

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.461 of 2009**

Mohan Lal S/o. Late Shri Dhvajaram Satnami, aged about 55 years, R/o. Village Risda, Tahsil & District-Korba (CG)

----- Appellant/Plaintiff

Versus

1. V.P. Kesharwani, Contractor, Vice President, Lions Club, Balco, Sector-6, Type-B, Qtr. No.836, Balco, Tahsil & District-Korba (CG)
2. Ramnath S/o. Laxminarayan Parasar, R/o. Village Korba, Tahsil & District-Korba (CG)
3. Pravin Chand Kothari S/o. Bhaichand Kothari, R/o. Housing Board, Balco Nagar, Tahsil & District-Korba (CG)
4. The State of Chhattisgarh, Through-Collector, District-Korba (CG)

----- Respondents/Defendants

For Appellant/Plaintiff : Mr.A.K.Prasad, Advocate
 For Respondent No.4/State: Mr.Ravi Bhagat, Dy.G.A.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

17/12/2020

1. Heard this second appeal preferred by the appellant/plaintiff on the question of admission and formulation of substantial question of law.
2. By the impugned judgment and decree, the first appellate Court dismissed appeal preferred by the appellant/plaintiff dismissing the suit of the plaintiff.
3. Mr.A.K.Prasad, learned counsel for the appellant/plaintiff, would submit that the both the

Courts below have concurrently erred in holding that the plaintiff is not in possession of the suit land, therefore, neither he is not entitled for declaration of title nor for permanent injunction, by recording a finding, which is perverse to record and as such, the second appeal involves substantial question of law for determination.

4. The plaintiff filed a suit for declaration of title and also for permanent injunction restraining the defendants from interfering with his possession with regard to the suit land bearing Khasra Nos.374/1 ख and 374/6, total area 0.10 acre situated at village Risda, District Korba.
5. The trial Court after appreciation of oral and documentary evidence available on record, by its judgment and decree 27.9.2007, dismissed the suit holding that the plaintiff is not in possession of the suit land, therefore, he is not entitled for decree for declaration of title and permanent injunction, the suit is held to be barred by limitation and is not valued properly, which has been affirmed by the first appellate Court in first appeal preferred by the plaintiff.
6. Both the Courts below have concurrently recorded the finding that the plaintiff is not in possession of the suit land, therefore, he is not entitled for relief

particularly for declaration of title as well as for permanent injunction. Concurrent finding recorded by two Courts below is a finding of fact based on evidence available on record. Since the plaintiff is not in possession of the suit land, therefore, his suit for declaration of title was barred by proviso to Section 34 of the Specific Relief Act, 1963. Similarly, if the plaintiff is not in possession of the suit land, then he is also not entitled for permanent injunction. As such both the Courts below have recorded the finding that the plaintiff is not entitled for declaration of title and permanent injunction. Concurrent finding recorded by two Courts below is 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 and even I do not find any substantial question of law for determination of this second appeal.

7. Accordingly, the second appeal being devoid of merit is liable to be and is hereby dismissed in *limine* without notice to other side.

Sd/-

(Sanjay K. Agrawal)
Judge

B/-