

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No. 396 of 2016

- Shyamlal S/o Late Sukhiram Sahu, Aged About 52 Years R/o Village- Nisda, Tehsil- Arang, District- Raipur, Chhattisgarh
- Puranik Sahu, S/o Late Sukhiram Sahu, Aged About 48 Years R/o Village- Nisda, Tehsil- Arang, District- Raipur, Chhattisgarh
- Sitaram Sahu S/o Late Sukhiram Sahu, Aged About 44 Years R/o Village- Nisda, Tehsil- Arang, District- Raipur, Chhattisgarh
- Hemsingh Sahu S/o Late Sukhiram Sahu, Aged About 28 Years R/o Village- Nisda, Tehsil- Arang, District- Raipur, Chhattisgarh
(Defendants)

---- Petitioner

Versus

- Smt. Bhagwantin Bai Wd/o Kedarnath Gupta, Aged About 45 Years R/o Jawahar Chowk, Gupta Para, Arang, Tehsil- Arang, District- Raipur, Chhattisgarh
- Shriram Gupta S/o Late Kedarnath Gupta, Aged About 26 Years R/o Jawahar Chowk, Gupta Para, Arang, Tehsil- Arang, District- Raipur, Chhattisgarh
- Mahavir Gupta S/o Late Kedarnath Gupta, Aged About 22 Years R/o Jawahar Chowk, Gupta Para, Arang, Tehsil- Arang, District- Raipur, Chhattisgarh
- State Of Chhattisgarh, Through The Collector- Raipur, District- Raipur, Chhattisgarh(Plaintiffs)

---- Respondent

For Appellants	: Shri Vishnu Koshta, Advocate
For Respondents 1 to 3	: Shri Yogesh Pandey, Advocate
For Respondent No.4/State	: Shri Adil Minhaj, P.L.

Hon'ble Shri Justice Pritinker Diwaker

Order On Board

19/12/2016

As per the case of the appellants/defendants, on 24.04.1979
Kedarnath Gupta, husband of plaintiff No.1 and father of plaintiff No.2 and 3

executed the sale agreement in favour of Sukhram, father of appellants/defendants and is said to have handed over the possession of land in question bearing Khasra No.104/20 area 0.946 hectare. When the sale deed was not executed by Kedarnath Gupta, Sukhram filed a suit for declaration and possession. The said suit was decreed by the trial Court vide judgment and decree dated 09.03.2016. This judgment was assailed by the respondents/plaintiffs and the appellate court has set aside the judgment and decree dated 09.03.96. It has been held that the possession of the defendant was a permissible possession. The said judgment and decree of the first appellate court was affirmed by the High Court. Subsequently the plaintiff filed a suit for declaration and possession on the ground that the land in dispute is a joint ancestral property and by mutual partition the property came in the name of Kedarnath Gupta.

2. In written statement, the contention made by the plaintiffs have been denied by the appellants and it was pleaded that since 1979 they are in possession of the land in question and on the ground of adverse possession they have acquired the title. However in the land in question, alleged partition has also been denied by the defendants. Vide judgment and decree dated 18.07.2011, the trial court has decreed the suit as filed by the plaintiff. The first appellate court has also affirmed the judgment and decree of the trial court. Hence this appeal.

3. Contention of the counsel for the appellants/defendants is that the plea of adverse possession was taken by the defendants in the trial court and that execution of sale deed in favour of the plaintiffs by Kedarnath was not in accordance with law and therefore the findings of both the Courts below in decreeing the suit are erroneous.

4. Replying to the arguments advanced by counsel counsel for the appellants/defendants it has been submitted by the counsel for the respondents plaintiffs that all the points have been duly considered by both

the Courts below and therefore no interference is call for with the concurrent findings so recorded.

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 the evidence, oral and documentary, adduced by the parties, the trial Court has recorded the findings in favour of the plaintiff 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 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 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

suguna