

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No. 121 of 2016

1. Harichandan Patel S/o Shri Damodar Patel, Aged About 54 Years
Occupation- Service (Teacher) R/o Village- Jampali, Tah.- Pussour Distt.-
Raigarh, Present R/o Village- Tarkela, Tah.- Distt.- Raigarh, Chhattisgarh
(Wrongly Mentioned As Harishchand In Judgment).

**---- Appellant
(Plaintiff)**

Versus

1. Damoder Patel, S/o Late Shri Keshavram Patel, Aged About 76 Years
Occupation- Farmer, R/o Village- Jampali, Tah.- Pussour, Distt.- Raigarh,
Chhattisgarh
2. Kartikram S/o Nankiram, Aged About 54 Years Occupation- Farmer, R/o
Village- Jampali, Tah.- Pussour, Distt.- Raigarh, Chhattisgarh
3. State Of Chhattisgarh, Through: Collector Raigarh, Chhattisgarh
(Defendants)

---- Respondent

For Appellant:
For Respondent No.3:

Shri V.K. Pandey, Advocate
Shri V.A. Goverdhan, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker

Order On Board

24/10/2016

1. Heard on admission.
2. The plaintiff/appellant has preferred this second appeal under Section 100 of the Code of Civil Procedure, 1908 (for brevity "CPC") against the judgment & decree dated 25.1.2016 passed by the 1st Additional District Judge, Raigarh in Civil Appeal No.20280000069/15 affirming the judgment and decree dated 30.7.2013 passed by the 1st Civil Judge Class-II Raipur in Civil Suit No.124-A/13.
3. The plaintiff/appellant filed a suit against the defendants seeking permanent injunction in respect of the suit property and a declaration that the sale deed dated 7.2.2007 is null and void. It is the case of the

plaintiff/appellant that defendant No.1 had sold the part of suit land to defendant No.2 during pendency of his suit for declaration & injunction and this sale being pendente lite transfer is void under Section 52 of the Transfer of Property Act, 1882.

4. Trial Court framed the issues and answering the same against the plaintiff dismissed the suit on the ground that the plaintiff failed to prove that the land sold under the sale deed dated 7.2.2007 is the ancestral property of plaintiff and defendant No.1. Against the judgment and decree passed by the trial Court first appeal was preferred by the plaintiff/appellant which has also been dismissed by the first appellate Court vide judgment and decree impugned herein affirming the findings of the trial Court.
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 evidence, oral and documentary, adduced by the parties the trial Court has recorded the findings against the plaintiff which have 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 decision being *Vidyadhar 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.”

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 second 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

roshan