

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.189 of 2007**

1. Charan Singh, S/o late Gangaram, aged about 65 years, R/o Village Khomda, P.H. No.40. R.N.M. Sankra Tahsil & District Mahasamund (CG).
2. Bharat, S/o Shri Charan Singh, aged about 40 years, R/o Village Remda Near Village Khomda, P.H. No.40. R.N.M. Sankra, Tahsil & District Mahasamund (CG).

---- Appellants**Versus**

1. Holmoti, D/o late Siril Gond, aged about 55 years, W/o Tulsiram Gond, R/o. Village Lubhaipali, Near Village Chhatwan, Police Station Pithora, Tahsil Kasdol, District Raipur (CG).
2. Gomti, D/o late Siril Gond, aged about 60 years, W/o. Sahdev Gond, R/o Village Khomda, Near Village Basna, Tahsil Saraipali, District Mahasamund (CG).
3. State of Chhattisgarh, through Collector, Mahasamund, District Mahasamund (CG).

---- Respondents

For Appellant : Shri Manoj Paranjpe, Advocate.

For Respondents/State : Shri Sameer Behar, Panel Lawyer

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

12/07/2016**(1)** Heard.

(2) This is appellants/defendants' second appeal under Section 100 of the Code of Civil Procedure, 1908 (for short 'the CPC') challenging the judgment and decree dated 28.02.2007 passed by

First Additional District Judge, Mahasamund in Civil Appeal No.16-A/2003, affirming the judgment and decree dated 29.03.2003 passed by Third Civil Judge, Class-I, Mahasamund in Civil Suit No.69-A/2002, whereby the trial Court has decreed the suit.

(3) Respondents No.1 and 2/plaintiffs filed a suit for partition with regard to the property shown in Schedule-A, which was decreed by the trial Court.

(4) Against the judgment and decree of the trial Court, the appellants/defendants filed First Appeal under Section 100 of the CPC, which was also dismissed by the First Appellate Court.

(5) Against which, this second appeal has been filed by the appellants/defendants.

(6) Learned counsel appearing for the appellants/defendants would vehemently submit that the concurrent findings recorded by two Courts below that there is no partition between the parties with regard to the property shown in Schedule-A, which is perverse and contrary to the record and raises the substantial question of law for determination of this second appeal.

(7) The concurrent findings recorded by two Courts below are finding based on the evidence available on record.

(8) After going through the records of the Courts below and having heard learned counsel appearing for the

appellants/defendants, I do not find any perversity or illegality in the said finding and no substantial question of law is involved to be formulated for admission of this appeal.

(9) 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 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.

1 (2012) 7 SCC 288

(10) 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 appeal, thus, the appeal deserves to be and is accordingly dismissed. No order as to costs.

Sd/-
(Sanjay K. Agrawal)
Judge

L/-