

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**S.A. No. 225 of 2006**

1. Ashok Kumar Chandrakar, aged 40 years, Principal, S/o Late Shri Sumant Prasad, R/o Kusumkasa, Tahsil-Balod, District Durg (C.G.)
2. Yashwant Chandrakar, age 33 years S/o Shri Sumant Prasad, R/o Bharewa (Pooran), Tah.- Pandariya, District Kawardha
3. Bundela Bai, Age 59 years W/o Sumat Prasad, R/o Bharewa (Pooran), Tah.- Pandariya, District Kawardha
4. Meena Kulmitra, D/o Sumant Prasad W/o Gopinath Kulmitra, Teacher, R/o Near Rest House, Patwari Chowl Lormi, District Bilaspur (C.G.)
5. Smt. Kiran Kulmitra, age 34 years, D/o Sumnat, W/o Atmapunj Kulmitra, R/o Village Ganiyari, District Bilaspur (C.G.)

---- Appellants**Versus**

1. Govt. Of C.G. through- Collector- Bilaspur
2. Sub-Divisional Officer (Irrigation) Minor Irrigation, Kharang Sub-Division, Bilaspur(C.G.)

---- Respondents

For Appellants:	Shri Vinod Kumar Sharma, Advocate.
For State/Respondents:	Shri Vimlesh Bajpai, Govt. Advocate.

Single Bench: Hon'ble Shri Sanjay Agrawal, J**Order On Board****24.06.2019**

1. This second appeal has been preferred by the Plaintiffs questioning the propriety of the judgment and decree dated 15.12.2005 passed by the District Judge, Kabirdham in Civil Appeal No.13-A/2005, by which, the lower appellate Court while affirming the judgment and decree dated 10.08.2005 passed by the Civil Judge, Class-I, Kabirdham in Civil Suit No.02-A/2004 has dismissed the appeal.
2. Briefly stated the facts of the case are that Plaintiff Sumant Prasad Chandrakar (since deceased now represented by his legal

representatives) instituted a suit claiming injunction in a mandate form praying for restoration of his land bearing Khasra No.332 in its original status and praying further for restraining the Defendants from raising any construction with regard to rest of the property as described in plaint paragraph 1. It is pleaded that the Respondent authorities colluded with one Mantram proceeded for construction of canal in an inappropriate and improper manner causing immense loss to the Plaintiff. The Plaintiff is, therefore, filed a suit for injunction as such.

3. While contesting the aforesaid claim, it is pleaded by the Defendants that the property in question has already been acquired by the Land Acquisition Officer, Mungeli on 07.04.1994 vide Revenue Case No.25-A/82/1991-92 and as such, the Plaintiff is not entitled to seek such relief.

4. In order to establish the claim, the Plaintiff has examined as many as three witnesses while none was examined by the Defendants.

5. After considering the evidence led by the parties and that by considering the documentary evidence, particularly, the award passed by the Land Acquisition Officer on 07.04.1994, the trial Court arrived at a conclusion that since the canal has already been constructed, therefore, the claim as made by the Plaintiff for restoration of his land bearing Khasra No. 332 to its original number and for restraining the Defendants from raising any construction with regard to rest of the land as prescribed in plaint paragraph 1 cannot be granted. As a consequence, the trial Court has dismissed the claim.

6. The aforesaid finding of the trial Court has been affirmed further by the lower appellate Court in an appeal, preferred by the Plaintiff.

7. Being aggrieved, the instant appeal has been preferred by the Plaintiffs. Shri Vinod Kumar Sharma, learned counsel for the Appellants submits that the judgment and decree as passed by the Courts below are apparently contrary to law. He submits further that the Defendants have not adduced any evidence in order to disprove the Plaintiff's claim, therefore, under such circumstances, the Courts below ought not to have refused the Plaintiff's claim. He, therefore, submits that the judgment and decree as passed by the Courts below are liable to be set aside.

8. I have heard learned Counsel for the Appellant and perused the entire records of the Courts below carefully.

9. From perusal of the record, it appears that while non-suiting the Plaintiffs' claim, the Courts below have taken note of the award which was passed by the Land Acquisition Officer on 07.04.1994 in Revenue Case No. 25-A/82/1991-92. It appears further from the perusal of the record that the award as passed by the Land Acquisition Officer has not been questioned by the Plaintiff and by efflux of time, it has attained its finality.

10. In view of the said fact and particularly, when the property in question has already been acquired by the Land Acquisition Officer, the Courts below have not committed any illegality in non-suiting the Plaintiff.

11. Consequently, I do not find any question of law, much less the substantial questions of law which arise for determination in this Appeal. The Appeal being devoid of merits is, accordingly, dismissed at the admission stage itself. No order as to costs.

Sd/-

(Sanjay Agrawal)
JUDGE