NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No. 74 of 2008

1. Gorelal Tiwari, S/o Gokul Prasad, Aged about 49 years,
2. Sundarlal Tiwari, S/o Shri Gokul Prasad, Aged about 43 years,

   Both are R/o Kasdol, District - Raipur (C.G.)
3. Smt. Narmada Bai Wd/o Gokul Prasad, Aged about 65 years (since died) : Through Her Legal Representative - Daughter Smt. Ramkali Bai, W/o Bajrang Prasad Dubey, Aged about 48 years, R/o Vinoba Nagar, Bilaspur, District - Bilaspur (C.G.)

---- Appellants

Versus

1. Mohanlal Tiwari, S/o Gokul Prasad, Aged about 51 years, R/o Village Kasdol, District Raipur (C.G.)
2. State Of Chhattisgarh, Through The Collector, Raipur, District - Raipur (C.G.)

---- Respondents

For Appellants	:	Shri Manoj Paranjpe & Ms. Priyanka Mehta, Advocates
For the State	:	Ms. K. Tripti, Rao, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

19/08/2016

1. Heard.

2. The plaintiffs' suit for declaration of title and permanent injunction and was partly decreed by the trial Court, against which defendants preferred an appeal in which they were unsuccessful against which the Second Appeal is preferred.

3. Mr. Manoj Paranjpe, learned counsel for the appellants would submit that the decree for declaration of title and permanent injunction

granted by both the Courts below by recording a perverse finding and gives rise to substantial question of law.

4. The findings recorded by both the Courts below holding that the partition has already been taken place and the plaintiff entitled for declaration of title and permanent injunction is a finding of fact based on material available on record. It is neither perverse nor contrary to the record, I do not find any substantial question of law for admission of this appeal.

5. 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. Paras-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.
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> 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

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[1] (2012) 7 SCC 288
[2] (1997) 3 SCC 546 : AIR 1997 SC 1906
[3] (1999) 3 SCC 573

> 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 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 Board[4].

6. Keeping in view, the ratio of law laid down by the Supreme Court in the aforesaid case, 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 second appeal.

7. Accordingly, the appeal deserves to be and is hereby dismissed at the motion stage.

Sd/-

(**Sanjay K. Agrawal**)
JUDGE

Kvr

[4] (2007) 14 SCC 138: AIR 2008 SC 956