

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 132 of 2008**

Smt. Narmada Bai, W/o Shri Rampratap Tiwari, aged about 62 years, R/o. Ward No. 1, Manendragarh Thana, Tahsil Manendragarh, Distt. Korea (C.G.)

-----Appellant/plaintiff

Versus

1. Hari Prasad Mishra, aged about 28 years, S/o Shri Ram Kumar Mishra.

2. Dilip Kumar Mishra, aged about 35 years, S/o Shri Ram Kumar Mishra.

3. Rakesh Kumar Mishra, aged about 25 years, S/o Shri Ram Kumar Mishra.

4. Sarswati Mishra, aged about 32 years, W/o Shri Dilip Mishra.

5. Babita Mishra, aged about 26 years, W/o Shri Hari Prasad Mishra,

All are residing near house of Kalika Sing Ward No. -13, Manendragarh, Thana & Tahsil Manendragarh, District Korea (C.G.)

-----Respondents/defendants

For Appellant : Dr. N.K. Shukla, Senior Advocate
with Shri Arijit Mishra, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

26/11/2019

(1) Heard on the question of admission and formulation of substantial question of law of this second appeal preferred by plaintiff/appellant under Section 100 of

the Code of Civil Procedure, 1908 questioning the impugned judgment & decree dated 31.12.2007 passed by Second Additional District Judge (F.T.C.), Manendragarh District Korla in Civil Appeal No. 5-A/2007, affirming the judgment & decree of Civil Judge, Class-II, Bhatapara dated 31.07.2006 passed in Civil Suit No. 43-A/2004, dismissing the suit.

(2) Learned counsel appearing for the appellant/plaintiff would submit that both the courts below are absolutely unjustified in dismissing the suit filed by the plaintiffs by holding that relationship of landlord and tenant is not established between the parties and the plaintiff is not entitled for decree of eviction and arrears of rent, as such, appeal deserves to be admitted for hearing by formulating substantial question of law for determination.

(3) The plaintiff filed a suit for eviction and arrears of rent stating inter alia that he is owner of the suit land, in which he constructed the house and let out it to the defendants on a monthly rent of Rs.500/- and when the suit accommodation is required, he served notice to them for vacating the suit premises but they have neither paid the rent nor vacate the suit premises resulting into filing of the civil suit for eviction and

arrears of rent, in which, the defendants set up a plea that they are not the tenant of the plaintiff; suit property is the government's land and they have been granted patta with regard to the aforesaid land by the State Government, as such, they are staying in that suit property in the capacity of lessee of State Government.

(4) The trial Court, upon appreciation of oral and documentary evidence available on record, dismissed the suit stating that the suit land is government land and it is leased out to the defendants by the Government and the relationship of landlord and tenant between the parties is not established. On an appeal being preferred by the plaintiff thereagainst, the first appellate Court, after re-appreciation of oral & documentary evidence available on record, affirmed the judgment and decree of the trial Court while dismissing the appeal. Against which, instant second appeal has been preferred.

(5) Thus, concurrent findings recorded by both the courts below holding the suit land to be the government land; defendants are lessee of the government; and relationship of landlord and tenant is not established between the parties and the defendant is lessee of the government. The said findings arrived at by both the courts below are finding of fact based on material

available on record and I do not find it either perverse or contrary to record and question of law much less substantial question of law is involved in this appeal.

(6) Accordingly, the second appeal, being devoid of merit, is liable to be and is hereby dismissed in *limine* without notice to the other side. No costs.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-