

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.199 of 2016**

1. Fali Ram Sahu, son of Shri Firanta Ram Sahu, aged about 42 years.
2. Babu Lal Sahu, son of late Ram Lal Sahu, aged about 37 years.

Both are resident of Bilaspur, Patwari Halka No.23/40, R.I. Circle Bhatgaon, Tahsil Bhatgaon, District Balodabazar-Bhatapara (CG).

---Defendants

---- Appellants

Versus

1. Firanta Ram Sahu, son of Shri Rishi Ram Sahu, aged about 64 years, R/o Behind Police Station Sarsiva, Sub Tahsil Bhatgaon, District Balodabazar-Bhatapara(CG). **---Plaintiff**
2. Salik Ram, son of Shri Firanta Sahu, R/o. Bilaspur, Patwari Halka No.23/40, R.I. Circle Bhatgaon, Tahsil Bhatgaon, District Balodabazar-Bhatapara, at present R/o. Anand Nagar, Korba, District Korba (CG).
3. State of Chhattisgarh, through Collector, Balodabazar, District Balodabazar-Bhatapara(CG).
4. Suraj Sahu, aged about 27 years, son of Shri Ram Lal Sahu, R/o Bilaspur, Patwari Halka No.23/40, R.I. Circle Bhatgaon, Tahsil Bhatgaon, District Balodabazar-Bhatapara (CG).
5. Mus. Fulki (Pulki), aged about 62 years, widow of Ram Lal Sahu, R/o Bilaspur, Patwari Halka No.23/40, R.I. Circle Bhatgaon, Tahsil Bhatgaon, District Balodabazar-Bhatapara (CG).
6. Mussammat Duj Bai, aged about 47 years, D/o. Ram Lal Sahu, wife of Bhagau Sahu, R/o Salhe, P.S. and Tahsil Sarangarh, District Raigarh (CG).
7. Musammat Teej Bai, aged about 42 years, D/o. Ramlal Sahu, wife of Tosh Ram Sahu, R/o. Sakarapali, Sub Tahsil Bhatgaon, District Balodabazar-Bhatapara (CG).

---- Respondents

For Appellants : Shri Ram Narayan Sahu, Advocate.

For Respondents/State : Shri Om Prakash Sahu, G.A.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****26/08/2016**

(1) Heard on admission.

(2) This is appellants/defendants' second appeal under Section 100 of the Code of Civil Procedure, 1908 (for short 'the CPC') challenging the judgment and decree dated 01.02.2016 passed by District Judge Balodabazar in Civil Appeal No.H-70-A/2014, affirming the judgment and decree dated 09.09.2014 passed by Civil Judge Class-II, Bhatgaon, District Balodabazar-Bhatapara in Civil Suit No.5-A/2012, whereby the trial Court has decreed the suit.

(3) Respondent No.1/plaintiff-Firanta Ram Sahu filed a suit for declaration of title and vacant possession over the suit property, which was decreed by the trial Court.

(4) Against the judgment and decree of the trial Court, the appellants/defendants filed First Appeal, which was also dismissed by the First Appellate Court.

(5) Against which, this second appeal under Section 100 of the Code of Civil Procedure, 1908 ('the CPC' in short) has been filed by the appellants/defendants.

(6) Learned counsel appearing for the appellants/defendants would submit that the concurrent findings recorded by two Courts below holding that the plaintiff is entitled for decree for declaration of title over the suit property, which is perverse and contrary to the record and, therefore, it gives rise to the substantial question of law for determination of this appeal.

(7) I have heard learned counsel appearing for the parties and perused the records of the Courts below with utmost circumspections.

(8) The concurrent findings recorded by two Courts below are finding based on the evidence available on record. They are neither perverse nor contrary to record.

(9) 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 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.

1 (2012) 7 SCC 288

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

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.

(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 available on record and it is neither perverse nor contrary to the record, no substantial question of law is involved in this appeal.

(11) Consequently, the second appeal deserves to be and is accordingly dismissed at admission stage. No order as to costs.

Sd/-
(Sanjay K. Agrawal)
Judge

L/-

³ (1999) 3 SCC 573

⁴ (2007) 14 SCC 138: AIR 2008 SC 956