

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 314 of 2007**

Shambhoo Prasad Kashyap (Dead) LRs:

1. Rukmani Bai Kashyap (deleted)
2. Krishna Kumar Kashyap, aged 52 years,
3. Shyam Kumar Kashyap, aged 42 years,
4. Rajkumar Kashyap, aged 40 years,

No. 2 to 4 are S/o S.P. Kashyap, All are resident of
Bus Stand Road, Nirala Nagar : Bilaspur (C.G.)

----Appellants/plaintiffs

Versus

1. Shri S.P. Pandey, aged 70 years, S/o Shri K.P. Pandey, r/o Telephone Exchange Road Nirala Nagar, Distt – Bilaspur (C.G.) ... Defendant No.1.

2. The Municipal Corporation Through : The Commissioner, Municipal Corporation, Bilaspur (C.G.)

....Defendant No. 2

---- Respondents.

For Appellants	:	Mr. Upendra Bharat, Advocate.
For Respondent No. 1	:	Mr. Somnath Verma, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

16/12/2019

(1) Heard on the question of admission and formulation of substantial question of law in this second appeal preferred by appellants/plaintiffs against the impugned judgment and decree passed by the first appellate Court affirming the judgment and decree of the trial court dismissing the suit.

(2) Original Plaintiff – Shambhoo Prasad Kashyap filed a suit for permanent injunction stating *inter alia* that defendant No.1 be restrained from making construction on the *Nistari Rasta (suit land)*. During pendency of the suit, amendment was sought by the plaintiff on 14.05.2004 that the defendant No. 1 has already encroached by making construction over the suit land, which, he has to demolish / remove in a public interest, thereafter tried the suit and dismissed the suit, which has been upheld by the first appellate Court, on an appeal being preferred by the plaintiffs.

(3) Mr. Upendra Bharat, learned counsel appearing for the appellants/plaintiffs, at the outset, would submit that the suit is only for permanent injunction and now the construction has been made by the defendant over the suit land, therefore, plaintiff may be permitted to withdraw the second appeal with liberty to file comprehensive suit for declaration of title and possession and/or decree for mandatory injunction removing / demolishing the construction already made.

(4) Per contra, counsel for the respondents would oppose the contention so made by counsel the appellant.

(5) Taking into consideration the fact that earlier suit was only for permanent injunction; and it is the case of the plaintiffs that now the construction has already been made by defendant No. 1 by encroaching the suit land (*Nistari Rasta*), therefore, it would be expedient to permit the appellants to withdraw this second appeal with liberty to file the

comprehensive suit for declaration of title and possession and / or for mandatory injunction, if any.

(6) Accordingly, the second appeal is dismissed as withdrawn with the liberty as aforesaid.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-