

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No. 17 of 2015

- Ravi Shrivastava S/o C.L. Shrivastava, Aged about 28 Years, R/o Jabdapara, Sarkanda, Bilaspur, Tahsil & Distt. Bilaspur (C.G.)

---- Appellant

Versus

1. Smt. Sundari Bai (Since dead) Through LRs.
- 1A. Bharat Lal Baga, Aged about 52 years, S/o Isardas R/o Village-Jethani Cycle Stores, Barpali Chowk, Champa, Distt. Janjgir-Champa (C.G.)
2. Chinmay Builders, 8/9 Pushpak Apartment, Chhotapara, Raipur (C.G.) Through- Managing Director- Shri Prakash Dabda, Aged about 50 Yrs, S/o Maganlal Dabda, R/o 8 Geetanjali Nagar, Raipur, Tah. and Distt. Raipur (C.G.)
3. Santu S/o Parshu, Aged about 35 Years, R/o Nayapara, Bodri, Tah. Bilha, Distt. Bilaspur (C.G.)
4. Smt. Shyambai @ Baulabai (Since dead) Wd/o Jahanik R/o Village-Bodri, Tah. Bilha, Distt. Bilaspur (C.G.)
- 4A. Shiv Kumar Khandekar S/o Late Bagat Ram, Aged about 37 Years, R/o Thakkar Baba Ward No. 12, Rawanbhata, Mungeli, Distt. Mungeli (C.G.)
5. State of Chhattisgarh Thru- Collector, Bilaspur (C.G.)

---- Respondents

For Appellants : Shri Vimlesh Bajpai, Advocate
For Respondents No.1A : Shri Vijay Kumar Mishra & Shri K.K. Khatri, Advocates.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

07/09/2016

Heard.

2. The plaintiffs herein filed a suit before the trial Court for declaration of title and recovery of possession was decreed and held that the suit was within limitation. Against which Shyam Bai/Defendant

No.4 did not prefer any appeal but the appellant who is subsequent purchaser of suit land (on 20-05-2009) had preferred an appeal before the First Appellate Court. The First Appellate Court dismissed the appeal affirming the judgement and decree of the trial Court against which the Second Appeal under Section 100 of the CPC has been preferred.

3. Shri Vimlesh Bajpai, learned counsel appearing for the appellant/defendant No.5 would submit that concurrent findings recorded by two Courts below that the suit is within limitation is perverse and gives rise to substantial question of law for admission of this appeal.

4. The concurrent findings recorded by two Courts below holding the suit to be within limitation is a finding of fact based on evidence and record. It is neither perverse nor contrary to record.

5. 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 findings of fact, unless finding recorded is perverse being based on no evidence. Paras-36 & 37 of report 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

¹ (2012) 7 SCC 288

² (1997) 3 SCC 546 : AIR 1997 SC 1906

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 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.

6. Keeping in view, the ratio of law laid down by the Supreme Court in the aforesaid case, the concurrent findings 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 second appeal.

7. Accordingly, the appeal deserves to be and is hereby dismissed at the motion stage, without notice to other side.

Sd/-

(Sanjay K. Agrawal)

JUDGE

Kvr

³ (1999) 3 SCC 573

⁴. (2007) 14 SCC 138 : AIR 2008 SC 956