

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.724 of 2003**

Dr.D.S. Chandrakar, age 32 years, S/o Puranlal Chandrakar, r/o village Kodiya, Tehsil Balodabazar, District Raipur, C.G.

---- Appellant

Versus

- (a) Reginald Waugh S/o V.P. Waugh, House No.326/26, Raja Talab, Raipur (CG)
- (b) Mrs. Sophiya Singh W/o. Manoj Singh, R/o A-1, 202, Gokul Angan, Vasi (W), Thana (Maharashtra)
- (c) Mrs. Shefali Sonia Nag, R/o 26C, 204 New Mahada, Mumbai (Maharashtra)

----Respondents

For Appellant	:	Mr.A.K.Prasad, Advocate
For Respondents	:	Ms Supriya Upasane, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

23/06/2016

1. The appellant/plaintiff has filed this second appeal under Section 100 of the Code of Civil Procedure against the judgment and decree dated 15.9.2003 passed by the Third Additional District Judge, Raipur, in Civil Appeal No.28-A/2001, affirming the judgment and decree dated 18.12.2000 passed by the First Civil Judge Class-II, Raipur, in Civil Suit No.56-A/91, whereby the trial Court has dismissed the suit.
2. The plaintiff's suit for declaration of title and permanent injunction filed on 13.7.1989 came to be dismissed by the trial Court holding that the plaintiff has failed to establish his title over the suit land and further held that the plaintiff is not in possession of the suit land and suit simplicitor for declaration of title without seeking relief of possession is hit by proviso to Section 34 of the Specific Relief Act, 1963 and as such, suit was not maintainable.
3. Feeling aggrieved and dissatisfied with the judgment and decree of the trial Court dismissing the suit, the plaintiff preferred civil appeal before the First Appellate Court. The First Appellate Court after critical examination of the facts, oral and documentary evidence available on record, affirmed the

judgment and decree of the trial Court and dismissed the appeal.

4. Mr.A.K.Prasad, learned counsel for the appellant/plaintiff would submit that concurrent finding of fact recorded by the Courts below holding the title of the plaintiff is not proved is perverse and contrary to the record.
5. After hearing learned counsel for the appellant/plaintiff and after going through the records of the Courts below, I am of the view that finding of the trial Court holding that the plaintiff has failed to prove his title over the suit land is based on the evidence available on record and it cannot be held to be perverse raising substantial question of law under Section 100 of the Code of Civil Procedure.
6. There is additional reason for not admitting the present second appeal is that the plaintiff is not in possession of the suit land and he has not sought relief of possession of the suit land, which is hit by proviso to Section 34 of the Specific Relief Act as the plaintiff, not in possession, ought to have claimed the relief of possession also, otherwise it is not maintainable (See **Union of India vs. Ibrahim Uddin and another**¹, in which it has been held by Their Lordships of the Supreme Court that suit for declaration of title of ownership of property, without seeking possession when plaintiff not in possession, is not maintainable.
7. Thus, the two Courts below have rightly dismissed the suit and concurrent finding of fact is based on record. I do not find any substantial question of law to be formulated for admission of this appeal.
8. Consequently, the second appeal deserves to be and is accordingly dismissed at admission stage.

Sd/-

(Sanjay K. Agrawal)
JUDGE

B/-

¹ (2012) 8 SCC 148