

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.139 of 2007**

Ramprasad, S/o Shri Gurdi @ Gudari, aged about 46 years,
R/o Jharripara, P.S. and Tahsil Bhanupratappur, District
Kanker (CG).

---Appellant/Defendant

Versus

1. Sunder Singh minor ,aged about 17 years, through natural guardian grand mother Smt. Danibai (now become Major) R/o Village Jharripara, Tahsil Bhanupratappur, District Kanker (CG).
2. Dulsai, W/o Jarhu Ram, aged about 56 years, resident of Taroi Ghotim, Chauki Kachhe, Tahsil Bhanupratappur, District Kanker (CG).
3. Somari, D/o Bhodu, aged about 52 years, resident of Jharripara Tahsil Bhanupratappur, District Kanker (CG).
4. State of Chhattisgarh, through the Collector, Kanker, District Kanker (CG).

---- Respondents/plaintiffs

For Appellant : Shri Prakash Tiwari, Advocate.

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

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

07/09/2016

(1) Heard on I.A. No.01 i.e. application under Section 5 of the Limitation Act for condonation of delay in filing the appeal.

(2) On due consideration, I am satisfied that the applicant has succeeded in explaining the cause of delay in filing the MCC and,

therefore, I.A.No.01 is allowed and delay in filing the appeal is hereby condoned.

(3) This is appellant/defendant's second appeal under Section 100 of the Code of Civil Procedure, 1908 (for short 'the CPC') challenging the judgment and decree dated 16.11.2006 passed by 2nd Additional District Judge (FTC), Kanker in Civil Appeal No.51-A/2006, affirming the judgment and decree dated 22.02.2001 passed by Civil Judge Class-II, Bhanupratappur in Civil Suit No.25-A/1995, whereby the trial Court has decreed the suit.

(4) The plaintiffs/respondents filed a suit for possession, declaration of title and permanent injunction over the suit property, which was decreed by the trial Court.

(5) Against the judgment and decree of the trial Court, the appellant/defendant filed First Appeal, which was also dismissed by the First Appellate Court.

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

(7) Learned counsel appearing for the appellant/defendant would submit that the concurrent findings recorded by two Courts below holding that the suit is within a limitation, which is perverse and contrary to the record and, therefore, it gives raise to the substantial question of law for determination of this appeal.

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

(9) 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.

(10) 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.

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

1 (2012) 7 SCC 288

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

3 (1999) 3 SCC 573

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.

(11) 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.

(12) 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/-

⁴ (2007) 14 SCC 138: AIR 2008 SC 956