

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 332 of 2008**

1. Fitlu, Son of Petra, aged about 57 years,
2. Folo (since deceased) through LR.
 - 2(a) Mst. Charki Bai, Wd/o late Falo, aged about 60 years,
 - 2(b) Rajesh Nayak, S/o late Falo, aged about 40 years,
3. Lilu, son of Petra, aged about 53 years.

All resident of village Matasi, Tahsil Kunkuri, District
 Jashpur, Chhattisgarh Plaintiffs

---- Appellants**Versus**

1. Kamruddin, son of Jitan Mia, residence of village Kunkuri,
 Tahsil Kunkuri, District Jashpur (C.G.)
2. State of Chhattisgarh, through Collector, Jashpur, District
 Jashpur (Chhattisgarh) Defendants

---- Respondents

For Appellants : Mr. J.K. Saxena, Advocate.
 For Respondent No.2: Mrs. Astha Shukla, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****09/09/2016**

(1) The plaintiffs filed a suit for declaration of title on the basis of adverse possession and sale deed dated 07.07.1956 is not binding on him.

(2) The suit was dismissed by the trial Court as the plaintiff has not perfected his title by way of adverse possess and also it is

barred by limitation.

(3) The plaintiffs preferred first appeal thereagainst. 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.

(4) Learned counsel appearing for the appellants/plaintiffs would submit that concurrent findings recorded by both the courts below are perverse and contrary to the records as the plaintiffs have perfected their title over the suit land by way of adverse possession and that give rise a substantial question of law for determination in this appeal.

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

(6) It is well settled principle of law that suit for declaration of title based on adverse possession is not maintainable.

(7) In the matter of ***Gurudwara Sahib Vs. Gram Panchayat Village Sirthala and another***¹, their Lordships of the Supreme Court have held that plaintiff cannot maintain suit for declaration of title based on adverse possession and it can use his adverse possession as a shield/defence. Para 8 of the report succinctly held as under:-

1 (2014) 1 SCC 669

“8. There cannot be any quarrel to this extent that the judgments of the Courts below are correct and without blemish. Even if the plaintiff is found to be in adverse possession, it cannot seek a declaration to the effect that such adverse possession was matured into ownership. Only if proceedings are filed against the appellant and the appellant is arrayed as defendant that it can use this adverse possession as a shield/defence.”

(8) The concurrent findings recorded by both the courts below holding that 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.

(9) Recently, the Supreme Court in the case of ***Vishwanath Agrawal, S/O Sitaram Agrawal Vs. Sarla Vishwanath Agrawal***² 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*³ 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*⁴ 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.

2 (2012) 7 SCC 288

3 (1997) 3 SCC 546; AIR 1997 SC 1906

4 (1999) 3 SCC 573

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*⁵.”

(10) 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

D/-

5 (2007) 14 SCC 138: AIR 2008 SC 956

