



2026:CGHC:19866

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

SA No. 63 of 2020

1 - Kumudeshwar Singh (Dead) S/o Ram Krishan Singh, Aged About 85 Years, R/o Semra, Tahsil Navagarh, District Janjgir-Champa, Chhattisgarh.

1.1 - (A) Ashwani Kumar Singh S/o Late Kumudeshwar Aged About 58 Years R/o Semra, Tahsil Navagarh, District Janjgir-Champa, Chhattisgarh.

1.2 - (B) Sobha Singh D/o Late Kumudeshwar Aged About 61 Years R/o Semra, Tahsil Navagarh, District Janjgir-Champa, Chhattisgarh.,

1.3 - (C) Sachi Singh D/o Late Kumudeshwar Aged About 51 Years R/o Semra, Tahsil Navagarh, District Janjgir-Champa, Chhattisgarh.,

1.4 - Deleted (D) Laxmi Devi As Per Honble Court Order Dated 23-01-2020

...Appellants

versus

1 - Deleted (Manharan) As Per Honble Court Order Dated 23-01-2020

2 - Deleted (Sukhsagar) As Per Honble Court Order Dated 23-01-2020

3 - Kadam (Dead) S/o Shivpal Sahu, Aged About 75 Years, R/o Semra, Tahsil Navagarh, District Janjgir-Champa, Chhattisgarh., District : Janjgir-Champa, Chhattisgarh

3.1 - (A) Manaharan S/o Late Kadam Aged About 55 Years (Annihilated), R/o Semra, Tahsil Navagarh, District Janjgir-Champa, Chhattisgarh., District : Janjgir-Champa, Chhattisgarh

3.2 - (B) Sukhsagar S/o Kadam Aged About 15 Years Natural Guardian Valima Sukwara Bai W/o Kadam Sahu (Annihilated), R/o Semra, Tahsil Navagarh, District Janjgir-Champa, Chhattisgarh., District : Janjgir-Champa, Chhattisgarh

3.3 - (C) Dilharan S/o Late Kadam Aged About 57 Years R/o Semra, Tahsil Navagarh, District Janjgir-Champa, Chhattisgarh., District : Janjgir-Champa, Chhattisgarh

3.4 - (D) Budhram S/o Late Kadam Aged About 54 Years R/o Semra, Tahsil Navagarh, District Janjgir-Champa, Chhattisgarh., District : Janjgir-Champa, Chhattisgarh

3.5 - (E) Minabai D/o Late Kadam Aged About 56 Years R/o Semra, Tahsil Navagarh, District Janjgir-Champa, Chhattisgarh., District : Janjgir-Champa, Chhattisgarh

3.6 - (F) Pyari D/o Late Kadam Aged About 53 Years R/o Semra, Tahsil Navagarh, District Janjgir-Champa, Chhattisgarh., District : Janjgir-Champa, Chhattisgarh

3.7 - (G) Santoshi Aged About 17 Years (Minor) Natural Guardian Valima Sukwara Bai W/o Kadam Sahu, R/o Semra, Tahsil Navagarh, District Janjgir-Champa, Chhattisgarh., District : Janjgir-Champa, Chhattisgarh

4 - State Of Chhattisgarh Through Jila Adyaksh, Janjgir, District Janjgir-Champa, Chhattisgarh., District : Janjgir-Champa, Chhattisgarh

... Respondent(s)

(Cause title taken from CIS)

For Appellants : Shri Amit Kumar, Advocate

For State : Shri Malay Jain, Panel Lawyer

Hon'ble Shri Bibhu Datta Guru, Judge

Judgment on Board

29.04.2026

1. By the present appeal under Section 100 of the Code of Civil Procedure, the appellant/plaintiff challenges the impugned judgment and decree dated 26.11.2019 passed by the learned Third Additional District Judge, Janjgir, District Janjgir - Champa (C.G.) in Civil Appeal No. 38-A/2018 (Kumudeshwar Singh (died) through Legal Representative vs. Manharan & Others) arising out of the judgment and decree dated 06.03.2018

passed by the learned Civil Judge, Class-II, Navagarh, District Janjgir-Champa (C.G.) in Civil Suit No. 16-A/11 (Kumudeshwar Singh (died) through LR's vs. Manharan & Others). For the sake of convenience, the parties shall be referred to as per their status before the learned Trial Court.

