

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No. 464 of 2016**Judgment reserved on : 02/01/2017Judgment delivered on : 17/01/2017

- Shyamratan S/o Late Bhagela Dhimar, aged about 42 years, R/o village Pangaon, P.S. Tahsil Baloda Bazar, District Baloda Bazar, Bhatapara (C.G.)

---- Appellant/
Plaintiff

Versus

1. Bajarhin D/o Firanta Dhimar, aged about 62 years, R/o Binauri, P.S. Tahsil Palari, District Baloda Bazar, Bhatapara (C.G.)
2. State of Chhattisgarh, Through the Collector, Baloda Bazar, District Baloda Bazar, Bhatapara (C.G.)

---- Respondents/
Defendants

For Appellant	:	Shri Suresh Kumar Verma, Advocate.
For Respondent No.2	:	Shri Vivek Sharma, G.A.

Hon'ble Shri Justice Pritinker Diwaker**C A V Judgment**

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 28.07.2016 passed by the 1st Additional District Judge, Baloda Bazar, District Baloda Bazar in Civil Appeal No.07-A/2016 affirming the judgment and decree dated 28.01.2016 passed by II Civil Judge Class-I, Baloda Bazar in Civil Suit No.36-A/2014.

03. Facts of the case are that Hathiyanbai was the mother of plaintiff -Shyamratan, whereas defendant Bajarhin is sister of

Hathiyarinbai and aunt of plaintiff Shyamratan. According to the plaintiff, after the death of Firanta Dhimar, his property would have been divided into two shares i.e. half share should have been gone to the Hathiyarinbai and her legal representatives, whereas remaining half shall go to defendant Bajarhin. When share of the plaintiff was denied to him, he filed the suit.

04. The trial Court has framed specific issue No.4 as to whether the suit has been filed within limitation or not. After the evidence, categorical finding has been recorded by the trial Court that the cause of action arose in favour of the plaintiff in the year 1995 and as per Article 58 of the Limitation Act, the suit ought to have been filed within three years, whereas the present suit has been filed in the year 2014 i.e. much after the expiry of limitation, and as such the suit itself is not maintainable.

05. The finding recorded by the trial Court has been duly affirmed by the appellate Court who too has come to conclusion that the suit was barred by limitation.

06. Counsel for the appellant submits that recently he has received the death certificate of Hathiyarinbai, who expired on 11.08.1970. He submits that the finding recorded by the trial Court that the plaintiff has failed to prove its case, is now required to be reconsidered.

07. While assisting the Court and opposing the submission of the appellant, it has been argued by the State counsel that once Hathiyarinbai died in the year 1970, the suit is hopelessly barred by limitation and the finding recorded by the trial Court which has been duly affirmed by the appellate Court is in accordance with law.

08. 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.”

09. 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. Even

otherwise, the finding recorded by the Courts below holding the suit to be barred by limitation appears to be just and proper.

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.

(Pritinker Diwaker)
JUDGE

Vijay

HIGH COURT OF CHHATTISGARH, BILASPUR

Order Sheet

SA No. 464 of 2016

Shyamratan **Versus** Bajarhin

02/01/2017	Shri Suresh Kumar Verma, counsel for the appellant. Shri Vivek Sharma, G.A. for the State/respondent No.2. Arguments heard. Reserved for order. (Pritinker Diwaker) Judge	

Vijay