

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No. 71 of 2016

- Dashrath Yadav, aged about 56 years son of Shri Bhadro, caste – Mahkul, Occupation – Service and Agriculturist, resident of Jamargee”B”, Tahsil – Patthalgaon, Civil and Revenue District – Jashpur (C.G.)

**---- Appellant/
plaintiff**

Versus

1. Shyamsundar Yadav, aged about 46 years, son of Shri Bhadro, caste – Mahkul, Occupation – Service and Agriculturist, resident of Jamargee “B”, Tahsil – Patthalgaon, Civil and Revenue District – Jashpur (C.G.)
2. State of Chhattisgarh, Through : the Collector, Distt. Jashpur (C.G.)

**---- Respondents/
Defendant No.1**

For Appellant.	:	Shri A.N. Bhakta, Advocate.
For State/Respondent No.1	:	Shri Adhiraj Surana, Dy. Govt. Advocate

Hon'ble Shri Justice Pritinker Diwaker

Order On Board

08/11/2016

Heard on admission.

02. Appellant/plaintiff has preferred this second appeal under Section 100 of the Code of Civil Procedure (for brevity “CPC”) against the judgment and decree dated 21.12.2015 passed by Additional District Judge, Kunkuri, District Jashpur in Civil Appeal No.18-A/2014 affirming the judgment and decree dated 06.09.2014 passed by Civil Judge, Class-II, Patthalgaon, District Jashpur in Civil Suit No.11-A/2013.

03. Appellant/Plaintiff filed a suit for declaration, title, partition and permanent injunction in relation to land in dispute bearing Patwari

Halka No.26, Khasra No.17, area 10.440 hectares situated at village Jamargee, Tahsil Patthalgaon, District Jashpur. According to the plaintiff, suit land was his ancestral property and private defendant is his younger brother and he is in possession of land Schedule 'B' as mentioned in the plaint.

04. Denying the contention of the plaintiff, it was pleaded by the defendant that previously partition of the property had not taken place and, therefore, both the parties mentioned total land in Schedule 'A' and 'B', which is not joint property.

05. The trial Court after framing issues has held that the plaintiff is not sole owner of the property mentioned in Schedule 'B' i.e. total Khasra No.11 area 5.039 hectares and in-fact both plaintiff and defendant are entitled for half of the share of the suit land.

06. Heard counsel for the parties and perused the documents on record.

07. From the material available on record it is apparent that after due appreciation of the evidence, oral and documentary, adduced by the parties the trial Court has recorded the findings in favour of the defendant which has 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 decisions being *Vidhyadhar 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.”

08. 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.

09. In the result, this 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