

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.485 of 1999**

1. Anjori, son of Shri Likhan, aged about 35 years.
2. Kumharu, son of Shri Likhan, aged about 30 years.
3. Rambai, aged about 11 years, D/o Santuram.
4. Triloka Bai, aged about 7 years, D/o Santuram.
5. Ramkali Bai, D/o Santuram, aged about 9 years.
6. Om Bai, D/o Santuram, aged about 5 years.
7. Dhaniram, S/o Santuram, aged about 2 years.
8. Santuram, son of Shri Sawant Marar, aged about 35 years.

Appellants No.3 to 7 through Guardian Santuram Marar,
resident of Village Dama Banjari, Chhuriya, District
Rajnandgaon (CG).

---- Appellants

Versus

1. Sonu, son of Jivnath, aged about 75 years, Village Dhotiya,
Tahsil and District Rajnandgaon (CG).
2. Deshi Lal, aged about 48 years, son of late Shri Sonu,
Agriculturist and resident of Village Ghotiya.
3. State of Madhya Pradesh, through Collector, Rajnandgaon
(CG).

---- Respondents

For Appellant : Shri P.K.C. Tiwary, Sr. Advocate with
Shri Kripesh G. Kela, Advocate.

For Respondent/State : Shri Om Prakash Sahu, G.A.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

30/09/2016

(1) Heard on admission.

(2) This is appellants/plaintiffs' second appeal under Section 100 of the Code of Civil Procedure, 1908 (for short 'the CPC') challenging the judgment and decree dated 25.02.1999 passed by First Additional District Judge, Rajnandgaon in Civil Appeal No.23-A/1998, affirming the judgment and decree dated 01.05.1996 passed by IInd Civil Judge, Class-I, Ramanujganj in Civil Suit No.38-A/1995, whereby the trial Court has dismissed the suit.

(3) The plaintiff-Sohadrabai filed a suit for declaration, permanent injunction stating inter-alia that the sale deed executed by her grandfather-Darbari on 12.04.1968 in favour of original defendant No.1-Sonu is null and void, which was dismissed by the trial Court on merits as well as on the ground that the suit was barred by limitation.

(4) Being dissatisfied with the aforesaid judgment and decree, the appellants preferred first appeal before the First Appellate Court, which was dismissed by the First Appellate Court vide judgment and decree impugned.

(5) Against which, this second appeal under Section 100 of the Code of Civil Procedure has been filed by the appellants/plaintiffs.

(6) Learned counsel appearing for the appellants would submit that the concurrent finding recorded by two Courts below is perverse

and contrary to record and therefore, it give rise to substantial question of law for determination of this appeal.

(7) I have heard learned counsel appearing for the appellants/plaintiffs and perused the records of the Courts below with utmost circumspection.

(8) Recently, the Supreme Court in the case of **Vishwanath Agrawal, S/o Sitaram Agrawal Vs. Sarla Vishwanath Agrawal**¹, has held that High Court should not disturb the concurrent finding of fact, unless finding recorded is perverse being based on no evidence. Para-36 & 37 of report states as under:-

“36. In *Major Singh Vs. Rattan Singh*² it has been observed that when the Courts below had rejected and disbelieved the evidence on unacceptable grounds, it is the duty of the High Court to consider whether the reasons given by the Courts below are sustainable in law while hearing an appeal under Section 100 of the Code of Civil Procedure.

37. In *Vidhyadhan Vs. Manikrao*³ it has been ruled that the High Court in a second appeal should not disturb the concurrent findings of fact unless it is shown that the findings recorded by the Courts below are perverse being based on no evidence or that on the evidence on record no reasonable person could have come to that conclusion. We may note here that solely because another view is possible on the basis

1 (2012) 7 SCC 288

2 (1997) 3 SCC 546: AIR 1997 SC 1906

3 (1999) 3 SCC 573

of the evidence, the High Court would not be entitled to exercise the jurisdictions under Section 100 of the Code of Civil Procedure. This view of ours has been fortified by the decisions of this Court in *Abdul Raheem V. Karnataka Electricity Board*⁴.

(9) Keeping in view, the ratio of law laid down by the Supreme Court in the aforesaid case, the concurrent finding of fact recorded by both the Courts below is based on evidence available on record and it is neither perverse nor contrary to the record. No substantial question of law is involved in this second appeal.

(10) Consequently, the second appeal deserves to be and is accordingly dismissed. No order as to cost(s).

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

L/-