

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No. 372 of 2016

1. Dulsiya Bai W/o Late Jagdish Satnami, aged about 60 years.
2. Chandra Kumar Satnami, S/o Jagdish, aged about 40 years.
3. Ashwani Kumar Satnami, S/o Jagdish, aged about 36 years.
4. Ajay Satnami S/o Virendra, aged about 15 years
5. Anuj Satnami S/o Virendra, aged about 14 years
6. Bhupendra Satnami, S/o Virendra, aged about 12 years.

Appellants No.4 to 6 are Minors through Dulsiya Bai, Appellant No.1.

All are residents of Village Tilda, Tahsil Tilda, District Raipur (CG)

---- Appellants/Plaintiffs

Versus

1. Chandrakala W/o Bhikau Satnami, aged about 44 years R/o Village Dhakune, Tahsil and Police Station Simga, District Raipur, Chhattisgarh
2. Man Singh Satnami, son of Jhadoo Lal Satnami, aged about 62 years.
3. Jagar Bai @ Agar Bai, wife of Baisakhu Ram Satnami, aged about 64 years, resident of village Rohra, Tahsil Simga, District Raipur (CG)
4. Ram Bai, wife of Sarjuram Satnami, D/o Jhaboo Lal Satnami, aged about 54 years, resident of village Sasaholi, Post-Police Station & Tahsil Tilda, District Raipur (CG)
5. State of Chhattisgarh, through Collector, Raipur, District Raipur (CG)

---- Respondents/Defendants

For Appellants:

Shri C.R. Sahu, Advocate.

Hon'ble Shri Justice Pritinker Diwaker

Order On Board

15/11/2016

1. Heard on admission.
2. The plaintiff/appellant has preferred this second appeal under Section 100 of the Code of Civil Procedure, 1908 (for brevity "CPC") against the

judgment & decree dated 29.2.2016 passed by the 7th Additional District Judge, Raipur in Civil Appeal No.25A/2014 affirming the judgment and decree dated 12.12.2013 passed by the Civil Judge Class-II, Tilda, District Raipur in Civil Suit No.5-A/09 whereby the trial Judge has partially decreed the suit of plaintiff/appellant herein for declaration and partition.

3. Facts of the case, in brief, are that the plaintiff/appellant herein filed a civil suit for declaration and partition stating therein that original plaintiff Jagdish and defendants are the relatives. Land bearing Khasra No.730/13 & 719 area 0.716 & 0.299 hectare, total area 1.015 hectare situate at village Tilda, PH No.7, District Raipur was recorded jointly in their names in the land records. Vide judgment dated 23.02.1988 passed in Civil Suit No.46A/84 it has been held that the parties to the suit are entitled for their respective share in the land in question and the said judgment has already attained finality. It is further case of the plaintiff that after the death of husband of Budhyarin Bai, Jhabbulal performed chudi marriage with Budhyarin Bai and after the death of Jhabbulal, Budhyarin Bai started living at her parental home and since then the plaintiff being the adopted son of Budhyarin Bai is in occupation and possession of her share. Thus, the plaintiff and the defendants are in joint possession of 2/3rd share of the land. However, the defendant No.1 moved an application under Section 178 of the Chhattisgarh Land Revenue Code, 1959 before the Tahsildar, Tilka claiming half share in the suit land, whereas he is entitled for only 1/3rd share.
4. On the pleadings of the parties, the trial Judge framed as many as four issues and given opportunity to the parties to adduce evidence, both oral and documentary, and after a full fledged trial rendered a decision partially allowing the claim of plaintiff/appellant herein holding that defendant No.1 is the owner of 1/3rd share of the suit land and 1/4th share of the property of Budhyarin Bai, whereas the plaintiff is entitled for the decree of partition to the extent of his share only. Being dissatisfied with the judgment and decree passed by the trial Court the appellant has preferred first appeal before the lower appellate Court which however has also been dismissed by the first appellate Court vide judgment and decree impugned herein affirming the findings of the trial Court.
5. Heard counsel for the parties and perused the documents on record.

6. From the material available on record it is apparent that after due appreciation of evidence, oral and documentary, adduced by the parties the trial Court has recorded the findings against the plaintiff 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 CPC. Fortifying its earlier decision being *Vidyadhar 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 v. 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.”

7. 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.
8. In the result, this second 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

roshan