

HIGH COURT OF CHHATTISGARH, BILASPUR

Second Appeal No.260 of 2016

Judgment reserved on: 04/08/2016

Judgment delivered on: 19/08/2016

Dhaniram, S/o Tikaram Nayak (Aghariya), aged about 82 years, Occupation Agriculture & Retired, R/o Village Kusmura, Tahsil, Civil & Revenue Distt. Raigarh (C.G.)

(Defendant No.1)/
---- Appellant

Versus

1. Bhojram, S/o Tikaram Nayak (Aghariya), aged about 78 years, Occupation Agriculture, R/o Village Kusmura, Tahsil and Distt. Raigarh

(Plaintiff)

2. State of Chhattisgarh, through the District Collector, Raigarh (C.G.)

(Defendant No.2)/
---- Respondents

For Appellant:	Mr. B.P. Sharma, Mr. H.S. Patel and Mr. Manay Nath Thakur, Advocates.
For State/respondent No.2:	Mr. Satish Gupta, Govt. Advocate, on advance copy.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Judgment

1. Respondent No.1/plaintiff filed a civil suit for declaration of title and possession of the land described in Schedule A to the plaint stating inter alia that in respect of the suit land, a sale deed has been made in favour of the plaintiff and defendant No.1, who are real brothers, on 6-4-1972 and in

the sale deed names of both these persons have been recorded but payment of consideration was made only by the plaintiff and since the name of defendant No.1 has been entered in the sale deed inadvertently, a relinquishment deed was executed by defendant No.1 in favour of the plaintiff on 3-10-1972 relinquishing his share. The plaintiff further stated that certain proceedings under Sections 145 and 146 of the Code of Criminal Procedure, 1973 have been initiated in the Court of Sub-Divisional Officer, Raigarh and since defendant No.1 is in possession of his property, possession be delivered to the plaintiff and suit be decreed.

2. In the written statement filed by defendant No.1 / appellant, it was stated that the plaintiff and defendant No.1 are in joint possession of the suit property, partition has also taken place of the suit property, mutation has been made in the revenue records and the said relinquishment deed dated 3-10-1972 is a sham deed and it was never acted upon, as such, the suit deserves to be dismissed.
3. The trial Court by its judgment and decree dated 8-4-2015 decreed the suit holding that defendant No.1 has relinquished his share in the suit property by executing a relinquishment deed dated 3-10-1972 and also held that defendant No.1 has admitted the said fact of relinquishing his share in favour of the plaintiff in Civil Suit No.1-A/1973 and thereby rejecting the

defence, decreed the suit. The first appellate Court affirmed the judgment and decree of the trial Court in an appeal filed by defendant No.1.

4. In the instant second appeal filed by the appellant / defendant No.1 under Section 100 of the Code of Civil Procedure, 1908, Mr. B.P. Sharma, learned counsel for the appellant / defendant No.1, would submit that both the Courts below have committed a legal error by recording a perverse finding and relying upon the relinquishment deed Ex.P-12 by holding that defendant No.1 has relinquished the share in the suit property and further held that admission made by defendant No.1 in Civil Suit No.1-A/1973 is not binding upon him and is of no consequence, as it is not between the same parties as in that civil suit, parties were altogether different and therefore two substantial questions be framed for admission of the present appeal.
5. I have heard learned counsel for the appellant/defendant No.1 on admission and also gone through the record with utmost circumspection.
6. The document Ex.P-12 is a registered relinquishment deed in which defendant No.1 Dhaniram has relinquished his share in favour of the plaintiff / respondent No.1 herein. This document is dated 3-10-1972 and according to defendant No.1, it has not been acted upon by the parties and even the

property included in Ex.P-12 has been included in the partition i.e. Ex.D-1. Even though the suit was filed relying upon Ex.P-12 that defendant No.1 has relinquished his share in favour of the plaintiff, but, even then, no counter claim was made seeking declaration that Ex.P-12 is sham and nominal transaction and it was never acted upon and therefore it does not confer any title to the plaintiff. Not only this, in Civil Suit No.1-A/1973, written statement was filed by the present defendant No.1 in the capacity of defendant No.2 along with the present plaintiff, jointly, in which in paragraph 7, it has clearly been admitted by present defendant No.1 Dhaniram that he has registered a deed of relinquishment in favour of Bhojram, the plaintiff herein, on 3-10-1972 and Bhojram is in exclusive possession and is also in physical possession thereof. Therefore, before the competent jurisdictional court, defendant No.1 has admitted the execution of relinquishment deed in favour of the plaintiff.

7. Both the Courts below have concurrently held that defendant No.1 has not only executed relinquishment deed in favour of the plaintiff, but has also admitted the execution of relinquishment deed in favour of the plaintiff in the written statement filed before the jurisdictional civil court on 7-7-1973 and it has not been shown successfully by defendant No.1 before the two Courts below that even after relinquishment, it was subjected to partition vide Ex.D-1. The concurrent

finding recorded by the two Courts below finding the relinquishment deed to be made by defendant No.1 and further admitting the execution of relinquishment deed in favour of the plaintiff before the civil court on 7-7-1973 (Ex.P-3) is a finding of fact based on documentary evidence available on record. I do not find any substantial question of law for admission of appeal.

8. Recently, the Supreme Court in the matter of **Vishwanath Agrawal, S/o Sitaram Agrawal v. Sarla Vishwanath Agrawal**¹ has held that High Court should not disturb the concurrent finding of fact, unless finding recorded are perverse being based on no evidence. Paragraphs 36 and 37 of the report are as under:-

“36. In *Major Singh v. 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 v. 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

1 (2012) 7 SCC 288

2 (1997) 3 SCC 546 : AIR 1997 SC 1906

3 (1999) 3 SCC 573

Procedure. This view of ours has been fortified by the decision of this Court in *Abdul Raheem v. Karnaraka Electricity Board*⁴.”

9. Keeping in view, the ratio of law laid down by the Supreme Court in the aforesaid cases, the concurrent finding of fact recorded by both the courts below is based on evidence and no substantial question of law is involved in this appeal. Thus, the finding of the two Courts below decreeing the suit of the plaintiff is based on finding of fact based on record, it is neither perverse nor contrary to record.

10. In the result, I do not find any substantial question involved in this appeal. Consequently, the appeal deserves to be and is accordingly dismissed in limine. No order as to costs.

Sd/-
(Sanjay K. Agrawal)
Judge

Soma

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