

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No. 278 of 2015

1. Mangaldas, aged 37 years, S/o Mokaradam Panika,
2. Itwar Das, aged 35 years, S/o Mokardam panika,
3. Sammar Das, aged 30 years, S/o Mokardam Panika,
4. Basanti, aged 40 years, D/o Mokaradam Panika,

All R/o village – Kutelamuda, Tahsil – Pali, District – Korba (C.G.)

**---- Appellants/
plaintiffs**

Versus

1. Mani Bai, aged about 70 years, D/o Jagdish,
2. Umesh aged 45 years, S/o Jagdish,
3. Jhaduram (dead) Through his legal representative Narayan Das S/o Late Jhaduram, aged about 45 years.

All R/o village – Kutelamuda, Thana, Katghora, Tahsil Pali, District Korba (C.G.)

4. State of Chhattisgarh Through : the District Magistrate, Durg, District Durg (C.G.)

**---- Respondents/
Defendants**

For Appellants	:	Shri Bharat Rajput, Advocate.
For Respondents 1 & 2	:	Shri Samir Singh, Advocate.
For Respondent No.4/State	:	Shri Adil Minhaj, P.L.

Hon'ble Shri Justice Pritinker Diwaker

Order On Board

29/11/2016

Heard on admission.

02. Appellant/plaintiff has preferred this second appeal under Section 100 of the Code of Civil Procedure (for brevity "CPC") against the judgment and decree dated 09.02.2015 passed by Additional District Judge, Katghora, District Korba in Civil Appeal No.03-A/2014 affirming the judgment and decree dated 27.01.2014 passed by Civil Judge Class-II, Pali, District Korba in Civil Suit No.26-A/2011.

03. Facts of the case are that a suit for declaration of title and permanent injunction was filed by original plaintiff Mukardam *inter-alia* pleading that the suit property was purchased by him from one Sukram vide registered sale deed dated 27.02.1978 and since then he is in peaceful possession and occupation of the same. However, the defendant No.2, son of said Jagdish, is trying to dispossess the plaintiffs from the suit land and, therefore, the necessity has arisen to file the suit seeking declaration that the plaintiff is the title holder of the suit land and in case it is found by the Court that the plaintiff is not the registered owner of the land then it be declared that the plaintiff has perfected his title on the basis of adverse possession.

Defendants in their written statement denied the plaint averments and submitted that the suit land was purchased by Suknath vide registered sale deed dated 04.06.1975 and thereafter his name has been recorded in the revenue record. The adverse possession has also been denied by the defendants.

04. On the pleadings of the parties, the trial Court has framed as many as four issues and after hearing the parties in the matter and granting them opportunity to lead evidence in support of their respective cases, dismissed the suit by holding that as the plaintiffs have failed to prove their valid title over the suit land, therefore, they are not entitled for grant of permanent injunction restraining the defendants from interfering with their possession. It has been further held that there is nothing on record to show that the plaintiffs have perfected the title over the land in question on the basis of adverse possession. Feeling aggrieved by the judgment and decree of the trial Court, the plaintiffs have preferred an appeal before the lower appellate

Court and the same has also been dismissed vide judgment impugned.

05. Heard counsel for the parties and perused the documents on record.

06. Learned counsel for the appellants submits that both the Courts below have erred in law in dismissing the suit and appeal of the appellants. He further submits that even assuming that the sale deed in favour of the plaintiffs was subsequent one then also the appellants have perfected their title on the basis of adverse possession.

07. 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 defendants 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 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.”

08. 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.

09. 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

Roshan