

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**SA No. 241 of 2006**

1. Mahesh Prasad alias Gorelal, S/o Late Baliram, aged about 62 years, resident of Pamgarh, District Janjgir Champa

**Appellant/Plaintiff**

**Versus**

1. Gurmeet Singh, S/o Jaswant Singh Punjabi, aged about 35 years, resident of village Pamgarh, District Janjgir Champa.

**Respondent/Defendant**

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|----------------|---|----------------------------|
| For Appellant  | : | Shri B.P. Sharma, Advocate |
| For Respondent | : | None appeared              |

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**Hon'ble Shri Justice Pritinker Diwaker**

**Order On Board**

**31/01/2017**

Heard on admission.

2. 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 08.03.2006 passed by Additional District Judge (FTC) Bilaspur in Civil Appeal No. 56-A/2004 affirming the judgment and decree dated 30.11.1990 passed by Civil Judge Class-I Janjgir in Civil Suit No. 306-A/1984 dismissing the suit filed by the plaintiff.

3. Facts of the case in brief are that on 31.7.1984 plaintiff/appellant had filed a suit for possession *inter alia* pleading that sale deed dated 17.4.1972 (Ex. D-1) was not the actual sale deed rather it was executed in lieu of the loan taken by him from the defendant. Case of the plaintiff is that previously also he used

to take loan from the father of the defendant after executing certain documents in lieu thereof. Plaintiff has pleaded that in the month of June 1975 the defendant had taken possession of the land in question and got his name recorded in the revenue record. Case of the defendant however is that the plaintiff had executed the registered sale deed in accordance with law and possession of the land in question was also delivered to him.

4. Trial Court framed as many as 6 issues and has answered the same saying that the sale deed was not executed in lieu of the loan taken by the plaintiff from the defendant and it was the actual registered sale deed duly executed in accordance with law. Trial Court further held that the suit has been filed in the year 1984 whereas according to the case of the plaintiff, the possession was taken by the defendant in the year 1975 and therefore the suit was barred by limitation. One of the findings recorded by the trial Court is that as except possession, no other relief such as the one declaring the sale deed as null and void was claimed by the plaintiff, the same cannot be granted in his favour. In respect of the sale deed, the trial Court has observed that though the plaintiff has paid the court fee on the basis of sale price but as no relief for declaring the said sale deed as null and void has been claimed, the same cannot be granted. Even otherwise, the finding has been recorded by the trial Court that since the suit has been filed 12 year after the execution of sale deed whereas the limitation prescribed therefor is 03 years, the plaintiff is not entitled for the relief sought for in the plaint. Trial Court has also recorded a finding that even according to the plaintiff, the deed so executed

was not the actual sale deed but a mortgage deed in fact, and has held his contention that even after execution of sale deed he remained in physical possession of the land in question for 2-3 years, as incorrect. While recording its findings, the trial Court has relied upon the statement of witnesses of the plaintiff namely Gangaram and Bhukhau. Against the judgment and decree passed by the trial Court first appeal was preferred by the plaintiff which has also been dismissed by the first appellate court vide judgment and decree impugned affirming the findings of the trial Court.

5. Counsel for the appellant/plaintiff submits that the findings recorded by both the Courts below are perverse. He submits that though the sale deed was registered in the year 1972, the defendant did not get his name recorded in the revenue records for number of years and the said land remained in possession of the plaintiff for sufficient long time. He submits that both the Courts below have committed an error of law in recording a finding that no relief of declaring the sale deed null and void can be granted as it has not been sought for by the plaintiff in his plaint.

6. Heard counsel for the appellant/plaintiff and perused the documents on record.

7. 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 defendant 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.”

8. 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.

9. 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**