

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 871 of 1998**

1. Bhagwandas, son of Shri Bholu Satnami, aged 40 years, r/o Village Sendri, Tahsil Baloda Bazar, Distt. Raipur (C.G.)

2a. Uttam Kumar, aged about 35 years,

2b. Manohar Lal, aged about 33 years,

2c. Mukesh Kumar, aged about 30 years,

All S/o Late Babulal, R/o Vill. Sendri, Post-Bijradih, Bhatapara, Distt. Balodabazar- Bhatapara (C.G.)
.....Defendants

---- Appellants

Versus

Ramkisun, son of Shri Ram Ratan Satnami, aged 37 years, r/o Shakti Ward, Bhatapara, Distt. Raipur (C.G.)
.....Plaintiff

---- Respondent

For Appellants : Mr. Malay Kumar Bhaduri, Advocate.

For Respondent : Ms. Priyanka Mehta, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

11/08/2016

(1) Plaintiff- Ramkisun filed a civil suit for permanent injunction claiming that he has purchased the suit land from Sirumual Sindhi by registered sale deed dated 19.02.1979 and thereby became the title holder of the suit land and the

defendants be restrained from interfering with the suit land.

(2) The trial Court, by appreciating the oral and documentary evidence on record, decreed the suit holding that the suit land was earlier owned by Sirumal Sindhi and in whose favour the decree for permanent injunction was also granted by the trial Court on 26.2.1977 in Civil Suit No. 43-A/1975 and he has sold the suit land in favour of present plaintiff by registered sale deed dated 19.02.1979 and, therefore, defendants have no right or title over the plaintiff's possession on the suit land.

(3) Defendants preferred first appeal there-against. The first appellate Court has dismissed the appeal by affirming the order of the trial Court, against which, second appeal under Section 100 of the CPC has been filed.

(4) Mr. M.K. Bhaduri, learned counsel appearing for the appellants/defendants would submit that concurrent findings recorded by both the courts below are perverse. He would further submit that the finding recorded by the trial Court in para 7 of its judgment while deciding the issue No. 2 is perverse as merely because the decree for permanent injunction was granted in favour of Sirumal Sindhi (Plaintiff's predecessor-in-title), it cannot be held that plaintiff has become title holder of the suit land by virtue of that decree

as the suit was decided *ex parte* in favour of Sirumal Sindhi and it would not operate as *res-judicate*. He would further submit that the trial Court, in paragraph 9 of its judgment, recorded a finding that Sirumal Sindhi has sold the suit land in the capacity of owner in favour of plaintiff on 19.2.1979. He has placed upon the judgments of the Supreme Court in the matters of **Satyendra Kumar & others Vs. Raj Nath Dubey & others¹**, **Santosh Hazari Vs. Purushottam Tiwari (deceased) by LRS. And Muddasani Venkata Narsaiah (D) Th. Lrs. v. Muddasani Sarojna²** in support of his case.

(5) I have heard learned counsel appearing for the appellants/defendants along with the record with utmost circumspection.

(6) A perusal of finding recorded by the trial Court in para 7 of its order would show that decree for permanent injunction was granted in favour of Sirumal Sindhi (plaintiff's predecessor-in-title) vide Ex P-2 and against the defendant's father Bhola Satnami restraining them from interfering with the possession of Sirumal Sindhi and that decree has not been shown to have been set aside by any competent court of law, as such that has become final.

¹ AIR 2016 SC 2231

² AIR 2016 SC 2250

(7) The trial Court has held that decree is still in force and no such finding regarding *res-judicata* has been recorded by the trial Court and that finding has been affirmed by the first appellate Court, in which, I do not find any illegality and it cannot be said to be the perverse findings, as such, a finding is based on material available on record.

(8) So far as next challenge of Mr. Bhaduri, learned counsel for the appellants is concerned, case of the defendants is that, their father has mortgaged the land in favour of Sirumal Sindhi and it was not a sale deed. But the fact remains that the defendants have admitted in their evidence that no such suit for declaring the sale deed as nominal sale has been filed. The aforesaid finding has also been affirmed by the first appellate Court, in which I also do not find any illegality and it cannot be said to be the perverse findings.

(9) The Supreme Court in the case of ***Vishwanath Agrawal, S/O Sitaram Agrawal Vs. Sarla Vishwanath Agrawal***³ has held that High Court should not disturb the concurrent finding of fact, unless finding recorded are perverse being based on no evidence. Para-36, 37 of report as under:-

3 (2012) 7 SCC 288

“36. In *Major Singh Vs. Rattan Singh*⁴ 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*⁵ 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 jurisdiction 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. Karnaraka Electricity Board*⁶.”

(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, no substantial question of law is involved in this appeal, thus appeal deserves to and accordingly dismissed at admission stage itself. No order as to costs.

Sd/-
(Sanjay K. Agrawal)
Judge

D/-

4 (1997) 3 SCC 546: AIR 1997 SC 1906

5 (1999) 3 SCC 573

6 (2007) 14 SCC 138: AIR 2008 SC 956

