

**HIGH COURT OF MADHYA PRADESH JABALPUR**

**SINGLE BENCH:**

**Hon'ble Shri Justice A.K. Shrivastava**

**S.A. No. 1127 / 2009**

- ....**APPELLANTS**:1. Jagjeet Wadhwa  
PLAINTIFFS s/o Sardari Lal Wadhwa  
Aged about 45 years,  
Occupation – Shopkeeper  
R/o Maganj Ward No.4  
Police Station Kotwali Damoh  
District Damoh (MP)
2. Jagdish Dubey  
s/o Devendra Kumar Dubey  
Age about 55 years,  
R/o Itwari Tori Sagar,  
District Sagar (M.P.)

**-Versus-**

- ....**RESPONDENT** : State of Madhya Pradesh  
DEFENDANT Through the Collector,  
Office – Collectorate (M.P.)  
District Damoh

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Sushri Arpana Nakra, learned counsel for the appellants/plaintiffs.

Smt. Sheetal Dubey, learned Government Advocate for the State/defendant.

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**J U D G M E N T**

**{ 30-03-2011 }**

Feeling aggrieved by the judgment and decree passed by learned first Appellate Court dismissing the suit of the plaintiffs for injunction the plaintiffs have filed this second appeal.

2. No exhaustive statements of fact are required to be narrated for the purpose of disposal of this appeal. Suffice it to

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say that a suit for injunction against the respondent / defendant has been filed by the plaintiffs on the ground that they are possessing a shop on tenancy basis. The State Government and its employees are illegally trying to dispossess the plaintiffs from the suit premises which is a shop and hence a suit for injunction has been filed.

3. The written statement has been filed by the defendant/State.

4. Learned Trial Court framed necessary issues and after recording the evidence of the parties decreed the suit of the plaintiff for injunction holding that they are in possession of the suit property and are also the tenant. The appeal which has been filed by the defendant/State Government has been allowed by impugned judgment and decree dismissing the suit of the plaintiffs.

5. In this manner this second appeal has been filed by the plaintiffs.

6. The following substantial questions of law were framed by this Court while admitting the appeal which reads, thus:

- (I) Whether learned first Appellate Court erred in substantial error of law by dismissing the suit of the plaintiffs despite holding that plaintiff No.1 Jagjeet Wadhwa is having possession of the suit property?
- (II) Whether in the facts and circumstances of the case since the possession of the plaintiffs

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has been found to be proved by learned two Courts below, the learned First Appellate Court erred in substantial error of law in dismissing the suit of injunction *de hors* to the provisions to Section 38 of the Specific Relief Act, 1963?

**Regarding Substantial Questions of Law No. (I) and (II):**

7. Vehemently it has been put forth by Sushri Arpana Nakra, learned counsel for the appellants that despite the suit of the plaintiffs has been dismissed by learned first Appellate Court, but, on bare perusal of the findings (para-13 onwards) one can infer that the possession of the plaintiffs has been found and therefore, by taking the law in their own hands the State Government cannot dispossess the plaintiffs.

8. On the other hand, Smt. Sheetal Dubey, learned Government Advocate for the State/defendant submits that tenancy has come to an end and therefore, plaintiff No.2 Jagdish Dubey is not having any right and the possession of the plaintiff No.1 Jagjeet Wadhwa is that of a trespasser.

9. Considered the rival contentions of the learned counsel for the parties and perused the judgment and decree passed by learned two Courts below and particularly the judgment of the learned first Appellate Court.

10. On going through the findings rendered by learned first Appellate Court from para-12 onwards this Court finds that the possession of the plaintiffs has been found by the learned first

Appellate Court although the appeal of the State Government has been allowed and suit has been dismissed.

11. On bare perusal of Section 38 of the Specific Relief Act, 1963 this Court finds that a perpetual injunction may be granted to the plaintiff to prevent the breach of an obligation existing in his favour, whether expressly or by implication. The term “obligation” has also been defined in Section 2 of the said Act which includes every duty enforceable by law. Admittedly, the plaintiffs are in possession of the suit shop.

12. On going through Sub-Section (3) of Section 38 of the said Act it is gathered that when the defendant evades or threatens to invade the plaintiff's right to, or enjoyment of, property, the Court may grant a perpetual injunction. Since the plaintiffs are admittedly in possession of the suit property, therefore, under Sub-Section (3) of Section 38 of the said Act they are entitled for decree of injunction. The possession of plaintiffs has been found to be proved by learned both the learned Courts below which is a pure finding of fact.

13. Resultantly, both the substantial questions of law are decided in favour of appellants and eventually the suit for injunction filed by them is hereby decreed. However, the State Government/defendant shall be free to file necessary proceedings to evict the plaintiffs in accordance with law. If such proceedings are filed they may be decided in accordance with law.

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14. Accordingly, this appeal is allowed. The impugned judgment and decree passed by learned first Appellate Court is hereby set aside and by restoring the judgment and decree passed by learned Trial Court the suit for injunction filed by the plaintiffs is hereby decreed. No order as to costs.

**(A.K. SHRIVASTAVA)**  
**JUDGE**

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