

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No. 138 of 2015

1. Jeevan Lal S/o Late Shri Gajanand, aged about 60 years, R/o Champa (Chhipiyapara), Distt. Janjgir-Champa Chhattisgarh (CG) At Present Residing At Korba Kosabadi Tehsil & Distt. - Korba (CG)

---- Appellant

Versus

1. Vinod Kumar, S/o Jagannath Prasad Namdev, aged about 50 years.
2. Puni Bai Wd/o Late Shankar Lal Namdev aged about 70 years.
3. Ram Prasad S/o Chhatar Ram Yadav, aged about 35 years.
4. Umesh Kumar S/o Gourishankar Soni, aged about 35 years.

All are R/o Champa, Tehsil-Champa Distt. Janjgir Champa (CG)

5. State Of Chhattisgarh Through : Collector, Janjgir Distt. Janjgir-Champa C.G.

---- Respondents

For Appellant	:	Shri Sanjay Patel, Advocate.
For Respondent No.5	:	Shri V.A. Goverdhan, Panel Lawyer

Hon'ble Shri Justice Pritinker Diwaker

Order On Board

24/11/2016

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 4.2.2015 passed by the Additional District Judge, Janjgir, District Janjgir-Champa in Civil Appeal No.46A/2013 affirming the judgment and decree dated 11.4.2013 passed by the Civil Judge Class-I Champa in Civil Suit No.2A/08 whereby the trial Judge has dismissed the suit of plaintiff/appellant herein filed for declaration of title and permanent injunction.

3. Facts of the case, in brief, are that the plaintiff/appellant herein filed a civil suit for declaration and permanent injunction stating therein that the land bearing Khasra Nos.1239/2 & 1292 area 1.18 acre & 0.32 acre respectively were recorded in the revenue records in the joint name of appellant and respondents No.1 to 4. The appellant filed an application before the Tahsildar, Champa for partition of the suit land to which the respondent No.1 filed reply stating that the entire suit land has been sold by him with the consent of all the parties. Immediately thereafter the appellant filed the civil suit for declaration of title and permanent injunction.
4. On the pleadings of the parties, the trial Judge has framed as many as six issues and given opportunity to the parties to adduce evidence, both oral and documentary, and after a full fledged trial rendered a decision non-suiting the plaintiff/appellant herein on the ground that the claim of the plaintiff is not maintainable as per provisions of Section 34 of the Specific Relief Act, 1973. Against the judgment and decree passed by the trial Court the appellant has preferred first appeal before the lower appellate Court which 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