OF CHHATTISGARH, BILASPUR**MA No. 110 of 2017**

- Amitap Shrivastav S/o Lt. V.P. Shrivastav, Aged About 49 Years Occupation Advocate, R/o Village Club Chowk, Near Shitla Mandir, Ward No. 43, Basantpur Rajnandgaon, Tahsil Rajnandgaon, Civil And Revenue District Rajnandgaon Chhattisgarh.....Plaintiff / Applicant

---- Appellant**Versus**

1. Smt. Laxmi Shrivastav (Ramtake) W/o Amitap Shrivastav, Aged About 46 Years Working As Zila Nazir, District And Sessions Court Janjgir, Tahsil Janjgir, District Janjgir Champa Chhattisgarh
2. State of Chhattisgarh, Through Collector Rajnandgaon Chhattisgarh

---- Respondents

For Appellant	:	Shri Rakesh Thakur, Advocate
For Respondent No.1	:	Shri Ashutosh Trivedi, Advocate
For Respondent/State	:	Shri Aditya Sharma, PL for the State

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****23/10/2018**

1. Heard.
2. The present appeal is against the rejection of the application filed under Order 39 Rule 1 & 2 read with Section 151 CPC, whereby the injunction prayed for by the appellant that his possession may not be disturbed, has been dismissed.
3. Learned counsel for the appellant submits that the appellant and respondent No.1 are the husband and wife, they were married in the year 2011. Before the

marriage the appellant had purchased the land wherein the house was constructed by the appellant in the name of the wife and thereafter he was residing in the same house along with his wife. The wife subsequently got a job in the civil Court and got transferred to Janjgir-Champa and was working there. It is stated that though the appellant was carrying the avocation of advocacy in the one room of the said house, however, the respondent No.1 has placed lock over the room and the appellant was restrained to continue his profession on the premises. He further submits that under the circumstances, the appellant may be allowed to continue his office in the premises and his possession may not be affected otherwise than in due course of law.

4. Learned counsel for the respondents oppose the same and submits that the order of the Court is well merited and there is no evidence on record to show that the appellant was in possession of the suit house and was carrying his office.
5. Heard learned counsel for the parties and perused the documents. Perusal of the documents would show that the purchase of the subject suit property was made by Ku. Laxmi Ramteke from one Ramanuj Prasad in the year 2008. The receipt would show that the respondent was paying the tax in respect of the said suit property. The submission of the appellant that before the marriage the property was purchased in the name of the wife prima facie do not impress the Court as the marriage was performed in the year 2011 and the purchase is prior to it. It is matter of evidence. The claim of the plaintiff that he is in possession of the suit house has been denied. In the statement of the respondent initially it

was stated that the husband started living with her in the house. Subsequent statement would show that she has stated that the husband had constructed another house at Sahdev Nagar and the averments have been made that all the household articles belonging to the respondent were taken away by the appellant i.e. the Sofa, Bed etc. She further stated that in the said house, the husband was found in compromising position with another lady and having objected, it led to dispute. Therefore, whether the appellant is actually in possession of the suit house or not cannot be accepted as it has been specifically denied by the wife and it is obvious when another house is constructed then the husband would have been living in the said house. It is a matter of evidence whether the appellant/plaintiff was in possession of the suit house or not? Prima facie as appears that the purchase is in the name of the respondent/wife and the receipts are also in name of the wife, therefore, the factum of possession as averred by the husband may be false and cannot be accepted as gospel truth. It is again a matter of evidence. The averments primarily made by the parties can be clarified only after the statement of the parties are recorded before the Court.

6. In view of this, I do not find any illegality in the order of the Court below so as to make interference in the same. Accordingly, the appeal is dismissed.

Sd/-

Goutam Bhaduri
Judge

Ashu