

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No. 549 of 2016

1. Madhusudan son of JN Sarkar, aged about 59 years (dead) through legal heirs:

(a) Laxminarayan son late Madhusudan, aged about 41 years,

(b) Ashutosh Sarkar, son of late Madhusudan, aged about 39 years,

(c) Prithvinarayan Sarkar, son of late Madhusudan, aged about 30 years,

No.1(a) to (c) are resident of Village Marwahi, Tahsil Marwahi, Distt. Bilaspur (CG)

(d) Kavita Das wife of Ajeet Das, daughter of late Madhusudan, aged about 29 years, resident of Amlai (MP)

(e) Rakesh Sarkar son of late Madhusudan, aged about 27 years, Village Marwahi, Tahsil Marwahi, Distt. Bilaspur (CG)

(f) Anjali Nag wife of Devashish Nag, daughter of late Madhusudan, aged about 24 years, resident of Rajkishore Nagar, Bilaspur (CG)

(g) Upendranath Sarkar, son of late Madhusudan, aged about 21 years, resident of Village Marwahi, Tahsil Marwahi, Distt. Bilaspur (CG)

2. Vikas Narayan, son of JN Sarkar, aged about 52 years, resident of Village Marwahi, Tahsil Marwahi, Distt. Bilaspur (CG)

---- Appellants

plaintiffs

Versus

1. State Of Chhattisgarh Through The Collector, Bilaspur, Chhattisgarh
2. The Assistant Commissioner, Tribal Development, Bilaspur, Chhattisgarh
3. The Deputy Director, Horticulture Department, Bilaspur, Chhattisgarh(Defendants)

---- Respondent

For Appellants : Shri K.K. Pandey, Advocate.
For Respondents : Shri Adil Minhaj, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker

Order On Board

30/01/2017

Heard on admission.

02. Present second appeal filed under Section 100 of CPC arises out of judgment and decree dated 24.8.2016 passed by Additional District Judge, Pendra Road, Bilaspur in Civil Appeal No.2-A/13 affirming the judgment and decree dated 5.12.2012 passed by Civil Judge, Class-II, Marwahi in Civil Suit No.25-A/11 whereby the trial Court has dismissed the suit as filed by the plaintiff.

03. Brief facts of the case are that deceased plaintiff Madhusudan and Vikas Narayan filed a suit for possession and permanent injunction against the respondents/defendants, inter alia, pleading that they are owner of the land in question situate at Marwahi, P.H.No.4, Khasra No.703/2, total area 1.75 acres and out of which they are in possession of 46 decimal of land. It was further averred that in the revenue records their names have been recorded, the land admeasuring 0.94 acres is in possession of Dy. Director, Horticulture and 0.35 acres of land is in possession of Assistant Commissioner, Tribal Welfare. They have pleaded that when they were cultivating the field, it was objected by defendant No.2 and the plaintiffs were asked to vacate the land.

04. The trial Court framed as many as four issues and while dealing with the same in light of pleadings of the respective parties and evidence adduced by them recorded a finding that the plaintiffs have failed to prove that they are the sole owner of the land in question and are also not entitled to have vacant possession of the suit land after

demolishing the construction raised thereon. Likewise, the plaintiffs are also held not entitled for any permanent injunction against defendants No. 1 & 2. The trial Court has recorded a categorical finding that the plaintiffs have made an attempt to prove that in certain revenue records their names have been recorded from 30.4.2009 onwards but they have failed to prove as to from what date they are in possession of the land in question. The trial Court has further recorded a finding that the plaintiffs have utterly failed to prove their title, nor they have succeeded in proving as to from which date they are in possession of the suit land or that earlier at any point of time they were in possession of the same. With the aforesaid findings, the trial Court dismissed the suit of the plaintiff vide judgment and decree dated 5.12.2012.

05. Against the said judgment and decree, the appellants/plaintiffs herein preferred first appeal before Additional District Judge, Bilaspur however, by the impugned judgment and decree the first appellate Court also dismissed the appeal affirming the findings recorded by the trial Court, with an observation that the the plaintiffs do not have any document showing their title over the land in question nor they are in possession of the same. It was also observed that the plaintiffs have utterly failed to prove as to on what basis their names have been recorded in the revenue records and how the land in question has come in their name on transfer.

06. Learned counsel for the appellants submits that both the Courts below have failed to appreciate the fact that the land in question is the ancestral property of the plaintiffs and has been recorded in their names in the revenue records, and have wrongly recorded a finding

that father of plaintiff No.2 had gifted the suit land to the Tribal Welfare Department on 30.6.1961. Lastly he submits that the defendants have raised construction over the suit land without permission or knowledge of the plaintiffs, who are recorded owner of the same and therefore, such construction was liable to be demolished.

07. On the other hand, State counsel supporting the impugned judgment and decree has submitted that both the Courts below after due appreciation of the entire material on record have recorded a concurrent finding against the plaintiffs, which is strictly in accordance with law and calls for no interference by this Court.

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 have subsequently been affirmed by the lower appellate Court as well. Both the Courts below have recorded a concurrent finding that on the basis of evidence, oral and documentary, the plaintiffs have utterly failed to prove their title/ownership over the land in question or entitlement for vacant possession of the suit land or for permanent injunction against the defendants. They also could not establish as to from what date they are in possession of the land in question. This Court does not find any perversity in the concurrent findings recorded by both the Courts below requiring interference in exercise of appellate jurisdiction under Section 100 of 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 Vs. 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.

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