

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 303 of 2007**

Mahesh Parakh S/o Late Shri Mishrilal Parakh,
Aged about 42 years, R/o Priyanka Parisar,
Parakh. Medical Stores Durg, District Durg,
Chhattisgarh.

---Appellant/Plaintiff

Versus

Smt. Kamladevi Saxena (died) through Lrs.

- Shri Dr. S.P. Saxena S/o Late Dr. M.P. Saxena,
R/o H.I.G. 43, Padmanabhpur, Durg, Chhattisgarh,
At present posted Civil Surgeon District
Hospital, Dhamtari, Chhattisgarh.

--- Respondent/Defendant

For Appellant : Mr. Ashish Surana, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

06/01/2020

1. Heard on admission in this second appeal preferred by the appellant/plaintiff under Section 100 of the CPC assailing the judgment and decree passed by the first appellate Court affirming the judgment and decree of the trial Court dismissing the suit of the plaintiff.

2. Mr. Ashish Surana, learned counsel for the appellant/plaintiff would submit that both the Courts have concurrently erred in dismissing the

suit of the plaintiff and not granting permanent injunction in his favour by recording a finding which is perverse and contrary to record.

3. Plaintiff filed a suit for permanent injunction simpliciter stating that on 06/10/1988 by depositing ₹ 2,000/- permission was granted by Durg Cooperative Marketing Society for construction of shop on the land owned by the Durg Cooperative Marketing Society, of which plaintiff is in possession. Balance amount of ₹ 13,000/- was also deposited on 27/06/1989, however, the defendant tried to get the shop allotted in her name. The Deputy Registrar, Cooperative Society directed to allot the shop to plaintiff. Despite of that, defendant started interfering with plaintiff's possession in the suit property, to which the defendant opposed by stating that since the plaintiff has failed to deposit the amount of ₹ 13,000/- therefore, the suit property has been allotted to the defendant on 04/07/1989.

4. Learned trial Court dismissed the suit of the plaintiff holding that plaintiff is not in possession of the suit property whereas defendant is in possession of the said suit property and

the plaintiff ought to have filed the suit for specific performance of contract against the Society which was affirmed by the first appellate Court.

5. The fact remains that the suit shop was allotted to the defendant and plaintiff did not seek cancellation of the allotment made by the Society in favour of the defendant and moreover, defendant is in possession and plaintiff did not even seek the relief of possession which is barred by proviso to Section 34 of the Specific Relief Act, 1963 and the Society which allotted the suit shop in favour of the defendant has not even been impleaded as a party/defendant in the suit, as such, I do not find any substantial question of law arising for consideration herein.

6. The second appeal, being devoid of merits, deserves to be and is accordingly dismissed *in limine* without notice to the other side. No cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge