

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 468 of 2012**

1. Chandravijay Gabel, S/o Nirmla Prasad, aged about 51 years, (Dead) through legal representatives

1(a) Dipesh Gabel, S/o Late Chandra Vijay Gabel, aged about 24 years, R/o Housing Board, Balco, Police Station-Deepika, District Korba (C.G.)

(b) Purnesh Gabel, S/o Late Chandra Vijay Gabel, aged about 22 years, R/o Housing Board, Balco, Police Station – Deepika, District- Korba (C.G.)

2. Prakash Chand Gabel, S/o Nirmal Prasad Gabel, aged about 36 years, R/o Village – Adbharpara Jorwa at present Balco, Korba, P.S. - Deepika, District Korba (C.G.)

.....Plaintiffs

---- Appellants

Versus

1. Smt. Chandrakala Devi, W/o Dinesh Chand Gabel, R/o Village-Chikhalariauda, at present Village- Sothi, Tahsil & Police Station- Sakti, District – Janjgir-Champa (C.G.)
2. Smt. Resham Bai, W/o Parmeshwar, aged about 35 years, R/o Village – Chikhalariauda, Tahsil & Police Station-Sakti, District Janjgir-Champa (C.G.)
3. State of Madhya Pradesh (now Chhattisgarh) through the Collector, Bilaspur (C.G.) (now Collector, Janjgir-Champa (C.G.)

---- Respondents

For Appellant : Mr. Manoj Jaiswal, Advocate.
For Respondent No.3/State : Ms. K. Tripti Rao, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

17/08/2016

(1) The plaintiffs, appellants herein, filed a suit against the defendants No. 1 & 2 (their sisters) for declaration of title and permanent injunction.

(2) The trial Court, by its judgment & decree, dated 28.06.2006, dismissed the suit holding that defendants are title holder of the suit land and the plaintiffs are not the exclusive title holder of the suit land and they have relinquished their title over the suit land in accordance with law, against which, first appeal was preferred by the plaintiffs. The First Appellate Court has also dismissed the suit by affirming the judgment & decree of the trial Court.

(3) Learned counsel for the appellants submits that concurrent findings recorded by both the courts below are perverse as the defendants have relinquished their title by relinquishment deed Ex. P-3 to P-5 and that give rise a substantial question of law for determination in this appeal.

(4) I have heard learned counsel appearing for the appellant and perused the records of both the courts below with utmost circumspection.

(5) Admittedly, the plaintiffs & defendants are brother and sisters and their names have been mutated in the revenue record recorded by the revenue Court and the documents Exs.P-3 to P-5 have been held to be inadmissible in evidence is the finding of fact based on material available on record and I do not find it either perverse or contrary to record and no question of law much less substantial question of law is involved in this appeal.

(6) The Supreme Court in the case of ***Vishwanath Agrawal***,

S/O Sitaram Agrawal Vs. Sarla Vishwanath Agrawal¹ has held that High Court should not disturb the concurrent finding of fact, unless finding recorded are 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 jurisdiction 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. Karnaraka Electricity Board*⁴.”

(7) Keeping in view, the ratio of law laid down by the Supreme Court in the above referred cases, the concurrent finding of fact recorded by both the courts below is based on evidence, no substantial question of law is involved in this appeal, thus appeal deserves to and accordingly dismissed at admission stage itself. No order as to costs.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

1 (2012) 7 SCC 288

2 (1997) 3 SCC 546

3 (1999) 3 SCC 573

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

D/-