

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 571 of 2018**

1. Shobha Ram Yadav, S/o Sidheshwar Yadav, aged about 52 years, Occupation Agriculture,
2. Dudheshwar Yadav, S/o Padamlochan, aged about 53 years, Occupation Agriculture Caste – Mahkal, R/o Village Belghutri (Bhamra), Thana Kunkuri, District Jashpur (C.G.)

----Appellants/Defendants**Versus**

1. Shridhar Yadav, S/o Markand, aged about 58 years,
2. Kunwar Yadav, S/o Markand, aged about 55 years, Both caste Mahkal, R/o – Village Belghutri, Thana Kunkuri, District Jashpur (C.G.)

---- Respondent/Plaintiff.

For Appellants	: Shri Bhupendra Singh, Advocate.
For Respondents	: Shri J.K. Saxena, Advocate (Notice on stay application Only)

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****19/03/2019**

1. Heard on the question of admission and formulation of substantial question of law in this second appeal preferred by defendants under Section 100 of the Code of Civil Procedure, 1908.
2. Plaintiffs filed a suit for permanent injunction and damages to the extent of Rs.20,000/- was decreed by the trial Court and on appeal being preferred by defendants, it was affirmed by the first appellate Court, against which this second appeal under Section 100 of the CPC has been preferred .

3. In a suit filed by the plaintiffs for permanent injunction and damages to the extent of Rs.20,000/-, the trial Court held that suit property was originally held by Natho Ram, which he had got on partition and he died leaving behind only one daughter - Etwari Bai and the plaintiffs are legal heirs of Etwari Bai; it has further been held that after death of Etwari Bai, plaintiffs are in possession of the suit land; and the defendants are trying to dispossess them, which they are not entitled and the plaintiffs are entitled for the decree of permanent injunction in their favour and decreed the suit of the plaintiffs. The said judgment & decree passed by the trial Court was affirmed by the first appellate court after re-appreciating the entire evidence adduced in the case.

4. Learned counsel for the appellants/defendants submits that both the courts below are concurrently erred in decreeing the suit of the plaintiff by recording findings, which are perverse and contrary to the record and that give rise to substantial question of law for determination.

5. The trial Court has clearly recorded a finding that Natho Ram got the suit property in family partition and the plaintiffs are the successor-in-interest of his daughter Etwari Bai and they are in possession of the suit land as title holder and, therefore, defendants have no right to interfere with their possession and Rs. 20,000/- as an amount of compensation granted to the plaintiffs, and on appeal being preferred the appellate court has affirmed the said finding. The said finding recorded by both the courts below are the 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.

6. 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 and others¹ & Raj Kumari and another Vs. Ravinder Kumar (deceased) through legal representatives & others²** }

8. Accordingly, the second appeal, being devoid of merit, is liable to be and is hereby dismissed in *limine*.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

1 (2018) 11 SCC 77

2 (2018) 12 SCC 681

