

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No. 208 of 2016

1. Roopchand Khare S/o Kapil Satnami, Aged About 57 Years R/o Village-Tingipur, Tahsil- Mungeli, Distt. Bilaspur (CG).....

---- Appellant/Plaintiff

Versus

1. State of Chhattisgarh Through Collector, Bilaspur, Distt. Bilaspur, Chhattisgarh

---- Respondent /Defendant

For Appellant:
For Respondent:

Shri Awadh Tripathi, Advocate
Shri Adhiraj Surana, Dy. Government
Advocate.

Hon'ble Shri Justice Pritinker Diwaker

Order On Board

15/11/2016

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 12.2.2016 passed by the Additional District Judge, Mungeli, District Mungeli in Civil Appeal No.H97A/2011 affirming the judgment and decree dated 11.5.2010 passed by the Civil Judge Class-I Mungeli in Civil Suit No.28-A/08 whereby the trial Judge has dismissed the suit of plaintiff/appellant herein filed for declaration of title and permanent injunction.
3. Facts of the case, in brief, are that the plaintiff/appellant herein filed a civil suit for declaration and permanent injunction stating therein that land bearing Khasra No.61 (Part) area 5.15 acre was given to him on lease vide order dated 05.07.1985 passed by the then Naib Tahsildar, Mungeli and since then he is in peaceful possession and enjoyment of the said property. It has further been pleaded by the plaintiff/appellant that on several occasions the plaintiff tried to get his name recorded in the land

records against the said land but all in vain. The Sub Divisional Officer, Mungeli vide order dated 4.6.2001 cancelled the lease granted in favour of the plaintiff and thereafter, in the year 2008, the plaintiff has filed a civil suit seeking decree of declaration of title and permanent injunction.

4. On the pleadings of the parties, the trial Judge framed as many as four issues and given opportunity to the parties to adduce evidence, both oral and documentary, and after a full fledged trial rendered a decision non-suiting the plaintiff/appellant herein on the ground that the lease deed based on which decree of declaration of title has been claimed is not in existence and that the suit of the plaintiff is barred in law. Against the judgment and decree passed by the trial Court the appellant has preferred first appeal before the lower appellate Court 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. Counsel for the appellant submits that the land in question has been granted to the appellant on lease in the year 1985 and since then he is in continuous possession of the land in question, however, the respondent authorities somehow wanted to dispossess the appellant.
7. Replying to the arguments advanced by the counsel for appellant, it has been submitted by the counsel for the respondent/State that as per Section 57 of the Chhattisgarh Land Revenue Code, 1959 the appellant ought to have assailed the lease cancellation order before the civil Court within one year, but he failed to do so and therefore both the Courts below were justified in rejecting the claim of the appellant.
8. 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.”

9. 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.
10. 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