

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 426 of 2003**

Ruchwa Das, S/o Dil Ram, age 50 years, Caste-Panika, r/o village Shivpur, Tehsil Sitapur, Distt. Surguja (C.G.).....Plaintiff

---- Appellant**Versus**

1. Mst. Gendi Bai, wd/o Moti Panika, age 55 years, r/o village Kudar, P.S. Dhaurpur, Tehsil Lundra, Distt. Surguja (C.G.)
2. Ramkhilawan Sao, S/o Nanku Sao, age 55 years, Caste-Sindi, Occupation – Agriculture, r/o village Kharakona, Tehsil Lundra, District Surguja (C.G.)
3. The State of M.P. (Now C.G.) through Collector, Surguja, Ambikapur, Distt. Surguja (C.G.) Defendants

---- Respondents

For Appellant : Mr. A.K. Prasad, Advocate.

For Respondents No. 1 & 2 : Mr. Sushil Dubey, Advocate.

For Respondent No.4 : Ms. K. Tripti Rao, PL

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****05/08/2016**

(1) The suit was filed by the plaintiff that sale deed executed by defendant No.1 in favour of defendant No. 2 is null & void as the property is an exclusive property of appellant/plaintiff.

(2) The trial Court, after appreciating oral and documentary evidence available on record, has held that suit property is joint property of the plaintiff and defendant No.1 and, therefore, defendant No.1 has also half share in the suit property and decreed the suit in part declaring the sale deed is invalid to the extent of half share (to

the share of plaintiff) in the suit land. Decree for permanent injunction was also granted in favour of the appellant/plaintiff accordingly.

(3) The plaintiff and defendant No.1 both filed separate appeals. The First Appellate Court, dismissed both the appeals upholding the judgment & decree of the trial Court, against which, the instant second appeal has been filed by the appellant/plaintiff.

(4) Mr. A.K. Prasad, learned counsel appearing for the appellant/plaintiff would submit the findings recorded by the trial Court partly dismissing the suit and judgment & decree of first appellate Court affirming that findings are perverse and contrary to the record and that give rise a substantial question of law for determination in this appeal.

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

(6) After hearing learned counsel appearing for the appellant/plaintiff and after going through the records, I am of the considered opinion that the findings recorded by both the courts below holding that there was no partition between the plaintiff and defendant No.1 and thereby declaring the sale deed to be invalid to the extent of $\frac{1}{2}$ share to the plaintiff in the suit land are the finding of fact based on material available on record and I do not find it either perverse or contrary to record and no question of law much less substantial question of law is involved in this appeal.

(7) Recently, the Supreme Court in the case of ***Vishwanath***

Agrawal, S/O Sitaram Agrawal Vs. Sarla Vishwanath Agrawal¹ 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:-

“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 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*⁴.”

(8) 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/-

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