

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 165 of 2008**

Sunder Lal, Son of Shri Kushal Das Nirmalkar, Aged about 45 years, Occupation- Service, R/o Village Irayeekhurd, Tahsil and Distt. Rajnandgaon, Chhattisgarh.

--- Appellant/Plaintiff

Versus

1. Prem Lal, Son of Kushal Das Nirmalkar, Aged about 50 years, Resident of Village Irayeekhurd, Occupation- Agriculturist, Tahsil and District Rajnandgaon, Chhattisgarh.
2. State of Chhattisgarh, Through the Collector, Distt. Rajnandgaon, Chhattisgarh.

---- Respondents/Defendants

For Appellant/Plaintiff	:	Mr. Praveen Dhurandhar, Advocate
For State	:	Mr. Mateen Siddiqui, Deputy Advocate General

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

28/08/2019

1. Heard on the question of admission and formulation of substantial question of law in this second appeal preferred by the plaintiff under Section 100 of the CPC.
2. Mr. Praveen Dhurandhar, learned counsel appearing for the appellant/plaintiff would submit that both the Courts below are absolutely unjustified in dismissing the civil suit filed by the plaintiff holding that the suit is barred by proviso to Section 34 of the Specific Relief Act, 1963, as the plaintiff is not in possession of the

suit land, which being perverse, gives rise to substantial question of law for determination in this second appeal.

3. Plaintiff – Sunder Lal and defendant No. 1 – Prem Lal are brothers. Plaintiff filed a civil suit for declaration of title and permanent injunction stating *inter alia* that defendant No. 1 is encroaching upon his land.
4. Learned trial Court, after appreciating oral and documentary evidence on record, came to the conclusion that as per the own saying of the plaintiff, defendant No. 1 is admittedly in possession of the suit land and plaintiff has not sought for relief of possession, therefore, the civil suit as framed and filed by the plaintiff is not maintainable, and further recorded a finding that the area and extent of encroachment made by defendant No. 1 upon the suit land has not been proved by the plaintiff. The said finding recorded by the trial Court was upheld by the first appellate Court in the civil appeal preferred by the plaintiff.
5. Both the Courts below have concurrently held that plaintiff is not in possession of the suit land and has not sought relief of possession therefore, the suit is barred by proviso to Section 34 of the Specific Relief Act, 1963, which is a finding of fact based on evidence available on record, which could not be shown by the plaintiff to be perverse and contrary to record. Likewise, the extent of encroachment made by defendant No. 1 upon the suit land ought to have been proved by the plaintiff by leading admissible evidence including by submitting demarcation report, which he has not done, as such, I do not find any perversity or illegality in the

concurrent finding recorded by both the Courts below and no substantial question of law is involved for determination in this second appeal.

6. The second appeal deserves to be and is dismissed *in limine* without notice to the other side. No order as to cost(s).

**Sd/-
(Sanjay K. Agrawal)
Judge**

Harneet