

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No. 623 of 2017**

- Mukesh Masih S/o Dashrath Masih Aged 29 Years R/o Fasterpur, Tahsil And District Mungeli Chhattisgarh.....Plaintiff

---- Petitioner

Versus

1. Rakesh Singh S/o Samuel Singh Aged 63 Years R/o Nagopahari, Chowki Fasterpur, Tahsil And District Mungeli Chhattisgarh.
2. Press Victor Incharge, Christ Incharge C. N. I. Fasterpur, Through Anish Masih S/o Gidon Masih, Aged 37 Yrs. R/o Fasterpur Tahsil And District Mungeli Chhattisgarh
3. State Of Chhattisgarh, Through Collector Mungeli Chhattisgarh.....Defendenta

---- Respondent

For Appellant	Mr. Anand Kumar Gupta, Advocate
For Respondent No.1	Mr. KS Kurre, Advocate
For Respondent /State	Mr. Sudeep Verma, Dy. GA

Order On Board By**Hon'ble Mr. Justice Prashant Kumar Mishra****21/6/2019**

1. Heard.
2. This Second Appeal under Section 100 of the Code of Civil Procedure would call in question the legality and validity of the impugned judgment and decree passed by the two Courts below respectively dismissing the plaintiff's suit for declaration of tile and permanent injunction and at the same time, allowing the counter claim of respondent No.1/defendant No1 for recovery of possession of the suit shop, which has been illegally

occupied by the appellant/plaintiff sometime in the month of May 2015.

3. The plaintiff filed the suit on the pleadings that he came into possession of the subject shop in the year 2006 under the oral permission of defendant No.2, who is the owner of the property. In the year 2012, defendant No.1 tried to encroach over the plaintiff's possession, over which, an FIR was lodged against defendant No.1 for committing offence under Section 448 of IPC, in which, eventually, defendant No.1 was acquitted. Soon after his acquittal, defendant No.1 started claiming ownership of the property and threatened to dispossess the plaintiff for which an FIR was lodged on 25.2.2015. Thereafter, defendant No.1 made repeated efforts to dispossess the plaintiff and on every occasion, the plaintiff reported the matter to the Police.
4. Defendants 1 & 2 filed separate written statements, in which, both of them pleaded that the plaintiff was allowed to operate a hotel from the suit shop in the year 2010, which he continued for about a year and thereafter, left the place handing over the possession of the property to defendant No.1. Suddenly, the plaintiff started claiming possession and disturbing the possession of defendant No.1 on or about 12.5.2015, for which, an FIR was lodged against the plaintiff.
5. The plaintiff eventually succeeded in obtaining forcible possession without having any title to the said property. It is

further stated that one Chandraprakash was in possession of the property belonging to defendant No.2 for about 70 years and subsequently, the said Chandraprakash executed an unregistered document in favour of defendant No.1 transferring the title and handing over possession to him.

6. It is thus contended that defendant No.1 has a better title and entitlement to remain in occupation of the suit shop and in any case, the plaintiff having no title and defendant No.1 having been dispossessed within 6 months from the date of filing of the counter claim, defendant No.1 is entitled to be settled back in possession.
7. Both the Courts below have found that the plaintiff has no title to the suit land. The Courts below have also found that the plaintiff is not entitled for permanent injunction against the defendants. It is further found on the strength of oral as well as documentary evidence that the plaintiff remained in possession of the suit shop only for a period of about 1 ½ years sometime in the year 2010-11 and thereafter, he was not in possession, which he then regained forcibly on or about 12.5.2015.
8. The counter claim specifically refers to Section 6 of the Specific Relief Act, 1963, under which, defendant No.1 has sought recovery of possession even though he has no title to the property, which provides that a person who is illegally dispossessed of any property may maintain a suit for possession

within a period of 6 months from the date of dispossession even if the said person has no title in the suit property.

9. Both the Courts below having found that defendant No.1 has been dispossessed within a period of 6 months from the date of filing of counter claim and also having found that defendant No.2 had allowed one Chandraprakash to occupy the property, who in turn allowed defendant No.1 to remain in occupation of the property, defendant No.1 has a better claim over the suit property and he is entitled to recover possession. The fact as to whether defendant No.1 has filed the suit for recovery of possession within a period of 6 months from the date of dispossession, is a pure finding of fact.

10. Both the Court below have, therefore, found that defendant No.1 is entitled to protect his possession.

11. The judgment and decree passed by the Courts below having been based on concurrent findings of fact, no substantial question of law would arise for determination in the instant appeal and in the absence whereof, this Court is left with no other option but to dismiss the appeal.

12. The appeal is accordingly dismissed. Sd/-

(Prashant Kumar Mishra)

Judge

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