

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.137 of 2003**

1. Salho d/o Jagdev, aged about 45 years, r/o village Gangoli,

2. Saila s/o Nanku, aged 40 years, r/o village Ghaghari

3. Ramdhani s/o Nanku, aged about 28 years, r/o village Ghaghari

All of Tehsil Dhaurpur, Distt. Surguja (CG)

----Appellants

Versus

1. Duhan s/o Mohana, age 58 years, r/o village Ghaghari
(according to plaint) Tehsil Dhaurpur, Distt. Surguja (CG)

2. The State of M.P. (Now C.G.) through Collector, Surguja (CG)

---- Respondents

For Appellants	:	Mr.A.K.Prasad, Advocate
For Respondent No.2	:	Mr.Aditya Sharma, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal
Order on Board

29/08/2018

- The suit was filed by the plaintiff/respondent No.1 for declaration of title, partition and permanent injunction. That suit was decreed by the trial Court, which has been affirmed by the First Appellate Court, against which this second appeal under Section 100 of the Code of Civil Procedure has been filed by the appellants/defendants.
- Learned counsel for the appellants would submit that the trial Court did not afford a reasonable opportunity to lead evidence to the appellants/defendants as by order dated 14.9.99 opportunity to lead evidence was closed abruptly, as such, said grant of decree by both the Courts below deserves to be set aside.

3. I have heard learned counsel for the appellants and perused the impugned judgment & decree and records of both the Courts below.
4. On 17.8.99, the trial Court allowed the defendants' application for adjournment on the ground that defendant No.2-Saila was suffering from fever subject to payment of cost of ₹ 150/- and matter was posted on 14.9.99 giving last opportunity to lead evidence. On 14.9.99, again same prayer was made for adjournment on the ground that defendant No.2-Saila is still unwell. The trial Court noted that cost for adjournment on 17.8.99 has not been paid and again on the ground of illness of Saila without filing medical certificate, time has been sought and further noted that defendants No.1 and 3 were also not present for examination. In that view of the matter, the trial Court closed opportunity to lead evidence. It is neither illegal nor contrary to law.
5. On perusal of the order-sheets dated 17.8.99 and 14.9.99, the aforesaid fact is apparent on the face of record. Closure of opportunity to lead evidence to the defendants is in accordance with law.
6. I do not find any substantial question of law in this second appeal. Accordingly, the second appeal is dismissed. No cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge

B/-