

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No. 578 of 2016

- Bisram Verma S/o Shri Vishnu Prasad Verma, aged about 45 years R/o Village Latuwa, Patwari Halka No.6, R.N.M. & Tahsil Balodabazar-Bhatapara, Chhattisgarh

---- Appellant/Plaintiff

Versus

1. Khemram Verma S/o Shri Onkar Verma, aged about 60 years.
2. Vishnu Prasad S/o Bharosa Verma, Aged About 66 Years.

Both are R/o Village Lutawa, Patwari Halka No.6, R.N.M. & Tahsil Baloda Bazar, District Baloda Bazar, Chhattisgarh

3. State Of Chhattisgarh, Through Collector Baloda Bazar, District Baloda Bazar, Chhattisgarh

---- Respondents/Defendants

For Appellant	:	Shri C.R. Sahu, Advocate
For Respondent No.3	:	Shri Adhiraj Surana, Dy.G.A..

Hon'ble Shri Justice Pritinker Diwaker

Judgement

16/01/2017

1. Heard.
2. The plaintiff/appellant has preferred this second appeal under Section 100 of the Code of Civil Procedure, 1908 (for brevity "CPC") against the judgment & decree dated 11.11.2014 passed by the 1st Additional District Judge, Balodabazar, in Civil Appeal No.36A/2012 affirming the judgment and decree dated 21.6.2012 passed by the Civil Judge Class-II, Balodabazar in Civil Suit No.60-A/10 whereby the trial Judge has non-suited the plaintiff/appellant.

3. Facts of the case, in brief, are that the plaintiff/appellant herein filed a civil suit against the defendants/respondents herein seeking relief of declaration of title, partition, separate possession and permanent injunction in respect of land bearing Khasra Nos.1729, 1849/1, 1954/2, 1960/4, 2325, 2827/2, 2846, 2896, 3262, 3286, 3304, 3313, 3417, 3920, 3982, 4030 area 0.032, 0.101, 0.008, 0.016, 0.271, 0.291, 0.380, 0.392, 0.267, 0.202, 0.089, 0.214, 0.077, 0.243, 0.340 & 0.737 hectare respectively. It has been stated in the plaint that after the death of Bharosa, though the partition of the ancestral property had taken place between the legal heirs of Bharosa and everyone was in possession of the respective parts of land but revenue records still shows the joint recording of the names. It is further case of the plaintiff that after the death of Onkar, husband of Basanta, as her son i.e. defendant No.1, had refused to take care of her, therefore she has kept the plaintiff with her and being impressed by the services rendered by the plaintiff, she wrote a will on 12.8.2005 in his favour in respect of her property situated at village Latuwa and on the basis of said Will the plaintiff has become the owner of the entire property of said Basanta. Therefore, the plaintiff is entitled for the reliefs as claimed by him in the plaint.
4. The defendant No.1 contested the suit mainly contending that the suit property is not the joint family property and said Basanta Bai never executed deed of Will on 12.08.2005. The defendant No.1 has also filed counter claim seeking a declaration that he is the absolute owner of the property described in Schedule-B appended to the counter claim on the ground that the same has been received by his father Late Onkar in partition and after the death of said Onkar, he being his son is in possession and enjoyment of it.
5. On the pleadings of the parties, the trial Judge framed as many as seven

issues and given opportunity to the parties to adduce evidence, both oral and documentary, and after a full fledged trial rendered a decision non-suiting the plaintiff/appellant herein on the ground that the plaintiff has failed to prove due execution of Will deed dated 12.8.2005 by said Basanta Bai transferring the suit property in his favour. The trial Court has also dismissed the counter claim laid by the defendant No.1 by holding that he too has failed to prove by leading oral and documentary evidence that he is the absolute owner of the property described in Schedule-B appended to the counter claim. Against the judgment and decree passed by the trial Court the appellant has preferred first appeal before the lower appellate Court which has also been dismissed by the first appellate Court vide judgment and decree impugned herein affirming the findings of the trial Court.

6. Heard counsel for the parties and perused the documents on record.
7. Counsel for the appellant submits that by examining the two attesting witnesses the appellant has not only proved the due execution of the Will deed in his favour by said Basanta Bai but also established that the Will was executed by her in a sound disposing mind and it was duly attested as required by law. However, both the Courts below without considering the evidence of the attesting witnesses, have non-suited the plaintiff/appellant and thereby committed an illegality warranting interference by this Court in exercise of its appellate jurisdiction under Section 100 CPC.
8. On the other hand, counsel for the State has supported the impugned judgments and decrees.
9. From the material available on record it is apparent that after due appreciation of evidence, oral and documentary, adduced by the parties the trial Court has recorded the findings against the plaintiff which have 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 decision being Vidyadhar 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.”

10. 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 inordinate delay of 639 days in filing this appeal for which no satisfactory explanation has been offered by the plaintiff/appellant.

11. In the result, this second 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