

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.668 of 2003

Gaind Ram, S/o Siyaram Sen, aged 52 (Fifty two) years, cultivator and
R/o Village Mudpar, Tahsil Baloda-Bazar (New Tahsil Palari), District
Raipur (C.G.)

(Plaintiff)
---- Appellant

Versus

1. Kashiram, S/o Indal Sen, aged 40 (Forty) years;

2. Ramji, S/o Indal Sen, aged 35 (Thirty-five) years,

Both resident and cultivators of Village Mudpar, Tahsil Balodabazar (New
Tahsil Palari), District Raipur (C.G.)

3. State of Chhattisgarh, through Collector, Raipur of District Raipur
(Defendants)
---- Respondents

For Appellant: Mr. Hemant Gupta, Advocate.

For Respondents No.1 and 2: -

Ms. Sareena Khan, Advocate.

For Respondent No.3 / State: -

Mr. Sumit Singh, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

12/03/2019

1. In this second appeal preferred by the plaintiff, following substantial
question of law was formulated for determination at the time of
admission: -

“Whether findings of both the Courts below specially relating
to possession of appellant is not justified?”

(For the sake of convenience, parties would be referred hereinafter
as per their status shown and ranking given in the plaint before the trial
Court.)

2. The plaintiff filed suit for declaration of title and also for possession, in
alternative for injunction that he is the title holder of suit land bearing
Khasra No.181/1, area 0.041 hectare and Khasra No.181/2, area 0.040
hectare, total area 0.081 hectare, in which defendants No.1 & 2 setup the

plea that they are in possession and they are title holders of the suit land. The trial Court dismissed the suit holding that the plaintiff's title is not established and the defendants are in possession for last 30 years and the suit is also barred by limitation which has been upheld by the first appellate Court in appeal leading to filing of second appeal before this Court under Section 100 of the CPC in which substantial question of law has been formulated which has been set-out in the opening paragraph of this judgment.

3. Mr. Hemant Gupta, learned counsel appearing for the appellant/ plaintiff, would submit that the concurrent finding recorded by the two Courts below holding that the plaintiff is not in possession of the suit land is perverse and contrary to record and is liable to be set aside.
4. Ms. Sareena Khan, learned counsel for defendants No.1 & 2 / respondents No.1 & 2, would support the judgments & decrees of both the Courts below.
5. I have heard learned counsel for the parties and considered their rival submissions made herein-above and went through the records with utmost circumspection.
6. The plaintiff filed suit for possession based on title that he is the title holder of the suit land bearing Khasra No.181/1, area 0.041 hectare and Khasra No.181/2, area 0.040 hectare, total area 0.081 hectare (or 20 decimal), but the plaint allegations would show that the plaintiff did not indicate the source of title or from where he has acquired title over the suit land. During the course of evidence, he brought Ex.P-1 in which the part of Khasra No.181 has been given to him on partition, but he claimed 20 decimals of land in the plaint whereas, in the said partition only 10 decimals has been given to him and he did not show that the land which was given to him on partition vide Ex.P-1 is the suit land. Further, he claimed that he purchased 10 decimals of land from Udal, his brother,

but no document evidencing purchase from his brother has been brought on record. Therefore, both the Courts have disbelieved the statement of getting the property on partition as well as through purchase from his brother Udal. However, both the Courts have recorded finding that the defendants are in possession for last 30 years and therefore the suit is barred by limitation. Admittedly, suit was filed by the plaintiff on 30-3-1988 and the defendants are in possession on that day for more than 30 years and it was rightly held to be barred by limitation by both the Courts below. Even the plaintiff has not persuaded the Court to frame issue on the question of limitation, as both the Courts have dismissed the suit as barred by limitation. The finding recorded by both the Courts below that the plaintiff has failed to prove his title over the suit land in order to get the relief of possession is a finding based on record, it is nether perverse nor contrary to record.

7. 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.)
8. The second appeal is liable to be and is hereby dismissed. Substantial question of law is answered accordingly. No order as to cost(s).
9. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

Soma

1 (2018) 11 SCC 77

2 (2018) 12 SCC 681