

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.90 of 2016**

Mo. Sadik, S/o Mo. Yakub, aged about 52 years, Occupation Business, resident of Mohalla-Nawagarh, P.S. Ambikapur Kotwali, Tahsil Ambikapur, Revenue and Civil District Surguja (CG).
 ---Plaintiff

---- Appellant

Versus

District Panchayat Surguja, Ambikapur, through Chief Executive Officer, District Panchayat, Surguja, Ambikapur (CG)--Defendant

---- Respondent

For Appellant : Shri Sunil Tripathi, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

06/10/2016

(1) Heard on admission.

(2) This is appellant/plaintiff's second appeal under Section 100 of the Code of Civil Procedure, 1908 (for short 'the CPC') challenging the judgment and decree dated 05.02.2016 passed by Fifth Additional District Judge, Ambikapur, District Surguja in Central Registration (Civil Appeal) No.38-A/2014, affirming the judgment and decree dated 18.09.2014 passed by 3rd Civil Judge, Class-II, Ambikapur, District Surguja in Civil Suit No.57-A/2013, whereby the trial Court has dismissed the suit.

(3) Appellant/plaintiff-tenant filed a suit against the respondent/defendant-landlord that the respondent/defendant is trying to dispossess him forcibly from the allotted shop in which, respondent/defendant proceeded *ex parte* before the trial Court. The trial Court dismissed the suit holding that respondent/defendant has issued notice (Exhibit P/8) to the appellant/plaintiff cancelling the allotment of shop and stating that the shop is required for SDLC (Skill Development and Learning Center), directing him to vacate the suit shop.

(4) Against the judgment and decree of the trial Court, the first appeal was preferred by the appellant/plaintiff, which was also dismissed by the First Appellate Court affirming that there is no perversity or illegality in the judgment and decree passed by the trial Court.

(5) Against which, this second appeal under Section 100 of the Code of Civil Procedure has been filed by the appellant/plaintiff herein.

(6) Mr. Sunil Tripathi, learned counsel appearing for the appellant/plaintiff would submit that the concurrent findings recorded by two Courts below declining to grant decree in favour of the appellant/plaintiff, which is perverse and contrary to record and it is liable to be set-aside and therefore, it gives rise to substantial question of law for determination of this appeal.

(7) I have heard learned counsel appearing for the appellant/plaintiff and perused the records of the Courts below with utmost circumspection.

(8) Admittedly, the appellant/plaintiff is a tenant of the shop and respondent/defendant-Zila Panchayat, Surguja is a landlord. Notice (Exhibit P/8) was issued to the appellant/plaintiff on 08.04.2013 cancelling his allotment and directing him to vacate the shop and the suit was filed on 12.4.2013. The trial Court as well as first appellate Court both have concurrently held that allotment of shop has been cancelled and appellant/plaintiff has been directed to vacate the shop within a period of 7 days by issuance of notice and the appellant/plaintiff is not entitled for the decree as claimed.

(9) The concurrent findings recorded by two Courts below are based on the evidence available on record. It is neither perverse nor contrary to record.

(10) 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 is perverse being based on no 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

¹ (2012) 7 SCC 288

² (1997) 3 SCC 546: AIR 1997 SC 1906

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 jurisdictions 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. Karnataka Electricity Board*⁴.

(11) 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 available on record and it is neither perverse nor contrary to the record. No substantial question of law is involved in this second appeal.

(12) Consequently, the second appeal deserves to be and is accordingly dismissed. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

L/-

3 (1999) 3 SCC 573

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