

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No. 446 of 2016

1. Heeradas son of Baniya aged 70 years
2. Shiv Prasad son of Baniya aged 60 years
3. Dharam Das son of Baniya aged 55 years

All R/o Village Maharpur, Tahsil Lormi, District Mungeli, CG,

Appellants/Plaintiffs

Versus

1. The State of Chhattisgarh through Collector, District Mungeli, CG

Respondents/Defendant

For Appellants	:	Shri K.S. Kurre, Advocate
For Respondent	:	Shri Adhiraj Surana, Dy. GA

Hon'ble Shri Justice Pritinker Diwaker

Order On Board

16/01/2017

Heard on admission.

2. Appellants/plaintiffs have preferred this second appeal under Section 100 of the Code of Civil Procedure (for brevity "CPC") against the judgment and decree dated 28.4.2016 passed by Additional District Judge Mungeli in Civil Appeal No. 53-A/2015 affirming the judgment and decree dated 31.8.2012 passed by Civil Judge Class-II Lormi in Civil Suit No. 71-A/2009 whereby the suit of the plaintiffs for declaration of title and permanent injunction was dismissed.

3. Facts of the case in brief are that deceased plaintiff Ravidas filed a suit for declaration and permanent injunction *inter alia* pleading that the land in question bearing Khasra No. 80, area 2.93 acres has been recorded as submerged land in the revenue record and the same was earlier allotted to him under Section 5 of the *Malgujari* Abolition Act. It is also pleaded that as he is in the cultivating possession of the land in question, initially the same was in the name of his father and brother and therefore he be declared as lessee and the revenue authorities may be restrained from interfering with his possession. While denying the contention of the plaintiffs it has been put forth by the defendant that the land in question is a government land and therefore the question of possession by the plaintiffs does not arise. Defendant has also taken a stand that the plaintiffs are not in cultivating possession of the land in question.

4. Trial Court has recorded a finding that Hira Das has admitted in his cross-examination that the land in question being a submerged land is being used for *Nistari* purpose. One of the findings recorded by the trial Court is that the witness of the plaintiff namely Mohit has admitted in his cross-examination that initially the land in question was recorded in the name of Kashi Ram who had two issues namely Ravi Das and Ganga Bai and that during the pendency of suit after the death of original plaintiff Ravi Das, the appellants were added as plaintiffs. Trial Court has further recorded a finding that the original plaintiff Ravi Das has never used the land in question for agriculture purposes. Yet another finding recorded by the trial Court is that the present plaintiffs are

not the legal heirs of original plaintiff Ravi Das. 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/plaintiffs submits that the findings recorded by both the Courts below are perverse and not sustainable in law. He submits that both the Courts below ought to have held that the appellants/plaintiffs being the owner of the suit land are in possession thereof and for that temporary injunction was granted against the respondent/defendant restraining it from interfering with their possession. According to the counsel for the appellants, the Courts below have fallen in error in holding that the appellants are not the legal heirs of original plaintiff Ravidas without there being any evidence, oral or documentary, to this effect.

6. Replying to the arguments advanced by the counsel for the appellants/plaintiffs, 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 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.”

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

Jyotishi