

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.575 of 2004**

Sahodra Bai, widow of late Ram Satnami, aged about 60 years, resident of Madhayeebhata, PHN 20, RIC, Bhatgaon, Tahsil Bilaigarh, District Raigarh (CG).

THROUGH

The Power of Attorney Holder Jogiram, son of Shri Jeet Ram Satnami, resident of Kot, Tahsil Bilaigarh, District Raipur (CG).
---defendant

---- Appellant

Versus

1. Ogram, aged about 30 years, son of Shri Pyari Satnami, R/o. Madhayeebhata, PHN 210, RIC Bhatgaon, Tahsil Bilaigarh, District Raipur (CG).
---Plaintiff
2. State of Madhya Pradesh/State of Chhattisgarh, through Collector, Raipur.

---- Respondents

For Appellant : Shri Ram Kumar Tiwari, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

02/09/2016

(1) Heard.

(2) This is appellant/defendant's second appeal under Section 100 of the Code of Civil Procedure, 1908 (for short 'the CPC') challenging the judgment and decree dated 24.08.2004 passed by IInd Additional District Judge, Balodabazar in

Appeal No.29-A/2000, affirming the judgment and decree dated 31.03.2000 passed by Civil Judge, Class-II, Balodabazar in Civil Suit No.14-A/1993, whereby the trial Court has decreed the suit.

(3) The suit filed by respondent/plaintiff No.1-Ogram herein that the deceased Ashram had executed a Will on 27.01.1990 in his favour by which, he has become the owner (Bhumiswami) and possession holder of the suit property, the trial Court has decreed the suit and appeal of the appellant/defendant herein was dismissed holding that she has not proved that she is legally wedded wife of deceased Ashram.

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

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

(6) Learned counsel appearing for the appellant/defendant would submit that the concurrent finding recorded by both the Courts below holding that the appellant/defendant has not proved that she is legally wedded wife of deceased Ashram, which is perverse and contrary to the record and therefore, it gives raise to the substantial question of law for determination of this appeal.

(7) I have heard learned counsel for the appellant/defendant and perused the records of both the Courts below including judgment and decree impugned.

(8) After hearing learned counsel for the appellant/defendant 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 appellant/defendant-Sahodra Bai has not proved that she is legally wedded wife of deceased Ashram, which is concurrent finding based on the evidence available on 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.

1 (2012) 7 SCC 288

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

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 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 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/-

3 (1999) 3 SCC 573

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