

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.451 of 2006**

Rewat Kumar, Son of Balidas Satnami, Aged about 38 years, Resident of Village-Devri (Sangwa Kampa), Tahsil & Thana-Mungeli, District Bilaspur (CG)

---- Appellant/Plaintiffs

Versus

1. Dinbandhu, S/o Balidas Satnami Aged about 48 years, R/o Resident of Village-Devri (Sangwa Kampa), Tahsil & Thana-Mungeli, District-Bilaspur (CG)
2. State of Chhattisgarh, Through the Collector, Bilaspur, District-Bilaspur (CG)

---- Respondents/defendants

For Appellant/Plaintiff	:	Mr.Ashish Shrivastava and Mr.Anurag Verma, Advocates
For Respondent No.1	:	None as appeal yet not admitted
For Respondent No.2/State	:	Ms K. Tripti Rao, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

06/03/2019

1. Heard on the question of admission and formation of substantial question of law of second appeal preferred by the appellant/plaintiff under Section 100 of the Code of Civil Procedure, 1908.
2. The plaintiff's suit for possession was dismissed by the trial Court and on appeal being preferred by the plaintiff, the First Appellate Court affirmed the judgment and decree of the trial Court, against which, this second appeal has been preferred.
3. Mr.Anurag Verma, learned counsel for the appellant/plaintiff, would submit that concurrent finding recorded by two Courts below is perverse and the appeal gives rise to substantial question of law for determination as the plaintiff's land has been encroached by the defendant.

4. The plaintiff and the defendant both are brothers. The plaintiff filed suit for possession against his brother that the defendant has encroached upon 4 decimal of his land after dispossessing him. The trial Court has held that the plaintiff has failed to prove dispossession and encroachment upon his land by the defendant. The First Appellate Court has affirmed the said finding. The finding recorded by two Courts below that the defendant has not dispossessed and encroached upon 4 decimal of the plaintiff's land is a finding of fact based on evidence available on record, which is neither perverse nor contrary to record. I do not find any perversity or illegality in the said finding. Even I do not find any substantial question of law for determination of this second 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 being devoid of merit is liable to be and is hereby dismissed in *limine*, without notice to other side. No cost(s).

Sd/-

(Sanjay K.Agrawal)
Judge

B/-

1 (2018) 11 SCC 77
2 (2018) 12 SCC 681