

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 666 of 2021

- Munir Ahmed Quadari, S/o Late Sheikh Ahsanuddin Quadari Aged About 41 Years R/o Chotapara, Near Luniya Bhawan, Raipur Tehsil And District Raipur Chhattisgarh

---- Petitioner

Versus

1. Dr. S.K. Jeevanmal S/o Late L. Jeevanmal, Aged About 75 Years R/o Jeevan Hospital, Bhatapara, Baloda Bazar, Tehsil And District Baloda Bazar Bhatapara Chhattisgarh
2. Shirin Sharmila Jeevanmal D/o Late Dr. Navinchand Jeevanmal Aged About 49 Years R/o Bhatapara, Through The Attorney Holder Mr. Navin Jeevanmal, Aged About 55 Years, S/o Dr. Premchand Jeevanmal, R/o Jeevanmal Hospital, Bhatapara, Tehsil And District Baloda Bazar Bhatapara Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Raza Ali, Advocate.
For Respondents	:	Mr. Yashwant Thakur, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant
Order On Board

02/12/2021

Heard.

1. This petition has been brought being aggrieved by the impugned order dated 16.11.2021 passed in Misc. Civil Appeal No.38/2021 dismissing the appeal of the petitioner and upholding the order of the trial Court granting temporary injunction to the respondents.
2. It is submitted by the counsel for the petitioner that the respondents have filed civil suit praying for only relief of permanent injunction. The petitioner claims that he is in possession of the suit property under licence from the respondents. The petitioner has made investments in

the property which is known as Shamiyana Palace which is let out time to time for holding of marriage ceremony and others ceremonies.

3. The respondents are not in possession of this property and in the suit filed there is no prayer made seeking possession, therefore, the suit itself is not maintainable. It is further submitted that the relief granted to the respondent by way of interim injunction is in the nature of grant of final relief.

Reliance has been placed on the judgment of Supreme Court in the case of Kashi Math Samsthan and another Vs. Srimad Sudhindra Thirtha Swamy and another, reported in AIR 2010 SC 296, Jharkhand State Housing Board Vs. Anirudh Kumar Sahu and Ors., reported in (2018) 18 SCC 330 and on another judgment of Supreme Court in the case of Balasupramanian & another Vs. M. Arockiasamy(dead) through LR's, reported in 2021 LawSuit(SC) 468. Therefore, it is prayed that interim injunction be granted in favor of respondent is erroneous and illegal, hence, liable to be set aside.

4. Learned counsel for the respondents opposes the submissions made by counsel for petitioner. It is submitted that there is concurrent finding of the two Courts below. The respondents are the title holders of the suit property. The petitioner was engaged by the respondents as Manager of the property, who has misappropriated the property and embezzled the funds, therefore, the petitioner is only an agent of the respondents. It was decided by the respondents to conclude the business in the suit premises regarding which notice was published on 30.6.2019 informing to the all concerned that the business in the suit property Shamiyana Palace has been closed and no booking for the same shall be allowed for the future. The petitioner despite this notice, continued accepting booking for the suit property regarding which he

had no entitlement and no authority from the respondent side. The petitioner has no title over the suit property.

Reliance has been placed on the judgment of Supreme Court in case of Deoraj Vs. State of Maharashtra and others, reported in (2004) 4 SCC 697. It is submitted that the Court is empowered to grant interim injunction in appropriate cases in the case of availability of a very strong *prima facie* case of a standard much higher than just *prima facie* case, the considerations of balance of convenience and irreparable injury forcefully tilting the balance of case totally in favour of the applicant. The case of the respondents is similar, therefore, there is no error committed in the impugned order, hence, the petition be dismissed.

5. In reply, it is submitted that the counsel for petitioner that before the passing of the injunction order of the trial Court. The petitioner has received bookings for the suit property Shamiyana Palace and the last date of booking is in the month of February, 2022, therefore, the petitioner may be permitted to honour the bookings. Hence, relaxation may be granted for the same.
6. Considered on the submissions. There is no specific denial of the title of the respondents by the petitioner and the claim of the petitioner is only that he was licensee of the suit property. Whereas it is claimed by the respondent that the petitioner is agent of the respondents. The view taken by the trial Court and the appellate Court that the respondents have *prima facie* case in their favor is a correct view which does not need any interference. The submissions of the respondents that the booking made by the petitioner was unauthorized and against the intention of the respondents which was expressed by them by publication of notice on 30.6.2019, therefore, the *prima facie* case

being in favor of the respondents and according to their statement, the booking made by the petitioner being unauthorized, the balance of convenience is in favor of the respondents. The finding of the irreparable injury in favor of the respondent has also does not need any interference.

7. The Court exercising jurisdiction under Article 227 the Constitution is limited to seeing that an inferior Court or Tribunal functions within the limits of its authority, and not to correct an error apparent on the face of the record, much less an error of law. In the instant case, there was no error of law or error apparent on the face of record much less an error of law as it has been held in Mohd. Yunus vs Mohd. Mustaqim & Ors, reported in (1983) 4 SCC 566, hence, in view of these observations, I do not find any substance in this petition, which is dismissed at motion stage.

Sd/-
(Rajendra Chandra Singh Samant)
Judge