

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.66 of 2008**

Samaru Lal Pal, aged about 60 years, son of late Shri Mahangu Ram Pal, caste Dhangarh/Dhankar (Schedule Tribe), R/o. Shankar Nagar, Raipur, District Raipur (CG).

---- Appellant**Versus**

1. Superintending Engineer, Public Works Department, Construction Division, Raipur, District Raipur (CG).
2. State of Chhattisgarh, through the Collector, Raipur, District Raipur (CG).

---- Respondents

For Appellant : Shri B.P. Gupta and Ms. Richa Jain, Advocates.

For Respondents : Ms. Astha Shukla, Panel Lawyer

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****11/08/2016****(1)** Heard.

(2) This is appellant/plaintiff's second appeal under Section 100 of the Code of Civil Procedure, 1908 (for short 'the CPC') challenging the judgment and decree dated 17.12.2007 passed by 12th Additional District Judge (F.T.C.), Raipur in Civil Appeal No.05-A/2007, affirming the judgment and decree dated 26.02.2007 passed by Fifth Civil Judge, Class-II in Civil Suit No.92-A/2006, whereby the trial Court has dismissed the suit.

(3) The appellant/plaintiff-Samaru Lal Pal filed a suit for correction of his caste in his service record as Dhankar (Dhangarh) in place of "Gararia" and the respondents/defendants be restrained from unnecessary harassing him.

(4) The trial Court, by its impugned order dated 26.02.2007 dismissed the suit holding that the appellant/plaintiff has failed to prove that he belongs to Dhankar (Dhangarh) caste, member of Schedule Tribe.

(5) On appeal being preferred by the appellant/plaintiff, the First Appellate Court has affirmed the finding of the trial Court.

(6) Against which, this second appeal has been preferred by the appellant/plaintiff.

(7) Learned counsel appearing for the appellant/plaintiff would vehemently submit that the concurrent finding recorded by both the Courts below holding that the appellant/plaintiff has not proved that he belongs to Dhankar (Dhangarh) caste, member of Schedule Tribe, which is perverse and contrary to the record and gives rise a substantial question of law for determination of this second appeal.

(8) I have heard learned counsel for the parties and perused the records of both the Courts below including judgment and decree impugned.

(9) After hearing learned counsel for the appellant/plaintiff and after perusal of the record, I do not find any perversity or illegality in the said finding recorded by both the Courts below holding that the appellant/plaintiff has not proved that he belongs to Dhankar (Dhangarh) caste, member of Schedule Tribe, which is concurrent finding based on the evidence available on record.

(10) Recently, the Supreme Court in the case of **Vishwanath Agrawal, S/o Sitaram Agrawal Vs. Sarla Vishwanath Agrawal**¹, has held that High Court should not disturb the concurrent finding of fact, unless finding recorded is perverse being based on no evidence. Para-36 & 37 of report as under:-

“36. In **Major Singh Vs. Rattan Singh**² it has been observed that when the Courts below had rejected and disbelieved the evidence on unacceptable grounds, it is the duty of the High Court to consider whether the reasons given by the Courts below are sustainable in law while hearing an appeal under Section 100 of the Code of Civil Procedure.

37. In **Vidhyadhan Vs. Manikrao**³ it has been ruled that the High Court in a second appeal should not disturb the concurrent findings of fact unless it is shown that the findings recorded by the Courts below are perverse being based on no evidence or that on the evidence on record no reasonable person could have come to that conclusion. We may note here that solely because another view is possible on the basis of the evidence, the

¹ (2012) 7 SCC 288

High Court would not be entitled to exercise the jurisdictions under Section 100 of the Code of Civil Procedure. This view of ours has been fortified by the decisions of this Court in Abdul Raheem V. Karnataka Electricity Board⁴.

(11) Keeping in view the ratio of law laid down by the Supreme Court in the aforesaid cases, the concurrent finding of fact recorded by both the Courts below is based on evidence available on record and it is neither perverse nor contrary to the record. No substantial question of law is involved in this appeal, thus, the appeal deserves to be and is accordingly dismissed at motion stage. No order as to costs.

Sd/-
(**Sanjay K. Agrawal**)
Judge

L/-