

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No. 531 of 2016

<u>Appellants/Plaintiffs</u>	1.	Smt. Purnima Chandra, Daughter of Manharan Chandra, aged about 23 years (Wife of Shankarlal), R/o Chhitapadariya, Thana Baradwar, Tahsil Jaijaipur, Civil and Revenue District Janjgir-Champa, CG
	2.	Smt. Pushpa Chandra, Daughter of Manharan Lal Chandra, aged about 21 years (Wife of Naresh Kumar), R/o Khairajhiti, Thana Jaijaipur, Tahsil Jaijaipur, Civil and Revenue District Janjgir-Champa, CG
	3.	Smt. Prabha Chandra, Daughter of Manharan Chandra, aged about 19 years, (Wife of Radheshyam Chandra) R/o Bhatamhul, Police Chowki Hasoud, Tahsil Jaijaipur, Civil and Revenue District Janjgir Champa (CG
	4.	Kumari Pramila Chandra, Daughter of Manharan Chandra, aged about 13 years
	5.	Kumari Parvati Chandra, Daughter of Manharan Chandra, aged about 11 years,
	6.	Roshanlal Chandra, Son of Manharan Chandra, aged about 9 years Appellants 4 to 6 are minor, through natural guardian father Manharan Chandra, son of Ram Prasad Chandra, aged about 52 years
	7.	Manharan Lal Chandra, son of Ram Prasad Chandra, aged about 52 years, R/o Arsiya, Tahsil Jaijaipur, Civil and Revenue District Janjgir Champa, CG

Versus

<u>Respondents/</u> Defendants	1.	Parmanand Chandra, son of Manharan Chandra, aged about 30 years, R/o Arsiya, Tahsil Jaijaipur, Civil and Revenue District Janjgir Champa, CG
	2.	The State of Chhattisgarh through the Collector, Janjgir Champa, Civil and Revenue District Janjgir Champa, CG

For Appellants	:	Shri Puneet Ruprel, 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. 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 8.8.2013 passed by Additional District Judge Sakti, District Janjgir Champa in Civil Appeal No. 112-A/2015 affirming the judgment and decree dated 30.7.2012 passed by Civil Judge Class-II Jaijaipur in Civil Suit No. 40-A/2010 whereby the suit of the plaintiffs for declaration of title and permanent injunction was dismissed.

3. Facts of the case in brief are that the plaintiffs filed a suit for declaration and permanent injunction *inter alia* pleading that plaintiffs 1 to 6 and defendant No.1 are the legal heirs of plaintiff No.7 Manharan Lal. Land in question was purchased in the name of defendant No.1 Parmanand on 1.2.1990 for which plaintiff

Manharan Lal is said to have given money to his mother Kaushliya Bai. Application filed by the other plaintiffs for mutation of the said land was allowed and against the said mutation order, an appeal was preferred by defendant No.1 before the Sub Divisional Officer which was also allowed. According to the plaintiffs, the property was purchased by plaintiff No.7 as Benami property in the name of defendant No.1 which, in fact, was the ancestral property.

4. Trial Court has recorded a finding that the sale deed dated 1.2.1990 in the name of defendant No.1 Parmanand was within the knowledge of the plaintiffs but yet the suit was filed on 29.11.2010 showing the cause to have arisen on 31.8.2010 and thus the suit has been filed much after the period of limitation which as prescribed under the Limitation Act is three years. Against the judgment and decree passed by the trial Court first appeal was preferred by the plaintiffs which has also been dismissed by the first appellate court vide judgment and decree impugned affirming the findings of the trial Court on merit as also on limitation. The appellate Court has held that the suit was much beyond the limitation period and that the plaintiffs did not approach the Court with clean hands.

5. Counsel for the appellants/plaintiffs submits that the findings recorded by both the Courts below are perverse and not sustainable in law. He further submits that the defendant No.1 has not given the explanation as to the source of income to purchase the land in question and therefore it would be presumed that the said land was purchased from the money belonging to Joint Hindu Property or the plaintiff No.7. It is further submitted on behalf of

the appellants/plaintiffs have duly explained regarding the purchase of the suit land but yet it has erroneously been ignored by both the Courts below.

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 plaintiffs 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. Furthermore, there is an exorbitant delay of 1066 days in filing the appeal for which no satisfactory explanation has been offered by the plaintiffs.

10. Thus, the appeal being devoid of any substance and also being hopelessly barred by limitation 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