

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No. 156 of 2009

1. Chudamani S/o Ganesh Ram Patel, aged about 37 years.
2. Ganesh Ram S/o Sakha Ram Patel, aged about 67 years,
Both R/o Vill & Post - Birkoni Tah & District Mahasamund C.G.

---- Appellants/Plaintiffs

Versus

1. Rajendra Chandrakar S/o Khoman Chandrakar, aged about 43 years.
3. Smt Archana Chandrakar W/o Rajendra Chandrakar, aged about 38 years,
Both R/o Near Gram Sahkari Bank Station Road Mahasamund C.G.
4. State Of Chhattisgarh, through the Collector, Mahasamund (CG)

---- Respondents/defendants

For Appellants	:	Shri Keshav Dewangan, 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 3.7.2007 passed by the 1st Additional District Judge, Mahasamund in Civil Appeal No.7A/2004 affirming the judgment and decree dated 31.12.2003 passed by the 3rd Additional Civil Judge Class-I, Mahasamund in Civil Suit No.204A/02 whereby the trial Judge has dismissed the suit of plaintiff/appellant herein filed for permanent injunction.

3. Facts of the case, in brief, are that the plaintiff/appellant herein filed a civil suit against the respondents for grant of decree of permanent injunction in respect of land bearing Khasra No.2068 area 1.10 acre situate at village Birkoni, PH No.139, RI Circle, Tahsil & District Mahasamund stating therein that he is in possession & occupation of the land in question, a government land, for the last about 40-45 years and the same is the only source of livelihood of the appellant. The appellant has already applied before the State authorities concerned for grant of lease in respect of the said land which is pending consideration. It is further stated that as the defendants No.1 & 2 are trying to dispossess the appellant from the said land, therefore, the necessity has arisen to file the suit for permanent injunction. The respondents No.1 & 2 filed their written statement denying the plaint averments and stating that the suit land is recorded as grass land; the appellant was never in possession of the land in question, rather it was given on lease to defendant No.2 which is valid upto the year 2020 and he is in possession of the same. It has further been stated that the appellant has not properly valued the suit and even he has not complied with the provisions of Section 80 CPC.
4. On the pleadings of the parties, the trial Judge has 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 non-suiting the plaintiff/appellant herein on the ground that the appellant has failed to prove his lawful possession over the land in question. 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