

HIGH COURT OF CHHATTISGARH AT BILASPUR**SA No. 122 of 2005**

1. Shiv Ram, Son of Dukhram, Caste- Sahu, Aged about 65 years, Occupation- Agriculturist.
2. Dhansingh, Son of Dukhram, Caste- Sahu, Aged about 50 years, Occupation – Agriculturist.

Both R/o Village – Sankara, Tahsil Balod, Distt. Durg, Chhattisgarh.

---Appellants/Plaintiffs

Versus

1. Kishori Lal, Son of Shri Harakhram, Caste- Sahu, Aged about 50 years.
2. Parvati Bai, Widow of Late Kishori Lal, Aged about 80 years, Occupation – Agriculturist.
3. Gayatri Bai, Wife of Shri Kishan Lal, Aged about 45 years.

All are resident of Village Sankara, Tahsil Balod, District Durg, Chhattisgarh.

4. State of Chhattisgarh, Through the District Collector, Durg.

---- Respondents/Defendants

For Appellants	:	Mr. Pradeep Singh on behalf of Mr. Malay Shrivastava, Advocate
For State	:	Akash Pandey, Panel Lawyer

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

02/08/2019

1. Heard on admission and formulation of substantial question of law in this second appeal preferred by the plaintiffs under Section 100 of the Code of Civil Procedure, 1908.
2. Mr. Pradeep Singh, learned counsel appearing for the plaintiffs would submit that learned first appellate Court is absolutely unjustified in dismissing the suit of the plaintiff and granting the first appeal by recording a finding which is perverse and contrary to record and

gives rise to substantial question of law for determination in this second appeal.

3. I have heard learned counsel for the plaintiffs, considered his submissions and went through the records with utmost circumspection.
4. The two plaintiffs herein filed a civil suit bearing No. 9-A/1999 for declaration of title, permanent injunction and possession stating *inter alia* that the property which is shown in portion 'A to B' in 'Shcedule A' annexed with the plaint is a wall of four feet in height and 70 meters ('haanth' as mentioned in the plaint) in length, which fell in the share of plaintiffs' father therefore, plaintiffs are the title-holder of the said property, but construction has been raised on the said property by the defendants therefore, mandatory direction be issued both to remove the wall constructed by defendants No. 1 to 3 and to bring back the position of the property as on 20/02/1999, which was granted by the trial Court by judgment and decree dated 07/08/2000 but was reversed by learned first appellate Court by judgment and decree dated 19/11/2004.
5. Learned first appellate Court, after appreciating the oral and documentary evidence on record, has clearly reached to the conclusion that the plaintiffs have failed to prove that the suit property is owned by them, and has further held that the suit wall was constructed by father of the defendants namely Harakh Ram and that too, without any objection raised by the plaintiffs. The fact that defendants are in possession of the suit property is proved not only by the evidence of the plaintiffs but also the evidence brought out by the defendants. The said finding recorded by learned first appellate

Court is a finding of fact which is based on evidence available on record and is neither perverse nor contrary to record.

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

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

Harneet