

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No. 161 of 2009

- Bharat Lal Shukla S/o Jagannath Shukla R/o Bazarpara, aged about 60 years, R/o Bazarpara, Ward No.7 Kota, Tahsil Kota District Bilaspur, Chhattisgarh.

----- Appellant/Plaintiff

Versus

1. Agrahari Vaishya Samaj Kargiroad, through Mewalal Gupta, aged about 65 years. R/o Kargiroad Kota, Tahsil Kota, District Bilaspur, Chhattisgarh.
2. S.N. Pateriay, aged about 55 years, Ex. Station House Police Office, P.S. Kota, Tahsil Kota, District Bilaspur, C.G.

----- Respondents

For Appellant/Plaintiff:- Mr. Somnath Verma, Adv.

Hon'ble Shri Justice Sanjay K. Agrawal
Order on Board

02/11/2020

1. Proceedings of this matter have been taken up through video conferencing.
2. Heard on admission and formulation of

substantial question of law in the second appeal preferred by the appellant/plaintiff.

3. By the impugned judgment, the first appellate Court has dismissed the appeal and affirmed the judgment and decree of the trial Court dismissing the suit.

4. Mr. Somnath Verma, learned counsel for the appellant / plaintiff, would submit that though both the Courts have held that the plaintiff is in possession of the suit property owned by Mr. Tungnath Mishra as tenant but he was not granted permanent injunction by recording a finding which is perverse to the record and, therefore, appeal deserves to be admitted for formulating substantial question of law for determination of the appeal in this regard.

5. I have heard, learned counsel for the appellant / plaintiff.

6. Admittedly, Mr. Tungnath Mishra was an owner/landlord of the suit accommodation and he had given the suit accommodation to the appellant on rent. Further case is that on the

strength of Will executed by Mrs. Usha Bai, wife of Mr. Tungnath Mishra, defendant No.1 pressurized appellant / plaintiff to vacate the suit property forcefully with the help of Station House Officer, defendant No.2. Both the Courts have held that the plaintiff is a tenant of Mr. Tungnath Mishra and after death of Mr. Tungnath Mishra, the suit property Will has been executed by Mrs. Usha Bai, wife of Mr. Tungnath Mishra, in favour of defendant No.1 but no evidence has been led by the appellant / plaintiff that appellant / plaintiff is being evicted forcefully from the suit accommodation. The said finding that plaintiff / appellant is not being evicted forcefully from the suit premises by defendant No.1 is a finding of fact based on evidence available on record. I do not find any perversity in the finding recorded by the two Courts below dismissing the suit of plaintiff / appellant.

7. Accordingly, the instant second appeal being devoid of merit is liable to be and is hereby dismissed in limine without notice to the other side, however, liberty is reserved

in favour of the appellant / plaintiff to
proceed in accordance with law as and when
occasion arises. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Ankit