

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MA No. 79 of 2016**

- Firm Shivnath Kamta Prasad, Bartan Shop, through its proprietor, Sanjeev Kumar Soni, Sadar Bazar, District- Bilaspur (C.G.).

---- Appellant**Versus**

1. Devesh Kumar Soni, S/o Late Shri Hanuman Prasad Soni, aged about 41 years, Occupation- Business, Khova Mandi Line, Subhash Nagar, Gondpara, Tahsil & District- Bilaspur (C.G.).
2. Smt. Chandrakanta Mishra, W/o Late Krishna Bihari Mishra, Aged About 88 Years,
3. Ravikant Mishra, S/o Late Krishna Bihari Mishra, Aged About 62 Years,
4. Rashmikant Mishra, S/o Late Krishna Bihari Mishra, Aged About 58 Years,
5. Shashikant Mishra, S/o Late Krishna Bihari Mishra, Aged About 53 Years,
Respondent No. 2 to 5 by Caste Brahmin, By Occupation- Business, R/o VIP Colony, Sarkanda, Tahsil & District- Bilaspur,
6. Smt. Laxmi Devi Mishra, W/o Late Shrikant Mishra, Aged About 63 Years,
7. Dhiraj Mishra, S/o Late Shrikant Mishra, Aged About 36 Years,
Respondent No. 6 to 7 by Caste Brahmin, R/o Main Road Sadar Bazar, Tahsil & District- Bilaspur.

---- Respondents

For Appellant	: Shri Parag Kotecha, Adv.
For Respondents	: Shri Prakash Tiwari, Adv.

Hon'ble Smt. Justice Rajani Dubey**Order on Board****08.06.2021**

1. The matter is heard through video conferencing.
2. This Miscellaneous Appeal has been preferred by appellant under Order 43 Rule 1 (r) of the Code of Civil Procedure, 1908 arising out of an order dated 16.08.2016 passed by learned Third Additional

District Judge, Bilaspur (C.G.), whereby the Civil Suit No. 32A/2016 filed by the appellant for declaration and permanent injunction as also an application filed under Order 39 Rules 1 & 2 of CPC for restraining the respondents from interfering with the possession of the appellant has been rejected by the learned trial Court.

3. Learned counsel for the appellant submits that the impugned order has been passed by the Court below without proper application of mind and the same is arbitrary. He further submits that order of the learned trial Court is nothing but a colorable exercise of the power and commits material irregularity. Hence, the order is not sustainable in the eye of law as well as on the fact and may be set aside.
4. Learned counsel for respondents submits that Rent Control Tribunal, Bilaspur, has passed an order dated 02.04.2018 in favour of respondents (Annexure A/2) and in compliance of the order of Rent Control Tribunal, Bilaspur, the concerning Tahsildar on 04.04.2018, had issued the memo of eviction against the present appellant and thereafter, the eviction proceeding was done on 06.04.2018 and the possession was obtained by the present respondents from the appellant. He also submits that on 06.04.2018, Eviction memo (Annexure R-3) has been sent by the Tahsildar to the Rent Control Tribunal against the order dated 02.04.2018, the present appellant had preferred an appeal before the learned Rent Control Tribunal, Raipur but the same was dismissed by learned Tribunal on 19.03.2019 (Annexure R-4). Respondents are having possession over the disputed shop without any hindrance.

5. I have heard learned counsel for both the parties and perused the material available on record.
6. Learned trial Court finds that respondents are owner of disputed shop since 29.12.2015 and they bought it through registered sale deed, it is clear from the documents filed by the respondents [Annexure R-1 to R-4] that they are having possession over the disputed shop, learned trial Court finds appellant does not have *prima facie* case, balance of conveyance and irreparable loss and dismissed the injunction application of the appellant. This order is based on proper appreciation of documents of both the parties.
7. Accordingly, in view of the foregoing discussions, I do not find any substance in this appeal. The appeal being devoid of merit is accordingly dismissed. No order as to costs.

**Sd/-
(Rajani Dubey)
Judge**

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