

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No. 536 of 2016

Appellant/Plaintiff

1. Hem Sagar S/o Nawdhano, aged about 40 years, R/o Village Karaipali, Tahsil & PS Tamnar, District Raigarh, Civil and Revenue District Raigarh, CG

Versus

Respondents/

Defendants

1. Ahilya Bai W/o Abhiram, aged about 52 years, R/o Village Badibahal, Tahsil & PS Himgir, District Sundargarh (Odisha)
2. Bhagwati alias Bhagani W/o Jaleshwar, aged about 46 years, R/o Village Tumajor, Tahsil & PS Himgir, District Sundargarh (Odisha)
3. Nawdhano alias Ghanshyam S/o Dhaniya aged about 68 years, R/o villalge Karrapali, Tahsil Gharghoda, District Raigarh, CG
4. Nayab Tahsildar, Tamnar, District Raigarh CG
5. State of Chhattisgarh through Collector, Raigarh, District Raigarh, CG

For Appellant	:	Shri M.K. Sinha, Advocate
For Respondent/State	:	Shri Adhiraj Surana, Dy. GA

Hon'ble Shri Justice Pritinker Diwaker

Order On Board

16/01/2017

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 11.8.2016 passed by District Judge Raigarh, in Civil Appeal No. 02-A/2011 affirming the judgment and decree dated 30.10.2010 passed by Civil Judge Class-II Gharghoda in Civil Suit No. 30-A/2007 whereby the suit of the plaintiff for declaration of title and permanent injunction was dismissed.

3. Facts of the case in brief are that the plaintiff namely Hem Sagar filed a suit for declaration of title and permanent injunction *inter alia* pleading that he is the son of late Bhuri Bai and Navdhano alias Ghanshyam (defendant No.3) whereas defendant No.1 Ahilya Bai, defendant No.2 Bhagwati alias Mangni are his sisters. According to the plaintiff, the land owned by his maternal grand father and that of maternal grand father of defendants 1 and 2 was recorded in his name with the consent of defendants 1 to 3. Plaintiff's further case is that after marriage, defendants 1 and 2 are residing in their matrimonial house and as per the desire of his mother late Bhuri Bai it is the plaintiff alone who is entitled to have the land in question. Plaintiff has further pleaded that out of the joint family income sufficient amount was spent in the marriage of defendants 1 and 2 and that at the time of death of Bhuri Bai they had agreed that the suit land would be in the name of the plaintiff and this being the factual scenario, according to the plaintiff, the defendants have no legal right over the suit property. According to the plea taken by the plaintiff, the order passed by the Board of

Revenue in respect of recording the names of defendants 1 and 2 on the land in question is not in accordance with law and it is he alone who is the owner thereof. Plaintiff has further pleaded that defendants No. 1 and 2 got their names recorded in the revenue record in an illegal manner. Plaintiff has thus prayed that he be declared the sole owner of the land in question described in schedule "A" and the defendants be restrained from interfering with his possession.

4. Trial Court has recorded a finding that the plaintiff has failed to prove its case; that the evidence of important witness Nawdhano has not been adduced by the plaintiff and that he has further failed to prove that he was the sole possessor the land in question. 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 and not sustainable in law. He further submits that both the Courts below have overlooked the evidence adduced by the plaintiff to the effect that the suit property was in possession of his mother late Bhuri Bai and father (defendant No.3 herein) and that his name was recorded in the revenue record with the consent of defendants No. 1 and 2. According to the counsel for the appellant, the Courts below ought to have seen that defendants No. 1 and 2 did not object to the possession of the plaintiff over the suit land for more than 23 years.

6. Replying to the arguments advanced by the counsel for the appellant/plaintiff, 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. Thus, the 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