

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 63 of 2010**

Karan Singh Kashyap S/o Ganesh Singh Kashyap,
Aged about 55 years, R/o Village Kandel, Tahsil
and District Dhamtari, Chhattisgarh.

---Appellant/Plaintiff

Versus

1. Gram Panchayat Kandel Through Sarpanch, Gram Panchayat Kandel, Post Kandel, Tahsil and District Dhamtari, Chhattisgarh.
2. State of Chhattisgarh, Through the Collector, Dhamtari, Chhattisgarh.
3. Prathamik Machhuwa Sahkari Samiti Kandel, Through its president Manohar Sarwa R/o Village Kandel, Tahsil and District Dhamtari, Chhattisgarh.

--- Respondents/Defendants

For Appellant	:- Mr. Vinod Kumar Sharma, Advocate
For State	:- Dr. Veena Nair, Dy. A.G.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

20/08/2020

1. Proceedings of this matter have been taken up through video conferencing.
2. Heard on admission and formulation of substantial question of law in this second appeal preferred

by the appellant/plaintiff under Section 100 of the CPC. By the impugned judgment and decree, learned first appellate Court dismissed the appeal preferred by the plaintiff affirming the judgment and decree of the trial Court dismissing the suit.

3. Mr. Vinod Kumar Sharma, learned counsel for the appellant/plaintiff, would submit that both the Courts below have concurrently erred in dismissing the suit of the plaintiff by recording a finding which is perverse and contrary to the record, as such, the appeal be admitted by formulating substantial question of law for determination.

4. The dispute relates to the allotment of patta of suit tank i.e. Kulhariya Talab which the Gram Panchayat had initially granted in favour of the plaintiff and it came to an end on 14/02/2003. The Gram Panchayat extended the lease again for a period of 10 years against which dispute arose and the matter was considered by the S.D.O. who revoked the lease granted in favour of the plaintiff and declared the suit tank to be used for nistari rights of the villagers against which appeal and revision were preferred and both were

dismissed, thereafter, the suit was filed without questioning the order of the S.D.O. as well as of the other revenue authorities.

5. The suit filed by the plaintiff was dismissed by the trial Court and affirmed by the first appellate Court holding that the order of the S.D.O. declaring the suit tank for nistar rights of the villagers has not been questioned by the plaintiff and even otherwise, the period for which lease had been extended has also come to an end.

6. Both the Courts below have rightly and concurrently held that the Gram Panchayat had no right to extend the lease in favour of the plaintiff for a period of ten years contrary to the governmental instructions and the order of the S.D.O. cancelling the lease has not even been questioned by the plaintiff in the suit. Even otherwise, the period of ten years from the date of renewal of the lease i.e. from 15/02/2003 has already come to an end during the pendency of the appeal, as such, the findings recorded by both the Courts below are findings of fact based on evidence available on record which is neither perverse nor contrary to the record.

7. The second appeal, being devoid of merits, deserves to be and is accordingly dismissed *in limine* without notice to the other side. No cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet