

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 33 of 2005**

1. Janak Tamrakar, aged about 55 years, son of Late Manoharlal Tamrakar.
2. Smt. Janki, aged about 52 years, son of Late Manohar Lal.
3. Gorelal (since deceased) through LRs.

(4-A) Savitri Tamrakar, W/o Late Shri Gorelal, aged about 61 years,

(4-B) Samindra Tamrakar, S/o Late Shri Gorelal, aged about 45 years,

4. Murarilal, aged about 48 years, son of Late Manohar Lal Tamrakar,
5. Pradeep, aged about 35 years, son of Fagulal Tamrakar,

All are resident of Takhatpur, Distt. Bilaspur (C.G.)

---- Appellant

Versus

Smt. Seeta Bai, aged about 50 years, son of Late Hardatt Pandey, resident of Tilaknagar, Bilaspur, Tah. and Distt. Bilaspur (C.G.)

---- Respondent

For Applicant:	Mr. B.D. Guru & Mr. Rajendra Tripathi, Advocate.
For Respondent :	Mr. R.K. Tiwari, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

15/09/2016

Heard.

(1) The plaintiffs' suit for declaration of title and possession was dismissed by the trial Court holding that plaintiffs have failed

to prove their title over the suit land; suit is barred by limitation; suit is under valued and it has not been properly valued; and the suit is also held to be not maintainable.

(2) The plaintiffs preferred first appeal thereagainst. The first appellate court, after re-appreciating the entire evidence adduced in the case, affirmed the judgment and decree passed by the trial court, leading to filing of this Second Appeal under Section 100 of the Code of Civil Procedure.

(3) Learned counsel appearing for the appellants/plaintiffs would submit the concurrent findings recorded by both the courts below is perverse and that give rise a substantial question of law for determination in this appeal.

(4) I have heard learned counsel appearing for the appellant and perused the records of both the courts below with utmost circumspection.

(5) The concurrent findings recorded by both the courts below dismissing the suit of the plaintiffs is the finding of fact based on material available on record and I do not find it either perverse or contrary to record and no question of law much less substantial question of law is involved in this appeal.

(6) 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 are perverse being based on no

1 (2012) 7 SCC 288

evidence. Para-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 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 jurisdiction 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. Karnaraka Electricity Board*⁴.”

(7) 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, no substantial question of law is involved in this appeal, thus appeal deserves to and accordingly dismissed at admission stage itself. No order as to costs.

Sd/-

(Sanjay K. Agrawal)

Judge

D/-

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

3 (1999) 3 SCC 573

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

