

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.67 of 2008**

Smt. Jugabai @ Ramotin Bai, aged about 46 years, wife of late Sukhiram Gond, mother late Hiroundin Bai Gond, resident of Village Babu Navagaon, Tahsil Chhuikhadan, District Rajnandgaon (CG).

---- Appellant**Versus**

1. Naseeb, aged about 41 years, son of late Khamhan Gond.
2. Jangal, aged about 46 years, son of late Kejau Gond.
3. Parshottam, aged about 44 years, son of late Kejau Gond.
4. Narottam, aged about 2 years, son of late Kejau Gond.

All resident of Village Kumharbara, Police Station Bakerkatta, Tahsil Chhuikhadan, District Rajnandgaon (CG).

---- Respondents

For Appellant : Shri R. N. Jha, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****31/08/2016****(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 18.09.2007 passed by Additional District Judge Khairagarh, District Rajnandgaon in Civil

Appeal No.12-A/2007, affirming the judgment and decree dated 20.03.2007 passed by Civil Judge, Class-1, Khairagarh, District Rajnandgaon in Civil Suit No.7-A/2005, whereby the trial Court has dismissed the suit.

(3) The appellant/plaintiff-Smt.Jugabai filed a suit for declaration of title and permanent injunction that she is adopted daughter of deceased Smt. Hiroundin Bai Gond as the suit property held by her.

(4) The trial Court after scrutiny of the evidence has held that the appellant/plaintiff has failed to prove that she is adopted daughter of Smt. Hiroundin Bai Gond.

(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 under Section 100 of the Code of Civil Procedure has been preferred by the appellant/plaintiff.

(7) Shri R.N. Jha, learned counsel appearing for the appellant/plaintiff, would submit that the concurrent finding recorded by two Courts below holding that the appellant/plaintiff has failed to prove that she is adopted daughter of Smt. Hiroundin Bai Gond is a finding based on the evidence available on record, which is perverse and contrary to the record. He would further

submit that both the Courts below have wrongly held that respondents/defendants No.1 to 4 are the successors of Smt. Hiraundin Bai Gond and, therefore, it gives rise to the 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 has failed to prove that she is adopted daughter of Smt. Hiroundin Bai Gond and respondents/defendants No.1 to 4 are successors of Smt. Hiroundin Bai Gond, 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. Paras 36 & 37 of the said decision are as under:-

“36. In **Major Singh Vs. Rattan Singh**² it has been observed that when the Courts below had rejected and

1 (2012) 7 SCC 288

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 Procedure. This view of ours has been fortified by the decisions of this Court in **Abdul Raheem V. Karnataka Electricity Board**⁴.

(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/-