

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.158 of 2006

1. Badhka Lodhu, S/o late Bechuram, aged about 50 years,
2. Chhote Lodhu, S/o late Bechuram, aged about 36 years,
3. Nanhak, S/o late Bechuram, aged about 45 years,
4. Mu. Budhani Bai, Wd/o late Bechuram, aged about 60 years,
5. Vishram, S/o Mainsai, aged about 55 years,

All are of Occupation Agriculture, R/o Village Parasa (Bairagi), Caste Nagesiya, Tahsil Dharamjaigarh, Distt. Raigarh (C.G.)

(Plaintiffs)
---- Appellants

Versus

1. Vrinda Ram, S/o Bortal, aged about 50 years, R/o Village Parasa, Tahsil Dharamjaigarh, Distt. Raigarh (C.G.)
2. State of Chhattisgarh, through the District Magistrate, Raigarh, Distt. Raigarh (C.G.)

(Defendants)
---- Respondents

For Appellants: Mr. Awadh Tripathi and Mr. Vivek Tripathi, Advocates.
For Respondent No.2/State: -
Miss K. Tripti Rao, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

07/03/2019

1. Heard on admission for formulation of substantial question of law in the second appeal preferred by the plaintiffs.
2. The plaintiffs' suit for declaration of title only and permanent injunction was dismissed by the trial Court finding no title and also the plaintiffs are not in possession which was upheld by the first appellate Court against which this second appeal has been preferred by the plaintiffs.
3. Mr. Awadh Tripathi, learned counsel appearing for the appellants /

plaintiffs, submits that concurrent finding recorded by the two Courts below that the plaintiffs are not title holders and possession holders is perverse and gives rise to substantial question of law for determination of this appeal.

4. The suit filed by the plaintiffs that they are title holders of the suit land was dismissed by the trial Court holding that the plaintiffs have failed to establish their title and further held that the plaintiffs are not in possession of the suit land and defendant No.1 is in possession of the suit land on the date of institution of suit which was principally agreed by the first appellate Court and the two Courts below have also recorded a finding that since the plaintiffs are not in possession and admittedly, defendant No.1 is in possession of the suit land on the date of institution of suit, therefore, the suit is barred by the proviso to Section 34 of the Specific Relief Act, 1963, as the plaintiffs ought to have sought the relief of possession while seeking declaration. The concurrent finding recorded by the two Courts below that the plaintiffs have failed to prove their title over the suit land and they are not in possession of the suit land, therefore, the suit is barred by the proviso to Section 34 of the Specific Relief Act, 1963, is a finding of fact based on evidence available on record and I do not find any perversity or illegality much less the substantial question of law for determination of this appeal.
5. Their Lordships of the Supreme Court have held that it is not permissible for the High Court to interfere with the concurrent finding of fact recorded by two courts below unless findings are perverse. (See: Aftaruddin (Dead) represented through legal representatives v. Ramkrishna Datta alias Babul Datta and

others¹ and Rajkumari and another v. Ravinder Kumar
(deceased) through legal representatives and others².)

6. Accordingly, the second appeal is dismissed *in limine*, without notice to the other side. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Soma

1 (2018) 11 SCC 77

2 (2018) 12 SCC 681