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HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 158 of 2016**

Bhagirathi Tripathi, S/o Shyam Sunder Tripathi, aged about 40 years, by caste – Bramhan, Occupation – Kastkar, R/o Village- Baitari, P.H. No. 21, Ra.Ni.Ma. Khamharpali, Tahsil- Saraipali, Distt. Mahasamund (C.G.)Plaintiff

---- Appellant**Versus**

1. A. Devanand, S/o Bairagi, aged about 32 years, (Legal heir's of Late Bairagi)
 - B. Panchanand, S/o Bairagi , aged about 26 years,
 - C. Gopika, S/o Bairagi, aged about 19 years,
 - D. Mu. Yaswanti, W/o Late Bairagi, aged about 55 years,
- All by caste Sanwara ,R/o Khamharpali, Post – Paiking, Police Station, Tahsil – Saraipali, Distt. Mahasamund (C.G.)
2. Khanchi Pradhan, S/o Dhannu Pradhan, by caste – Kolta, R/o Village- Baitari, P.H. No.21, Ra.Ni.Ma.- Khamhari, Tahsil- Sariapali, Distt. Mahasamund (C.G.)
 3. State of Chhattisgarh through the Collector, Distt. Mahasamund (C.G.)

---- Respondents

For Appellant: Mr. Awadh Tripathi, Advocate.
For Respondent No.3: Mrs. Astha Shukla, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****07/09/2016**

Heard.

- (1) The plaintiff's suit for declaration of title and permanent

injunction was dismissed the trial Court.

(2) The plaintiff 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 appellant/plaintiff 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 holding that will deed executed in favour of respondent No.1/defendant is not forged or fabricated is a finding of fact based 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 evidence. Para-36, 37 of report as under:-

“36. In *Major Singh Vs. Rattan Singh*² it has

¹ (2012) 7 SCC 288

² (1997) 3 SCC 546; AIR 1997 SC 1906

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/-

3 (1999) 3 SCC 573

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

