

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**SA No. 258 of 2016**

1. Hemchand S/o Parganiha Satnami, Aged About 48 Years
2. Chitrarekha Bai, D/o Parganiha Satnami, Aged About 27 Years

Both R/o Village Bahera, Tahsil Berla, District Bemetara  
(Chhattisgarh)

**Appellants/Defendants**

**Versus**

1. Smt. Hemin Bai W/o Hajari Satnami, Aged About 47 Years R/o  
Village Gadhadih, Tahsil Saja, District Bemetara (CG)
2. Chandrika Bai, W/o Gangasagar, Aged About 37 Years R/o  
Village Bahera, Tahsil Berala, District Bemetara (CG)

**Respondents/Plaintiffs**

3. State Of Chhattisgarh Through Collector Bemetara, District  
Bemetara (CG)

**Respondent(Defendant)**

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| For Appellants      | : | Shri Ashok Swarnkar Advocate |
| For Respondent No.3 | : | Shri Adhiraj Surana, Dy. GA  |

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**Hon'ble Shri Justice Pritinker Diwaker**

**Order On Board**

**16/01/2017**

Heard on admission.

2. Appellants/defendants have preferred this second appeal under Section 100 of the Code of Civil Procedure (for brevity "CPC") against the judgment and decree dated 18.4.2016 passed by Additional District Judge Bemetara in Civil Appeal No. 9-A/2015 affirming the judgment and decree dated 30.10.2014 passed by Civil Judge Class-I Bemetara in Civil Suit No. 18-A/2009 whereby

the suit of the plaintiffs was partly decreed.

3. Facts of the case in brief are that plaintiffs Hemin Bai and Chandrika Bai filed a suit for declaration, permanent injunction, possession and partition *inter alia* pleading that they are the successors of Pargania through his second wife Pusai Bai whereas the defendants Hemchand and Chitrarekha Bai are his son and daughter through his third wife Rajia Bai. According to the plaintiffs, as Pargania performed third marriage without divorcing second wife, the defendants being his illegitimate children have no right over the land in question. It is the further case of the plaintiffs that taking advantage of the situation, defendant No.1 namely Hemchand got recorded his name in the revenue record in relation to 6.673 hectare of land whereas in relation to 1.480 hectare of land names of both the defendants were recorded though as per the existing legal position names of the plaintiffs were also to be recorded over the land in question being the successors of Pargania. Plaintiffs have thus prayed for half of the share in both these lands in question.

4. Trial Court framed as many as 11 issues and has answered the same saying that the plaintiffs are entitled for recording their names in half of the lands in question; that defendants had no right to get their names recorded in the revenue record; that the plaintiffs after receiving their share are also entitled for permanent injunction and possession; that any partition done in favour of the defendants without impleading them as party is not acceptable; and that the plaintiffs are entitled for half of the share of Pargania as also the possession thereof. Against the judgment and decree

passed by the trial Court first appeal was preferred by the defendants 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 appellants/defendants submits that the findings recorded by both the Courts below are perverse and once the partition has taken place before the revenue authorities and even if the plaintiffs were not the party in the same, it is binding on them. He submits that the plaintiffs have failed to prove that they are the successors of Pargania and therefore also they are not entitled for any share over his property.

6. Replying to the arguments advanced by the counsel for the appellants/defendants, it has been submitted by the counsel for the respondent/State that all the points have been duly considered by both the Courts below and therefore no interference is called for with the concurrent findings so recorded.

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

8. 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 plaintiff 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.”

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 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**