

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****Second Appeal No. 402 OF 2015**

Narayan, S/o Bajju, aged about 50 years, Caste Uraon,  
Resident of village Civil Dag, P.S. And Tahsil Kusmi, Revenue  
and Civil District Surguja (C.G.)

**---- Appellant****Versus**

1. Sukhna, S/o Chingu Das, aged about 37 years, Caste Panika, Resident of village Civil Dag, P.S. And Tahsil Kusmi, Revenue and Civil District Surguja (C.G.)
2. State of Chhattisgarh, through Collector, Ambikapur, District Surguja (C.G.)

**---Respondents**


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| For appellant        | : | Mr. Sunil Tripathi, Advocate |
| For respondent/State | : | Mr. Sameer Bihar, P.L.       |

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**Hon'ble Shri Justice Sanjay K. Agrawal****Order on Board****15/06/2016**

1. Plaintiff's suit for declaration of title and recovery of possession was dismissed by the trial Court on 29/03/2011, which was affirmed by the First Appellate Court on 16/04/2015.
2. Learned counsel for the appellant/plaintiff would

submit that concurrent finding recorded by two Courts below holding that the will to be legally executed in favour of the Sukhna by Jairam whom the property belonging are perverse and contrary to the record.

3. Both the Courts below have concurrently recorded a finding that property held by Jairam and he has executed will in favour of Sukhna who is nephew of plaintiff is duly proved.

4. Recently, the Supreme Court in case of **Vishwanath Agrawal, Son of Sitaram Agrawal Vs. Sarla Vishwanath Agrawal, (2012) 7 SCC 288**, has held that the High Court should not disturb the concurrent finding of fact, unless finding recorded are perverse being based on no evidence. Paras-36 and 37 of report as under:-

“36. In **Major Singh v. Rattan Singh, (1997) 3 SCC 546**, 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, (1999) 3 SCC 573**, 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 decision of this Court in **Abdul Raheem V. Karnaraka Electricity Board, (2007) 14 SCC 138.**”

5. 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, there is no perversity and no substantial question of law is involved in this second appeal.

6. In view of above, I do not find any fault with the judgment and decree of both the Courts below. The second appeal lack merits and is accordingly dismissed at the admission stage itself. No order as to cost(s).

Sd/-  
(Sanjay K. Agrawal)  
Judge