

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 352 of 2006**

Manjit Singh Rana, S/o- Shri Sohan Singh Rana, Aged about -52 years, R/o-
Gandhi Mandir Ward, Bhatapara, Tahsil – Bhatapara, District Raipur (C.G.)

----Appellant/plaintiff

Versus

1. Puja (Minor), D/o – Late Parshu Ram
2. Arti (Minor), D/o – Late Parshu Ram
3. Gudiya (Minor), D/o- Late Parshu Ram,
Respondents No. 1 to 3 through grandfather Jamuna Lal s/o Chhaju Lal Sharma (R-7)
4. Ramesh Tiwari, S/o Jamuna Lal, Aged about -35 years.
5. Sarla, D/o- Jamuna Lal, Aged about -32 years.
6. Urmila, S/o Jamuna Lal, Aged about 28 years.
(Urmila is L.R. of defendant Smt. Godawari Bai, S/o Jamuna Lal)
7. Jamuna Lal, S/o- Chhaju Lal Sharma, Aged about -75 years,
8. Shri Om Prakash Sharma, S/o – Jamuna Lal Sharma, Aged about 45 years.
Respondents No. 1 to 5 are Legal Heirs of plaintiff No.1
All are residents of Gandhi Mandir Ward, Bhatapara, Tahsil – Bhatapara, District – Raipur (C.G.)
9. Chief Municipal Officer, Municipal Corporation, Bhatapara, Tahsil Bhatapara, District Raipur (C.G.)

----Respondents/defendants.

For Appellant	: Mr. Y.C. Sharma, Advocate
For Respondents	: None as appeal yet not admitted.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

21/02/2019

(1) Heard on the question of admission and formulation of substantial question of law in this second appeal preferred by plaintiff under Section 100 of the Code of Civil Procedure, 1908.

(2) Plaintiff's suit for declaration of title and permanent injunction was dismissed by the trial Court. First appeal preferred thereagainst was also dismissed by impugned judgment & decree.

(3) Mr. Y.C. Sharma, learned counsel appearing for the appellant/plaintiff would submit that both the courts below are absolutely unjustified in dismissing the suit of the plaintiff by recording findings which are perverse and contrary to the records and that give rise to substantial question of law for determination.

(4) The plaintiff filed a suit for declaration that open land between plot No. 125/3 and 125/2 shown in the map annexed with the plaint is land used exclusively by him and defendants be restrained from interfering with the suit land. Trial Court as well as first appellate Court have clearly recorded a finding that suit *Gali* is not reserved for exclusive use of plaintiff and it is also used by defendants No. 1 to 3 as well & further recorded a finding that plaintiff has made construction unauthorizedly on suit land and, as such, not entitled for any relief. The said finding recorded by both the courts below are finding of fact based on material available on record and I do not find it either perverse or contrary to record and no question of law much less substantial question of law is involved in 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 and contrary to law. {See : ***Aftaruddin (dead) represented through Legal representatives Vs. Ram Krishna Dutta alias Babul Datta & others***¹ & ***Rajkumari Vs. Ravinder Kumar & others***² }

(6) Accordingly, the second appeal, being devoid of merit, is liable to be and is hereby dismissed in *limine* without noticing to the other side.

Sd/-
(Sanjay K. Agrawal)
Judge

D/-

¹ (2018) 11 SC 77

² (2018) 12 SCC 681

