

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.78 of 2009**

1. Diru (died) through LRS.
- 1(A) Ramnath Ram, S/o. Shri Diru Ram, aged about 42 years,
By Caste Nagwanshi.
- 1(B) Bhagirathi Ram, S/o. Shri Diru Ram, aged about 39 years,
by Caste Nagwanshi.
- 1(C) Must Banso Bai @ Sukari, Wd/o. Diru Ram, aged about 60
years, By caste Nagwanshi.

All are residence of Village Ghoghartola, Dhengurjor,
Patwari Halka No.31, R.N.B. and Tahsil Bagicha, District
Jashpur (CG).

---- Appellants

Versus

1. Chaitu, S/o. Shri Dhulu, aged about 45 years, By caste
Nagwanshi, residence of Village Ghoghartola,
Dhengurjor, Patwari Halka No.31, R.N.B. and Tahsil
Bagicha, District Jashpur (CG).
2. Dhansay, S/o. Shri Budhram, aged about 34 years, By
caste Nagwanshi, residence of Village Ghoghartola,
Dhengurjor, Patwari Halka No.31, R.N.B. and Tahsil
Bagicha, District Jashpur (CG).
3. State of Chhattisgarh, through the Collector, Jashpur,
District Jashpur (CG).

---- Respondents

For Appellants : Shri Sunil Sahu, Advocate.

For Respondents/State : Ms. Astha Shukla, Panel Lawyer

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

12/08/2016

(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 30.03.2007 passed by District Judge, Jashpur in Civil Appeal No.1-A/2006, affirming the judgment and decree dated 28.02.2004 passed by 1st Civil Judge, Class-I, Jashpur in Civil Suit No.20-A/2000, whereby the trial Court has partly decreed the suit.

(3) Appellants/plaintiffs filed a suit for declaration of title and permanent injunction over the suit property shown in Schedule-B & C, which was partly decreed by the trial Court holding that the plaintiffs are entitled for declaration of title only 1/3rd share in the suit property.

(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 has been filed by the appellants/plaintiffs.

(6) Mr. Sunil Sahu, learned counsel appearing for the appellants/plaintiffs would submit that the concurrent findings recorded by two Courts below holding that the appellants/plaintiffs are entitled only for 1/3rd share with regard to the property shown in

Schedule 'C', which is perverse and contrary to the record and therefore, it gives rise to substantial question of law for determination of this appeal.

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

(8) The concurrent finding recorded by two Courts below are finding based on the evidence available on record. They are neither perverse nor contrary to record.

(9) 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 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

1 (2012) 7 SCC 288

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

3 (1999) 3 SCC 573

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 Board*⁴.

(10) 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.

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

Sd/-
(Sanjay K. Agrawal)
Judge

L/-