

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.520 of 2003**

1. Sukhdeo, aged about 36 years, son of Shri Budhram Urao.
2. Mittu, aged about 40 years, son of Shri Budhram Urao.
3. Luthru, aged about 51 years, son of Shri Chuiya Urao.
4. Budheram, aged about 56 years, son of Shri Seema Urao.
5. Mukund, aged about 13 years (minor), son of Shri Sunder through next friend Butia.

All are agriculturist, resident of Village Bagbahar, Tahsil Pathalgaon, District Raigarh (CG). ---Plaintiffs

---- Appellants

Versus

1. Jaipal ram, aged about 50 years, son of Shri Ghaghuram Uraon, Government Servant.
2. Suresh Prasad, aged about 48 years, son of Ghaghuram Uraon, Occupation Service.
3. Chandrabhan, aged about 40 years, son of Shri Gaghuram, Agriculturist.
4. Chhedilal, aged about 35 years, son of Shri Ghaghuram Uraon.
5. Surendra Kumar, aged about 38 years, son of Shri Ghaghuram Uraon, Agriculturist.

All are resident of Village Bagbahar, Tahsil Pathalgaon, District Raigarh (CG). ---Defendants

---- Respondents

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

For Respondents : Shri Vishnu Koshta, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

02/09/2016

- (1) Heard on admission.
- (2) This is appellants/plaintiffs' second appeal under Section 100 of the Code of Civil Procedure, 1908 (for short 'the CPC') challenging the judgment and decree dated 14.07.2003 passed by District Judge, Raigarh in Civil Appeal No.42-A/2001, affirming the judgment and decree dated 06.09.2001 passed by Civil Judge, Class-I, Dharamjaigarh in Civil Suit No.218-A/1998, whereby the trial Court has dismissed the suit.
- (3) Appellants/plaintiffs filed a suit for declaration of title based on adverse possession and consequently, claiming permanent injunction. The trial Court dismissed the suit on the preliminary issue.
- (4) Against the judgment and decree of the trial Court, the appellants/plaintiffs filed first appeal, which was also dismissed by the First Appellate Court.
- (5) Against which, this second appeal under Section 100 of the Code of Civil Procedure, 1908 (for short 'CPC') has been filed by the appellants/plaintiffs.
- (6) In a suit for declaration of title based on adverse

possession, the plaintiffs' stated that they are continuing in possession over the suit property since life-time of their father and forefather and it is admitted by adverse possession but no period has been specified for that they are in possession over the suit property since long years and there is no plea found in the suit to plaintiffs possession is based on the relief of the declaration. The plea of adverse possession is not fully pleaded and even otherwise, the suit for declaration of title on the adverse possession is not maintainable.

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

(8) It is well settled principle of law that suit for declaration of title based on adverse possession is not maintainable.

(9) In the matter of ***Gurdwara Sahib Vs. Gram Panchayat Village Sirthala and another***¹, in which, Their Lordships of the Supreme Court have held as under :-

“8. There cannot be any quarrel to this extent that the judgments of the Courts below are correct and without blemish. Even if the plaintiff is found to be in adverse possession, it cannot seek a declaration to the effect that such adverse possession was matured into ownership. Only if proceedings are filed against the appellant and the appellant is arrayed as defendant that it can use this

¹ (2014) 1 SCC 669

adverse possession as a shield/defence?”

(10) The concurrent findings recorded by both the Courts below are finding based on the evidence material available on record. They are neither perverse nor contrary to record.

(11) Recently, the Supreme Court in the case of ***Vishwanath Agrawal, S/o Sitaram Agrawal Vs. Sarla Vishwanath Agrawal***², has held that High Court should not disturb the concurrent finding of fact, unless finding recorded are perverse being based on no evidence. Paras-36 & 37 of report as under:-

“36. In *Major Singh Vs. Rattan Singh*³ 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*⁴ 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

2 (2012) 7 SCC 288

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

4 (1999) 3 SCC 573

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*⁵.

(12) 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.

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

Sd/-
(Sanjay K. Agrawal)
Judge

L/-