

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.475 of 2019**

Bharat Aluminium Company Limited Through – Associate General Manager – Legal, Bharat Aluminium Company Limited, Balco Nagar, P.S.- Balco, Tahsil & Distt. Korba (CG)

---- Appellant**Versus**

1. Amit Shukla S/o Shri H.P.Shukla, 38 yrs,
2. Rahul Shukla S/o Shri H.P. Shukla, 40 yrs,

Both R/o Ward No.43, Mukht Nagar Infront of Padmanabpur Durg, Tah. & Distt. Durg (CG) through – Power of Attorney Holder Manoj Mishra, S/o Kripa Shankar Mishra, R/o Padi Marg, Balco Nagar, Tah. & Distt. Korba (CG)

3. Smt.Khatija Begum W/o Sheikh Dilawar, 52 years,
4. Smt. Shah Nara Begum W/o Sheikh Sayyay Rehman, 40 yrs,
5. Smt. Shabina Begum, W/o Sheikh Dilawar, 38 yrs,
6. Smt. Habiwa Khalida Begum W/o Sheikh Kaimur, 35 yrs,
7. Smt.Shabana Begum, W/o Sheikh, 32 years

Res. no.4 to 8 R/o Vill. Risda, Tah. & Distt. Korba (CG)

8. Smt.Sushila Mishra W/o Shri Kripa Shankar Mishra, R/o Mishra Bhawan, Padimar, Balco Nagar, Balco, Tah. & Distt. Korba (CG)
9. Smt. Girja Shukla W/o Shri Hariprasad Shukla, R/o Mukht Nagar, Ward No.43, Infront of Padmanabpur, Durg, Distt. Durg (CG)
10. Balkrishna Pandey S/o Late Umashankar Pandey, R/o Mishra Bhawan, Padimar, Balco Nagar, Korba, Tah. & Distt. Korba (CG)
11. State of C.G. Through – Collector, Korba, Tah. & Distt. Korba

---- Respondents

For Appellant	:	Mr.Prafull Bharat, Advocate
For Respondent No.11	:	Mr.Ravi Bhagat, Dy.G.A.

Hon'ble Shri Justice Sanjay K. Agrawal
Order on Board

01.08.2019

1. Heard on admission and formulation of substantial question of law in

this second appeal preferred by the appellant herein.

2. Mr.Prafull Bharat, learned counsel for the appellant, would submit that the first appellate Court is absolutely unjustified in dismissing the appeal of the appellant herein by recording the finding which is perverse and contrary to record and the second appeal gives rise to substantial question of law for determination.
3. I have heard learned counsel for the appellant, considered his submissions made hereinabove and also went through the records with utmost circumspection.
4. In a suit filed by plaintiffs-Amit Shukla and Rahul Shukla against defendants No.1 to 10 being Civil Suit No.23A/15 (appellant therein was not party to suit) the trial Court on 29.2.2016 decreed the suit holding that the plaintiffs are title-holders of the suit land and entitled for possession from the defendants. The defendants therein did not prefer any appeal questioning that decree, but the appellant herein (BALCO) preferred an appeal under Section 96 of the CPC which he was permitted to file by the first appellate Court stating that earlier suit land was owned by the appellant herein which he has surrendered in favour of the State Government i.e. 0.841 hectare and in lieu of that, the State Government has given other land to them on lease and lease deed has already been executed in favour of the appellant and therefore, he is having legal interest in subject-matter of the decree. The first appellate Court has dismissed the appeal finding no merit, against which, this second appeal under Section 100 of the CPC has been filed by the appellant herein.

5. It is the case of the appellant that though the suit land was earlier surrendered by him in favour of the State Government on 19.12.2013 and the State Government has already executed lease in exchange of that land in favour of the appellant herein, but now the State Government has issued notices against the leased out land to the appellant herein and therefore, the appellant has interest in the suit land.
6. The appellant has already surrendered the suit land in favour of the State Government and in lieu of that land, the State Government has already executed lease deed in exchange of that land in favour of the appellant herein, in which the appellant (BALCO) is continuing in possession and if the State Government has issued any notices for eviction, the appellant herein is at liberty to proceed in accordance with law to protect its lease, if any, but the appellant (BALCO) cannot question the decree granted by the trial Court with regard to suit land which the appellant has already surrendered in favour of the State Government. I do not find any illegality or perversity in the finding recorded by the first appellate Court and even I do not find any substantial question of law for determination of this second appeal.
7. Accordingly, the second appeal being devoid of merit is liable to be and is hereby dismissed in *limine* without notice to other side.

Sd/-

(Sanjay K.Agrawal)
Judge