2. The civil suit has been instituted by the plaintiff against the defendants seeking declaration of title, permanent injunction, recovery of possession, and removal of encroachment in respect of land situated at Village Semra, P.H. No. 8, R.I. Circle and Tahsil Navagarh, District Janjgir-Champa, bearing Khasra No. 38/1 (area 1.004 hectare), Khasra No. 38/28 (area 0.016 hectare), and Khasra No. 38/5 (area 0.008 hectare).
3. (a) The case of the plaintiff, in substance, is that Khasra No. 38/1 constitutes ancestral joint family property of the plaintiff and his predecessors, and no portion thereof has ever been legally transferred to Defendants No. 1, 2, or 3. It is alleged that Khasra No. 38/5 and Khasra No. 38/28 have been illegally and fraudulently recorded in the names of Defendant No. 2 (Sukhsagar) and Defendant No. 1 (Manharan), respectively, without any valid transfer or mutation order.

(b) The plaintiff submits that he became aware of such illegal entries on 29.06.2011 upon obtaining certified copies of the revenue records. Thereafter, an application was made for obtaining mutation details, and the Tehsildar, Navagarh, by communication dated 13.05.2011, informed that no mutation order was available in respect of Khasra No. 38/5, and no mutation record relating to Khasra No. 38/28 could be traced in official records.

(c) It is further averred that upon inquiry, the defendants failed to produce any document evidencing lawful acquisition of title and instead started raising construction over the disputed land. A legal notice was served through counsel upon Defendant No. 3, which remained unresponded. The plaintiff further states that the defendants initially encroached upon land belonging to the Irrigation Department and thereafter, by deceit, extended their possession over the suit land.

(d) The plaintiff got the land demarcated through the Tehsildar, and the demarcation proceedings revealed that the defendants had encroached upon the suit land and were raising constructions thereon. It is also stated that the suit

property was jointly owned by the plaintiff's brothers, namely Babusingh and Nanak Singh (since deceased), and forms part of a Hindu joint family estate.

4. (A) The defendants, in their written statement, admitted that Khasra Nos. 38/28 and 38/5 are parts of Khasra No. 38/1 but denied all other allegations. It is their case that Defendant No. 3 had purchased the said lands approximately 45 years ago from the plaintiff and his family members, namely Babusingh and Nanak Singh, at the rate of Rs. 100 per decimal, and since then has been in continuous, peaceful possession, having constructed residential structures thereon.

(B) The defendants further contended that their names were duly recorded in revenue records and subsequently mutated in favour of Defendants No. 1 and 2 vide Mutation No. 19/2004-05, and that they have been residing in the constructed houses as rightful owners. It is also pleaded by the defendants that, in any case, they have perfected their title by way of adverse possession, having been in open, continuous, and uninterrupted possession of the land for more than 40-45 years to the knowledge of the plaintiff, who never raised any objection during this period.

(C) The defendants denied having knowledge of the legal notice on account of illiteracy and further contended that the demarcation report does not establish any encroachment by them over the plaintiff's land. They also asserted that the plaintiff had previously sold portions of the land to various persons, as reflected in the demarcation report.

5. In support of his case, the plaintiff examined himself and one witness and produced documentary evidence including the original demarcation report (Ex. P/1), certified copy of B-1 records (Ex.P/2), Khasra Panchshala (Ex. P/3), and copy of application for records (Ex. P/4).

Despite being granted several opportunities, the defendants failed to lead any oral or documentary evidence in support of their pleadings, and accordingly, their right to adduce evidence was closed by the Court.

