

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No. 226 of 2016

- Punwa S/o Nem Singh, Aged About 33 Years Caste Satnami, Occupation Cultivator, R/o Village Tenduwa, Tahsil Nawagarh, District Durg Present District Bemetara, Chhattisgarh

---- Appellant

Plaintiff

Versus

1. Mangaj S/o Dansai, Aged About 73 Years
2. Ferha S/o Bhagat, Aged About 43 Years
3. Smt. Janki Bai Wd/o Naresh Tandan, Aged About 43 Years
4. Dharmendra S/o Naresh, Aged About 13 Years
5. Mahendra S/o Naresh, Aged About 12 Years
6. Bhawesh S/o Naresh, Aged About 7 Years

Respondents No. 4 to 6 are minor through natural guardian mother Janki Bai Wd/o Naresh Tandan,

All residents of Village Kestara, Tahsil Durg, present District Bemetara (CG)

7. State Of Chhattisgarh, Through Collector Durg Present District Bemetara, Chhattisgarh

---- Respondent

Defendants

For Appellant	: Shri YC Sharma, Advocate.
For Respondent/State	: Shri Adil Minhaj, PL.

Hon'ble Shri Justice Pritinker Diwaker

Order On Board

13/12/2016

Heard on admission.

02. This second appeal arises out of judgment and decree dated

19.1.2016 passed by District Judge, Bemetara in Civil Appeal No.16-A/2013 affirming the judgment and decree dated 10.10.2011 passed by First Civil Judge, Class-II, Bemetara in Civil Suit No.2-A/2005 whereby the suit as filed by the plaintiff was dismissed.

03. Brief facts of the case are that plaintiff Punwa filed a suit for declaration of title and possession, *inter alia*, pleading that the suit land was acquired by Bhagaiya Bai from her husband Sukalu and she died issueless. The plaintiff claimed himself to be the legal representative of deceased Bhagaiya Bai as per family tree appended with the plaint. According to the plaintiff, he moved an application before the Patwari for recording his name and also made a request to the defendants to vacate his property, but the same was not considered as a result of which there arose a cause of action for filing the instant suit. The plaintiff prayed for declaration of his ownership over the land in question as mentioned in para-3 of his plaint.

04. Denying the claim of the plaintiff, it was put forth by the defendants that the suit land was the self-acquired property of Bhagaiya Bai. They also denied the fact that the plaintiff is the nearest successor of Bhagaiya Bai and further submitted that last rites of deceased Bhagaiya Bai were performed by them and not by the plaintiff as claimed. According to the defendants, they are in lawful possession of the land in question and therefore, prayed for dismissal of the suit.

05. The trial Court framed certain issues and while dealing with the same in light of pleadings of the respective parties and evidence adduced by them came to the conclusion that the plaintiff has utterly

failed to prove that he is the sole owner of the land in question, he is not entitled for the decree of possession from the defendants; he has failed to prove that he is the nearest successor of deceased Bhagaiya Bai and is also not entitled to receive any cost. Thus by the judgment and decree dated 10.10.2011 the trial Court dismissed the suit with cost.

06. Against the said judgment and decree, the plaintiff preferred first appeal before District Judge, Bemetara, however, by the impugned judgment and decree the first appellate Court also dismissed the appeal affirming the findings recorded by the trial Court.

07. Learned counsel for the appellant submits that the defendants have utterly failed to prove as to on what basis they acquired the title of the suit land and as such, the appellate Court was not justified in rejecting the application as filed by the plaintiff under Order 41 Rule 27 of CPC.

08. From the material available on record it is apparent that after due appreciation of the evidence, oral and documentary, adduced by the parties the trial Court has recorded the findings in favour of the defendants which have subsequently been affirmed by the lower appellate Court as well. There does not appear any perversity in the concurrent findings recorded by both the Courts below requiring interference by this Court in exercise of appellate jurisdiction under Section 100 of CPC. Fortifying its earlier decisions being *Vidhyadhar V. Manikrao* (1999) 3 SCC 573 and *Abdul Raheem V. Karnataka Electricity Board* (2007) 14 SCC 138, the Apex Court in the matter of ***Vishwanath Agrawal S/o Sitaram Agrawal Vs. Sarla Vishwanath***

Agrawal reported in **(2012) 7 SCC 288** has held that the concurrent findings recorded by Courts below cannot be disturbed until and unless they are perverse or contrary to law. Relevant portion of the said judicial pronouncement reads as under:

“37... 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.”

09. Thus in view of the above factual and legal background, there appears to be no perversity in the concurrent findings recorded by both the Courts below and being so this second appeal does not involve any question of law much less the substantial question of law.

10. In the result, this appeal being devoid of any substance is liable to be dismissed and it is dismissed as such at the admission stage itself.
No order as to costs.

Sd/

(Pritinker Diwaker)

Judge