

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****Second Appeal No.535 of 2013**

Bihari Patel S/o Devdhar Patel, aged about 52 years, R/o Village-Mudagaon, Post-Saraitola, P.S. & Tah. Tamnar, Distt.Raigarh, Civil and Revenue Distt-Raigarh (CG)

**---- Appellant****Versus**

1. Smt.Hirawati wife of Shri Ishwar Patel, caste-Aghariya, R/o village Subra, Post-Piprahi, Tah.Lailunga, Distt.Raigarh (CG)
2. Chappawati wife of Shri Jeewanlal Patel, caste-Aghariya, R/o Village-Jampali, Post-Usraut, Tah. & Distt.Raigarh (CG)
3. State of Chhattisgarh through Collector, Raigarh, Distt.Raigarh (CG)

**---- Respondents**

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 For Appellant : Mr.M.K.Sinha, Advocate  
 For Respondent No.3 : Ms K.Tripti Rao, P.L.  
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**Hon'ble Shri Justice Sanjay K. Agrawal****Order on Board****11/08/2016**

1. The plaintiff filed a suit for declaration of title, confirmation of possession and permanent injunction holding that the suit property is exclusively held by him as partition has already been taken place during life time of his father Devdhar Patel between him and his sisters defendants No.1 and 2.
2. The trial Court dismissed the suit filed by the plaintiff holding that the suit property is ancestral property and not exclusive property of the plaintiff and it has not been proved that in lieu of share of defendants No.1 and 2 they have been given gold and silver ornaments.
3. In an appeal preferred by the plaintiff, the First Appellate Court also

dismissed the appeal.

4. Against which, the present second appeal has been preferred by the appellant under Section 100 of the Code of Civil Procedure.

5. Mr.M.K.Sinha, learned counsel appearing for the appellant/plaintiff, would submit that concurrent finding of fact recorded by two Courts below holding that the plaintiff is not exclusive title holder of the suit property is perverse as there is evidence to show that defendants No.1 and 2 were given gold and silver ornaments in lieu of their share in the suit land.

6. I have heard learned counsel for the appellant and perused the records of the Courts below with utmost circumspection.

7. Both the Courts below have concurrently held that the plaintiff is not exclusive title holder of the suit property, the suit property is ancestral property and defendants No.1 and 2 have a share. It has not been proved that defendants No.1 and 2 have been given gold and silver ornaments in lieu of their share, which is the finding of fact.

8. Recently, the Supreme Court in the case of **Vishwanath Agrawal, S/o Sitaram Agrawal Vs. Sarla Vishwanath Agrawal**<sup>1</sup>, has held that High Court should not disturb the concurrent finding of fact, unless finding recorded is perverse being based on no evidence. Para-36 & 37 of report states as under:-

“36. In **Major Singh Vs. Rattan Singh**<sup>2</sup> it has been observed that when the Courts below had rejected and disbelieved the evidence on unacceptable grounds, it is

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1 (2012) 7 SCC 288

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

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<sup>3</sup>** 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<sup>4</sup>**.

9. 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.

10. Accordingly, the appeal deserves to be and is accordingly dismissed. No order as to costs.

Sd/-

(Sanjay K Agrawal)  
Judge

B/-

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3 (1999) 3 SCC 573

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