6. After appreciating the evidence available on record and after framing the issues, the learned trial Court by judgment and decree dated 06.03.2018 dismissed the suit of the plaintiff holding that the plaintiff failed to prove that the suit land was his ancestral property, as no cogent documentary evidence of title was produced, and thus he was not entitled to declaration

or recovery of possession. The defendants also failed to prove their plea of purchase, as no valid sale document was filed. Further, the plea of adverse possession was rejected due to lack of evidence of continuous and hostile possession. There against, the Civil Appeal preferred by the plaintiff , which has been dismissed vide impugned judgment and decree by the learned First Appellate Court. The present appeal preferred by the plaintiff.

7. Learned counsel for the appellants submits that the Trial Court as well as the First Appellate Court have committed grave errors of law in dismissing the suit despite the defendants having admitted that the suit land is ancestral property of the appellants, thereby entitling them to a decree of declaration and possession. It is further contended that both the Courts erred in placing the burden of proof upon the appellants, whereas the same lay upon the respondents/ defendants to establish their plea of alleged purchase said to have been made 45 years ago from Babu Singh and Nanak Singh, which they failed to prove by any cogent evidence. It is also argued that the First Appellate Court committed a further error of law in rejecting the appellants' application under

Order 41 Rule 27 CPC and refusing to take on record certified copies of revenue records (Record of Rights) reflecting the names of the appellants' ancestors, which were necessary for proper adjudication.

8. I have heard learned counsel for the appellant, perused the material available on record.
9. It is evident that both the Courts have concurrently held that the appellant/plaintiff failed to prove their title over the suit property. Though the plaintiffs asserted that the land in question was their ancestral joint family property, they did not produce any cogent documentary evidence, such as revenue records or title documents, to substantiate such claim. Mere oral assertions and supporting testimony were rightly held to be insufficient to grant a decree of declaration and possession.
10. So far as the contention regarding admission by the defendants is concerned, both the Courts have correctly appreciated that the alleged admission was only to the extent that the suit land formed part of a larger survey number and not an unequivocal admission of the plaintiffs' title. Hence, no

decree could have been passed solely on such partial admission.

11. With regard to the burden of proof, this Court finds no illegality in the approach adopted by both the Courts. In a suit for declaration of title and possession, the primary burden lies upon the plaintiffs to establish their title independently. The failure of the defendants to prove their plea of purchase or adverse possession does not ipso facto entitle the plaintiffs to a decree, unless they succeed on the strength of their own case.

12. The defendants' plea of purchase was rightly disbelieved in absence of any registered sale deed or valid document, and similarly, the plea of adverse possession was rejected for want of evidence showing continuous, open, and hostile possession for the statutory period. However, such findings do not improve the case of the plaintiffs.

13. As regards the rejection of the application under Order 41 Rule 27 CPC by the First Appellate Court, this Court finds that no sufficient cause was shown by the appellants for non-production of the said documents at the trial stage. The additional evidence sought to be produced could have been

filed earlier with due diligence, and therefore, the First Appellate Court committed no error in rejecting the application.

14. As far as the submission of learned counsel for the appellant/plaintiff with regard to production of certain documents in this appeal is concerned, such permission cannot be granted as a matter of course, nor can additional evidence be introduced at the whim or convenience of a litigating party. In fact, the general principle is that the appellate Court should not travel outside the record of the trial Court as well as the First Appellate Court and cannot take any evidence in an appeal under Section 96 of the CPC. It is noteworthy to mention here that once trial had concluded and the decree was under challenged in an appeal, the appellants cannot be permitted to fill the gaps in their case by seeking to adduce further material to fortify the claim that was fundamentally flawed. (See : **Gobind Singh and Ors. v Union of India and Ors. (Civil Appeal Nos.5168-5169 of 2011 decided on 9-3-2026).**)

15. The findings recorded by both the Courts are based on proper appreciation of oral and documentary evidence and are

neither perverse nor contrary to law. No substantial question of law arises for consideration in the present Second Appeal. No perversity, illegality or misapplication of law has been demonstrated by the appellant so as to warrant interference in second appeal.

