

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No. 927 of 2019

- Vishnu Kumar Agrawal S/o Shri Laxminarayan Agrawal Aged About 35 Years Occupation Business, R/o Sadar Bazar Bilaspur, Police Station City Kotwali, Tahsil, Civil And Revenue District- Bilaspur, Chhattisgarh. Mo. No.- 9893355805

---- Petitioner

Versus

1. Gulam Ahmed S/o Late Gulam Mustfa Aged About 62 Years R/o Khaparganj Mohalla Bilaspur, Police Station City Kotwali, Tahsil, Civil And Revenue District- Bilaspur, Chhattisgarh
2. Gulam Moinuddin S/o Late Gulam Mustfa Aged About 68 Years
3. Nadeem Ahmed S/o Late Gulam Farukh Aged About 40 Years LRs Of Late Gulam Farukh S/o Late Gulam Mustfa,
4. Neam Ahmed S/o Late Gulam Farukh Aged About 38 Years Lrs Of Late Gulam Farukh S/o Late Gulam Mustfa,
5. Firoza Begam W/o Late Gulam Farukh Aged About 57 Years Lrs Of Late Gulam Farukh S/o Late Gulam Mustfa
6. Niyaz Ahmed S/o Late Gulam Jilani Aged About 40 Years Lrs Of Late Gulam Jilani S/o Late Gulam Mustfa,
7. Sakila Bano W/o Late Gulam Jilani Aged About 60 Years Lrs Of Late Gulam Jilani S/o Late Gulam Mustfa,
8. Shahnaz Bano D/o Late Gulam Jilani Aged About 37 Years Lrs Of Late Gulam Jilani S/o Late Gulam Mustfa,

(respondents No.2 to 8 are r/o Infront Of C.M.D. College, Link Road Bilaspur, Tahsil, Civil And Revenue District- Bilaspur, Chhattisgarh)

--- Respondents

For Petitioner – Mr. Ratnesh Kumar Agrawal, Advocate.

For respondents No.1 to 8 – Mr. Ram Sajiwan, Advocate.

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

19-01-2021

Heard.

1. The present petition has been brought under Article 227 Constitution of India praying for exercise of supervisory jurisdiction to interfere with the order dated 01.11.2019 passed in Civil Suit No.466-A/2014, by the trial Court allowing the application filed by the respondent under Order 1 Rule 10 of C.P.C.
2. It is submitted by the learned counsel for the applicant that petitioner was the plaintiff in the Civil Suit filed and deceased Gulam Ahmed @ Kallu was defendant. The application was filed by the so called legal representatives of the deceased Gulam Ahmad, which has been erroneously allowed by the impugned order.
3. It is submitted by the learned counsel for the petitioner that the suit filed is for the relief of eviction of the defendant from the suit property. The relationship of the plaintiff and defendant was based of tenancy, hence, the respondents, who have been arrayed as party in the Civil Suit, are neither the necessary party nor the proper party.
4. Relying on the judgment of Supreme Court in the case of **Kanaklata Das and Ors Vs. Naba Kumar Das & Ors.** reported in (2018) 2 SCC 352, it is submitted that the Supreme Court has held very clearly that the question of title of the suit premises is not germane to the decision of eviction suit and the plaintiff is the *dominus litis*, who cannot be forced to make a third person party in the suit. The petitioners had never desired the respondents to be made party, hence, the order passed is not sustainable.
5. Learned counsel for the respondent submits that the petitioner has not

brought Civil Suit before the Court with clean hands. There is dispute on the title of the petitioner on the disputed property on which the respondents have also placed their claims.

6. Referring to the judgment and decree dated 22.04.1997 passed in Civil Suit No.12-A/1996 between Amritlal Kachhwaha and Anr. Vs. Gulam Mohd. @ Kallu and Ors., it is submitted that the trial Court has held that the respondents are in possession of the suit property since more than 12 years, therefore, they have entitlement to retain possession of the same and the suit was dismissed. This judgment and decree was challenged in First Appeal No.238/1997 which has been decided on 01.08.2013 and dismissed, according to which, again it has been held that the respondents are the persons entitled to retain possession of the suit property which is the same in this case. The defendant has denied the tenancy in his pleading and there is a question of title, therefore, the respondents, who have been arrayed as party by the impugned order are necessary parties.
7. In reply, it is submitted by the learned counsel for the petitioner that the petitioner has claimed over the suit property on the basis of sale deed dated 22.08.1990. The suit property was purchased from Abdul Ahmad and the deceased defendant Gulam Ahmad was the person who gave consent for the sale transaction, hence, there is no question of any dispute of title. The petitioner claims that there had been a relation of tenancy between the plaintiff and the defendant. Therefore, there had been no scope in inclusion of the respondents as parties, and the prayer made in the petition may be allowed.
8. Heard learned counsel for the parties and perused the documents.
9. The disputed property is the land bearing Khasra No.661/50 and 661/51

measuring 792 Sq.Ft. on which the shop is constructed and some land is lying vacant. The petitioner/plaintiff make the claim on the basis of the sale deed dated 22.08.1990. It has been pleaded that in the month of September 1990, the land and the shop was given on monthly rent of Rs.600/- to the defendant Gulam Ahmad @ Kallu. The eviction of the defendant was sought on this basis that the tenancy has been terminated in the suit filed.

10. The deceased defendant Gulam Ahmad has filed written statement denying the title of the petitioner on the suit property and stating that the petitioner was never in possession of the suit property and there was no tenancy created between the plaintiff and the defendant, therefore, the defendant is in possession of the suit property in capacity of owner.
11. Reliance of the petitioner side on the judgment of Supreme Court in Kanaklata and others (Supra) gives no guidance, because it is clearly held in the judgment that the eviction suit has to be filed by the plaintiff/landlord against the defendant/tenant under the said State Rent Act and this is not such a case.
12. On perusal of the copy of plaint and written statement, it is found that it does not appear to have been filed under the provision of the accommodation Control Act, 1961. The reason for making such assumption is this, that after the enactment of C.G. Rent Control Act, 2011, the Section 6(5) of the Act, 2011 specifically provides, that from the date the Tribunal becomes functional, the jurisdiction of all Courts except the jurisdiction of Supreme Court under Article 136 and High Courts under Article 226 and 227 of Constitution of India shall stand excluded in respect of all matters falling within the jurisdiction of the Tribunal. The present Civil Suit has remained pending before the Court

of Civil Judge Class-II, Bilaspur since then. Hence, it is found that there are issues present regarding the title over the suit property hence this case does not appear to be a purely eviction suit. Respondents claimed to be legal representatives of Gulam Ahmad, who subscribe to the pleading in W.S. made by him, therefore in my view there is no error in the impugned order, hence, this petition is dismissed at motion stage.

13. Accordingly, the petition is disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Monika