

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.65 of 2008**

Parasnath S/o Firturam Dewangan, aged 42 years, R/o
Bhatgaon, Police Station and Tahsil Bilaigarh,
District Raipur (CG)

----- **Appellant/Plaintiff**

Versus

1. Somnath S/o Firturam Dewangan, aged 40 years,

2. Bhagwati W/o Somnath Dewangan, aged 38 years,

Both R/o Village Bhatgaon, Police Station and Tahsil
Bilaigarh, District Raipur (CG)

----- **Respondents/Defendants**

For Appellant/Plaintiff: Mr. Rupesh Shrivastava and
Mr. Chandradeep Tripathi, Advocates
For Respondents/Defendants:
: Mr. Pawan Kesharwani, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

29.01.2020

1. The substantial questions of law involved, formulated
and to be answered in this second appeal preferred by
the plaintiff are as under:-

"1. Whether the two Courts below were
justified in deciding the suit against the
plaintiff in spite of the admission of the
defendant No.1 the lease of the said shop
given in the year 1992 was in favour of the
plaintiff ?

2. Whether the two Courts below have
committed an error of law and not accepting
Ex.P-4, the consent letter to be basis on
which the plaintiff was entitled for the

vacant possession of the suit premises ?"

[For the sake of convenience, parties would be referred hereinafter as per their status shown and ranking given in the suit before the trial Court].

2. The suit plot in which the plaintiff has constructed the shop situated at village Bhatgaon within the limits of Nagar Panchayat was held by the plaintiff on lease vide Ex.P-1 for a period of three years. The plaintiff and defendant No.1 both are brothers. It is the case of the plaintiff that since his brother defendant No.1 was unemployed he allowed him to run his shop as licensee and lease has been renewed for a further period of three years, but possession of defendant No.1 is unauthorized. Despite service of notice, he has not vacated the suit shop, therefore, the plaintiff filed a suit stating that he be declared lease-holder and the defendants be directed to hand over the peaceful possession to him.
3. The defendants filed their written statement and denied the averments made in the plaint stating inter-alia that defendant No.1 himself has constructed the suit shop and as such, the plaintiff is not entitled for declaration of title and possession.
4. The trial Court upon evaluation and after appreciation of oral and documentary evidence available on record, by its judgment and decree dated 18.1.2005, dismissed

the suit, which has been affirmed by the first appellate Court. Questioning the judgment and decree of the first appellate Court, this second appeal under Section 100 of the CPC has been filed by the appellant/plaintiff, in which substantial questions of law have been formulated, which have been set-out in the opening paragraph of this judgment.

5. Mr. Rupesh Shrivastava, learned counsel for the appellant/plaintiff, would submit that concurrent finding recorded by two Courts below that the plaintiff is not entitled for possession is perverse finding despite holding that the plaintiff is lessee of the suit shop, as such, finding recorded by two Courts below deserves to be set aside.

6. On the other hand, Mr. Pawan Kesharwani, learned counsel for the respondents/defendants, would support the impugned judgment and decree.

7. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also went through the records with utmost circumspection.

8. Admittedly, the suit land was owned by Nagar Panchayat, Bhatgaon and lease was granted in favour of the plaintiff vide Ex.P-7 for a period of three years and it was further extended for a further period of three years. There is nothing on record to demonstrate

that after three years on 3.2.2002 lease was further extended in favour of the plaintiff. It appears that defendant No.1 has allowed to construct the suit shop on the plot allotted to the plaintiff on lease by Nagar Panchayat, Bhatgaon and dispute has occurred of that suit shop so constructed, but the fact remains that the plaintiff has claimed title of the suit shop which cannot be granted to him as lease was granted to him for a period of three years and that has been further extended up to 2.2.2002 and as per definition of Section 105 of the Transfer of Property Act, 1882, a lease of immoveable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms, as such, lease was granted in favour of the plaintiff firstly for a period of three years and it was further extended for a further period of three years and thereafter nothing has been brought on record to show that lease was further extended, as such, both the Courts below were justified in holding that the plaintiff is not title-holder of the suit shop and even in absence of extension of period of

lease, he cannot be declared lessee of the suit land/shop that too in absence of Nagar Panchayat, Bhatgaon as party defendant in the suit. I do not find any merit in this second appeal. The substantial questions of law are answered accordingly.

9. Consequently, the second appeal being devoid of merit is liable to be and is hereby dismissed leaving the parties to bear their own cost(s).

10. Decree be drawn-up accordingly.

Sd/-
(Sanjay K.Agrawal)
Judge

B/-