

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 211 of 2008**

Amar Sai, S/o Akabar Gond, aged about 60 years, (Krishak)
resident of Village- Tehsil – Baikunthpur, District Korla (C.G.)
(Died)

Legal Representatives

1. Smt. Heerodiya widow lady of Late Amarsai, aged about 65 years,
2. Gulab Singh, S/o Late Amarsai, aged about 45 years
3. Ramlakhan, S/o Late Amarsai, aged about 43 years,
4. Foolkunwar, W/o Dharmpal, daughter of Late Amarsai, aged about 41 years,
5. Ramnath, S/o Late Amarsaid, aged about 39 years,
6. Foolesary, W/o Sumaru Singh, daughter of Late Amarsai, aged about 37 years,
7. Mankunwar, W/o Veer Singh, daughter of Late Amarsaid, aged about 35 years,
8. Devnath, S/o Late Amarsai, aged about 33 years,
9. Ramjeet, S/o Late Amarsai, aged about 31 years,
10. Jaglal, S/o Late Amarsai, aged about 29 years,

Appellants No. 1,2,3,4,5,8,9 & 10 his resident of Village- Murma, (Schoolpara), appellants No. 6 resident of Village – Jhaliyadand & Appellant No. 7 is resident of Village – Jamgahna, All Tehsil of- Baikunthpur, District–Korla(C.G.)

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1. Smt. Rukmen, widow lady of Seetaram, aged about 50 years
2. Vimal Prasad Singh, S/o Sunder Singh, aged about 20 years,
3. Govind Singh, S/o Sunder Singh, aged about 18 years,
4. Smt. Suhano, Widow lady of Sunder Singh, aged about 40 years,

All resident Village – Murma, Tehsil – Baikunthpur, District Korla (C.G.)

5. Raising, S/o Shivcharan Gond, (According to record Kalicharan Gond), aged about 60 years, resident of Village – Murma, Tehsil-

Baikunthpur, District Korla (C.G.)

6. State of Chhattisgarh, through Collector, Korla (Baikunthpur) (C.G.)

---- Respondents

For Appellants : Mr. Prakash Tiwari, Advocate.
For Respondent No. 6 : Mrs. Astha Shukla, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

09/09/2016

Heard.

(1) The plaintiffs' suit for declaration of title, partition and possession was dismissed by the trial Court on merits as well as on the ground that suit is barred by limitation.

(2) The plaintiffs preferred first appeal there-against. The first appellate court, after re-appreciating the entire evidence adduced in the case, affirmed the judgment and decree passed by the trial court, leading to filing of this Second Appeal under Section 100 of the Code of Civil Procedure.

(3) Learned counsel appearing for the appellants/plaintiffs would submit the concurrent findings recorded by both the courts below dismissing the suit on merits as well as barred by limitation is perverse 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) The concurrent findings recorded by both the courts below holding that plaintiffs are not the title holder of the suit land and the suit is barred

by limitation 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) 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 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 aforesaid case, 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

1 (2012) 7 SCC 288

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

3 (1999) 3 SCC 573

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