

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No. 1032 of 2018

- Dikesh Sahu S/o Shri Parmanand Sahu Aged About 49 Years R/o Dikesh Auto Centre Nagri, Tahsil Nagri, District Dhamtari Chhattisgarh

---- Petitioner

Versus

1. The Chief Executive Officer Janpad Panchayat, Nagri, District Dhamtari Chhattisgarh
2. Pankaj Kumar Dhruw S/o Madhav Singh Dhruw Aged About 35 Years R/o Village Sirsida, Tahsil Nagri, District Dhamtari Chhattisgarh
3. Lomas Prasad Sahu S/o Nohru Ram Sahu Aged About 41 Years R/o Jangalpara, Nagri, District Dhamtari Chhattisgarh

---- Respondents

For Petitioner	: Mr. Somnath Verma, Advocate.
For Respondent No.1	: Mr. Azad Siddique, Advocate.
For Respondents No.2 & 3	: Mr. J.K. Shastri, Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

02-12-2019

Heard.

1. This petition has been brought being aggrieved by the order dated 06.10.2018 passed in Miscellaneous Civil Appeal No.01/18 by the Court of Additional District Judge, F.T.C., Dhamtari by dismissing the appeal brought against the order of trial Court dismissing the application of the petitioner/plaintiff filed under Order 39 Rule 1 and 2 read with Section 151 of C.P.C. on 03.01.2018.
2. Learned counsel for petitioner submits that the disputed shop No.47 in shopping complex of Janpad Panchayat, Nagri was allotted to respondent No.2. Respondent No.2 had rent out the shop to respondent No.3 and thereafter, the petitioner has become tenant in the same shop from the year 2003. Petitioner has established his business styled as Dikesh Auto Center in the same shop and is in possession.

3. On the basis of a complaint made by respondent No.2, respondent No.1 has issued a notice of eviction against the applicant. The only prayer of the petitioner is that since he is admittedly in possession of the suit shop, therefore, his eviction from the shop can be said only in accordance with the procedure laid down in law and he should not be subjected to any forcible eviction as it is contemplated in the notice given by respondent No.1. Therefore, relief of temporary injunction is prayed for.
4. Learned counsel for respondent No.1 submits that respondent No.2 has been allotted the suit shop and the agreement was executed between respondent No.1 and 2. According to the terms of agreement transfer of the suit shop by respondent No.2 to any person would be a condition for disentitling respondent No.2 for the allotment and also for the possession of the said shop. Respondent No.2 has given a complaint to respondent No.1 on 25.03.2017 making a statement that the petitioner has illegally taken possession of the suit shop from where he should be evicted and possession be handed over to respondent No.2. Respondent No.1 has then served the notice upon the petitioner vide Annexure R/1-3. It is submitted that the petitioner has no entitlement to maintain the possession over the suit shop. Therefore, the learned trial Court and the appellate Court have rightly dismissed the application and appeal of the petitioner which needs no interference.
5. Learned counsel for respondent No.2 and 3 adopts the arguments advanced by the learned counsel for respondent No.1.
6. Heard learned counsel for both the parties and perused the documents.
7. The claim of the petitioner that he is in lawful possession of the suit property was examined by the trial Court. The possession of the petitioner in the suit shop is undisputed. The claim of the petitioner is

that he has come into possession of the property on the basis of some tenancy agreement. Such tenancy agreement which may be legal or illegal has not been produced on record by the petitioner. The trial Court has held that there is no prima-facie case in favour of the petitioner and similar is the finding of the Appellate Court.

8. There is no mention as pleaded in the plaint that respondent No.3 had handed over the possession of the suit shop to the petitioner for some tenancy agreement and there is no such admission by the respondent No.3 that the suit shop was given on rent to the petitioner. The very basis of the claim of lawful possession of the petitioner is itself missing for the reason that there is no admission made by the respondent side and also that there is no agreement in writing between the petitioner and the respondent No.2 and 3. Hence, in such circumstances, the possession of the petitioner and the disputed shop cannot be said to be based on any lawful contact or any title. Therefore, prima-facie the petitioner, appears to be a trespasser. According to the settled principle, the trespasser is not entitled for any kind of protection. In ***Mahadeo Savlaram Shelke & Ors. Vs. Pune Municipal Corporation*** And reported in ***(1995) 3 SCC 33***, the Supreme Court has held that, it is settled law that no injunction can be granted against the true owner at the instance of persons in unlawful possession. Also according to C.P.C. M.P. Amendment (1976), no temporary injunction can be granted where a perpetual injunction cannot be granted under Section 38 of Specific Relief Act. It is a similar case, therefore, I do not find any substance in this petition. Hence, it is dismissed and disposed off at motion stage.

9. Accordingly, the petition stands disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge