

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.579 of 2004**

Manikchand Jaiswal, S/o Jeeut Sao, aged about 55 years,
Caste Jaiswal, R/o. Girwani, Tahsil Pal, District Sarguja (CG).

---- Appellant

Versus

1. Bachan Lal Jaiswal, S/o. Jeeut Sao, aged about 45 years, R/o Village Ghirwani, Tahsil Pal, District Sarguja (CG).
2. State of Chhattisgarh, through the Collector, District Surguja (CG).

---- Respondents

For Appellant : Shri R.K. Tiwari, Advocate.

For Respondent/State : Ms. Astha Shukla, Panel Lawyer

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

17/08/2016

(1) Heard on admission.

(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 16.09.2004 passed by Additional District Judge (F.T.C.), Ramanujganj, District Sarguja in Civil Appeal No.51-A/2002, affirming the judgment and decree dated 26.02.1998 passed by Civil Judge, Class-II, Ramanujganj in Civil Suit No.3-A/1996, whereby the trial Court has dismissed the suit.

(3) Appellant/plaintiff filed a suit for declaration of title and setting aside the sale deed, which was dismissed by the trial Court holding that the appellant/plaintiff is not entitled for declaration of title and the suit for cancellation of sale deed is barred by limitation.

(4) Against the judgment and decree of the trial Court, the First Appeal and sale deed dated 11.06.1975 were preferred by the appellant/plaintiff, which was also dismissed by the First Appellate Court.

(5) Against which, this second appeal under Section 100 of the Code of Civil Procedure has been filed by the appellant/plaintiff herein.

(6) Mr. R.K. Tiwari, learned counsel appearing for the appellant/plaintiff would submit that the concurrent findings recorded by two Courts below dismissing the suit on merits as well as on the question of limitation which is perverse finding and contrary to record and therefore, it gives rise to substantial question of law for determination of this appeal.

(7) I have heard learned counsel appearing for the appellant/plaintiff and perused the records of the Courts below with utmost circumspections.

(8) The concurrent finding recorded by two Courts below that the appellant/plaintiff is not entitled for declaration of title and suit is barred by limitation are finding based on the evidence material

available on record. They are neither perverse nor contrary to record.

(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

2 (1997) 3 SCC 546: AIR 1997 SC 1906

3 (1999) 3 SCC 573

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

(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 second appeal.

(11) Consequently, the second appeal deserves to be and is accordingly dismissed. No order as to costs.

Sd/-
(Sanjay K. Agrawal)
Judge

L/-