

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.75 of 2008**

1. Veer Sai, 60 Yrs. S/o Bisunram
2. Kunwar Sai, 50 Yrs. S/o Bisunram
3. Patango, 25 Yrs. D/o Mohar Sai
4. Sitaram, 40 Yrs. S/o Dakhalram
5. Ramchander, 35 Yrs. S/o Dakhalram
6. Godhan, 55 Yrs. S/o Budhram
7. Dasai, 50 Yrs. S/o Budhram
8. Rupan, 47 Yrs. S/o Budhram

All R/o Karra, Teh. Dhaurpur (Lundra), Distt.Surguja

---- Appellants

Versus

1. Lohara, 60 Yrs, S/o Fauda
2. Heera Sai, 40 Yrs., S/o Lohara
3. Lal Sai, 38 Yrs. S/o Lohara
- 1 to 3 R/o Karra, Teh. Dhaurpur (Lundra), Distt.Surguja
4. State of Chhattisgarh, By Collector, Surguja

---- Respondents

 For Appellants : Mr.Raja Sharma, Advocate
 For Respondent No.4 : Ms K.Tripti Rao, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

11/08/2016

1. Heard on admission.
2. The plaintiffs suit for declaration of title, permanent injunction and recovery of possession was dismissed by the trial Court holding that the plaintiffs have failed to prove that the suit property was self-acquired property of Mahendra Gond and therefore, the plaintiffs are not entitled for decree of declaration and possession.

3. First Appeal was also dismissed by the First Appellate Court.
4. Against which, this second appeal under Section 100 of the Code of Civil Procedure has been filed.
5. Mr.Raja Sharma, learned counsel appearing for the appellant, would submit that concurrent finding recorded by the Courts below holding that the plaintiffs have failed to prove that the suit property was self-acquired property of Mahendra Gond is perverse as in the document filed along with an application under Order 41 Rule 27 of the CPC defendant No.1 has admitted before the Judicial Magistrate First Class on 27.7.2007 that the suit property was the self-acquired property of Mahendra Gond and therefore, it gives rise to substantial question of law for admission of this appeal.
6. I have heard learned counsel appearing for the appellants and perused the records of the Courts below with utmost circumspection.
7. The two Courts below have concurrently recorded the finding that the plaintiffs have failed to prove that the suit property "Scheduled B" was the property held by Mahendra Gond.
8. 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 states as under:-

"36. In Major Singh Vs. Rattan Singh² it has been observed that when the Courts below had rejected and

¹ (2012) 7 SCC 288

² (1997) 3 SCC 546: AIR 1997 SC 1906

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. Manikrao³ 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 Board⁴**.

9. 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.

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

Sd/-

(Sanjay K Agrawal)
Judge

B/-

3 (1999) 3 SCC 573

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