

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 11-01-2019

Judgment delivered on 28-03-2019

FA No. 244 of 2005

Raman Lal Maheshwari s/o. Late Mishri Lal, aged about 45 years, occupation none , r/o. Village Ward No.13 Nayapara, Bemetara, Police Station & Tahsil Bemetara, Dist. Durg (CG)..

---- Appellant/plaintiff

Versus

1. Deekishan s/o. Late Mishri Lal Maheshwari, aged about 48 years, occupation business, r/o. Ward No.10 Bemetara, through Khatidas Chandak, Sahupara Bemetara, PS & tahsil Bemetara and Rajasthan General Stores, New Bus Stand Bemetara, Dist. Durg (CG).
2. Champa Lal s/o. Late Jeetmal Kothari, aged about 55 years, occupation Business r/o. Ward No.14 Singhour Durg road Bemetara, Dist. Durg and Ramesh Vastralay, Nagar Palika complex, Bemetara, Dist. Durg (CG).

---- Respondents/defendants.

For appellant : Mr. Sudhir Verma, Advocate.

For respondents : None

SB: Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1. This appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against the judgment/decreed dated 15-7-2005 passed by the Additional District Judge, Bemetara (CG) in Civil Suit No. 3-A of 2004 wherein the said court dismissed the

suit filed by the appellant for possession, injunction and mesne profits for shop at survey No. 1195/1 plot No. 19, area 262 sq.f., situated at new Bus Stand, Bemetara.

2. As per version of the appellant/plaintiff, he is proprietor of the shop in question. The property is his self owned property. Earlier the appellant and respondents were living jointly and on 18-1-1988 they separated and respondent No.2 gave the disputed shop to the appellant in oral partition which was repaired by the appellant. Respondent took possession illegally of the said shop that is why he filed suit before the trial Court for possession, injunction and mesne profits which was dismissed by the trial Court.

3. Learned counsel for the appellant would submit as under:

I) The court of Sub Divisional Officer, Bemetara had issued memo on 4-12-2001 which shows that the appellant was in possession.

ii) From the evidence it is established that respondent illegally dispossessed the appellant that is why appellant is suffering loss of Rs.3,000/- per month.

iii) Lease of the shop was never granted in favour of the respondent and the application for lease of the appellant is pending for consideration, therefore, finding of the trial court is liable to be reversed.

4. I have heard learned counsel for the appellant and perused the records of both the courts below including the judgment and decree.

5. PW/1 Deokishan and PW/2 Champalal were not in a position to say as to what was the property partitioned between the appellant and respondent No.2. It is not clear from their statement as to how many share holders of the property of both sides, therefore, any partition between the appellant and the respondent was not established before the trial Court. From Ex.D/3 it appears that appellant filed an application for permanent lease of the shop in question. From the evidence of the appellant, it is established that any lease granted to the appellant was temporary in nature. Temporary lease does not create any title, therefore, appellant is not title holder of the shop. Even in case of lease all the conditions have to be followed and period of

lease is also limited as per agreement, therefore, lease does not confer any right over the property in question and in case of temporary lease which was granted to the appellant, the same can be cancelled at any time by the authorities as per conditions. When the appellant is temporary lease holder he has no right to claim mesne profits as the appellant himself can be removed at any time from the shop in question. In absence of any title no injunction can be granted in his favour.

6. The trial Court discussed the entire oral and documentary evidence and recorded finding that relief cannot be granted to the appellant. Finding of the trial Court is based on relevant material placed on record and same is not based on irrelevant or extraneous material. After re-assessing the evidence, this court has no reason to substitute contrary finding. The appeal is liable to be dismissed.

7. Accordingly, decree is passed in favour of respondents and against the appellant as under:

- (i) The appeal is dismissed with cost.
- (ii) Parties to bear their own costs.
- (iii) Pleader's fee., if certified, be calculated as per Schedule or as per certificate whichever is less.
- (iv) A decree be drawn up accordingly.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju