

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.332 of 2006**

Gayatri Bai, aged about 40 years, wife of Shri Faguram Sahu,
resident of Godaiya (Oklahi), Tahsil and District Bilaspur (CG).

---- Appellant**Versus**

1. Aagar Bai, aged about 42 years, daughter of Punau and wife of Shri Hariram Sahu, resident of Village Khaira (Chilhathi), Tahsil and District Bilaspur (CG).
2. State of Chhattisgarh, through Collector, Bilaspur (CG).

---- Respondents

For Appellant : Shri Ram Kumar Tiwari, Advocate.

For Respondents/State : Shri Sameer Behar, Panel Lawyer

Hon'ble Shri Justice Sanjay K. Agrawal
Order On Board

12/07/2016

(1) Heard.

(2) This is appellant/plaintiff's second appeal under Section 100 of the Code of Civil Procedure, 1908 (for short 'the CPC') challenging the judgment and decree dated 16.03.2006 passed by 10th Additional District Judge (F.T.C.), Bilaspur in Civil Appeal No.06-A/2006, affirming the judgment and decree dated 28.11.2003 passed by Fourth Civil Judge, Class-II in Civil Suit No.58-A/2002, whereby the trial Court has dismissed the suit.

(3) The appellant/plaintiff-Gayatri Bai instituted a suit for declaration of title and permanent injunction that she is adopted

daughter of Shri Chamra Ram and entitled for the suit property as during life-time of Chamra Ram he has executed a Will duly executed & attested on 15.11.1950 in her favour.

(4) The trial Court after scrutiny of the evidence has held that the plaintiff/appellant has failed to prove that she is adopted daughter of Chamra and further recorded a finding that the plaintiff has failed to prove the valid execution and attestation of Will in her favour by Shri Chamra Ram.

(5) On appeal being preferred by the appellant/plaintiff, the First Appellate Court has affirmed the finding of the trial Court.

(6) Against which, this second appeal has been preferred by the appellant/plaintiff.

(7) Learned counsel appearing for the appellant/plaintiff would submit that the concurrent finding recorded by both the Courts below holding that the appellant/plaintiff is not adopted daughter of Shri Chamra Ram and Will has not been proved, raises a substantial question of law for determination of this second appeal.

(8) I have heard learned counsel for the parties and perused the records of both the Courts below including judgment and decree impugned.

(9) After hearing learned counsel for the appellant/plaintiff and after perusal of the record, I do not find any perversity or illegality in

the said finding recorded by the two Courts below holding that the appellant/plaintiff is not adopted daughter of deceased Shri Chamra Ram and Will has not been executed in her favour by Shri Chamra Ram, which is concurrent finding based on the evidence available on record.

(10) 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 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

1 (2012) 7 SCC 288

Procedure. This view of ours has been fortified by the decisions of this Court in Abdul Raheem V. Karnataka Electricity Board⁴.

(11) 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 available on record and it is neither perverse nor contrary to the record. No substantial question of law is involved in this appeal, thus, the appeal deserves to be and is accordingly dismissed. No order as to costs.

Sd/-
(**Sanjay K. Agrawal**)
Judge

L/-