16. It is well settled that in a second appeal under Section 100 CPC, interference is permissible only when a substantial question of law arises. In the present case, the findings recorded by the Trial Court as well as the First Appellate Court are based on proper appreciation of evidence, are neither perverse nor contrary to law, and do not give rise to any substantial question of law.
17. Even otherwise, the scope of interference in a Second Appeal under Section 100 of the Code of Civil Procedure is extremely limited. Interference is permissible only when the appeal involves a substantial question of law. Concurrent findings of fact recorded by both the Courts cannot be interfered with unless such findings are shown to be perverse, based on no evidence, or contrary to settled principles of law.
18. In the present case, both the Trial Court and the First Appellate Court have concurrently recorded findings, on the

basis of evidence available on record, that the appellant failed to establish their case by placing cogent and sufficient material. The appellant has failed to demonstrate any perversity, illegality, or misapplication of law in the findings so recorded.

19. The questions sought to be raised in the present Second Appeal essentially relate to re-appreciation of evidence and challenge to concurrent findings of fact. Such questions do not give rise to any substantial question of law within the meaning of Section 100 of the Code of Civil Procedure.
20. It is well established that when there is a concurrent finding of fact, unless it is found to be perverse, the Court should not ordinarily interfere with the said finding.
21. In the matter of ***State of Rajasthan and others Vs. Shiv Dayal and another***, reported in ***(2019) 8 SCC 637***, reiterating the settled proposition, it has been held that when any concurrent finding of fact is assailed in second appeal, the appellant is entitled to point out that it is bad in law because it was recorded *de hors* the pleadings or based on misreading of material documentary evidence or it was recorded against any

provision of law and lastly, the decision is one which no Judge acting judicially could reasonably have reached.

22. Very recently the Supreme Court in the matter of ***Russi Fisheries Pvt. Ltd. Vs. Bhavna Seth & Ors. in C.A. No. 109/2010*** **decided on 09.04.2026** has held thus at paras 31 to 35 :-

“31. It is settled in law that the findings of fact howsoever erroneous, cannot be reopened and disturbed in second appeal which is required to be adjudicated only upon the substantial question of law, if any, arising therein. Thus, the argument that the High Court in second appeal ought to have examined the evidence to ensure the correctness of the findings of the First Appellate Court has no legs to stand and fails.

32. Long back in 1981, three judges of this Court in the case of Bholaram Vs. Ammerchand (1981) 2 SCC 414 had ruled that even if findings of facts by courts below are wrong or grossly inexcusable that by itself would not entitle the High Court to interfere under Section 100 CPC in the absence of clear error of law. A similar view was reiterated in Madhavan Nair vs. Bhaskar Pillai (Dead) by Lrs. (2005) 10 SCC 553, wherein it has been

laid down that even if the First Appellate Court commits an error in recording a finding of fact, that itself will not be a ground for the High Court to upset the same.

33. In Kashibai w/o Lachiram and Another vs. Parwatibai w/o Lachiram and others (1995) 6 SCC 213, a similar proposition of law was laid down by this Court and it was held that the High Court cannot reappreciate the evidence and interfere with the findings of facts unless a substantial question of law or a question of law duly formulated is to be decided. The second appeal does not lie on the ground of erroneous findings of facts based on appreciation of the relevant evidence.

34. Similar is the situation in the case at hand. The High Court has not found any substantial question of law or a question of law worth consideration in the second appeal and, therefore, there was no occasion for it to have reappreciated the evidence so as to come to a different conclusion.

35. Again, in Kulwant Kaur & Ors. Vs. Gurdial Singh Mann (dead) by Lrs & Ors. AIR (2001) SC 1273, it was emphasized that the fact remains that in a second

appeal, a finding of fact, even if erroneous, will not be disturbed unless it is found that it stands vitiated for want of perversity. No such case for interference has been made out in the present case."

23. Be that as it may, the argument advanced by learned counsel for the appellant and the proposed question of law cannot be regarded as satisfying the test of being 'substantial question of law' within the meaning of Section 100 of CPC. These questions, in my view, are essentially question of facts. The appellants failed to raise any substantial question of law which is required under Section 100 of the CPC in. In any event, the Second Appeal did not involve any substantial question of law as contemplated under Section 100 of the CPC, no case is made out by the appellants herein. The judgments impugned passed by the learned trial Court as well as First Appellate Court are just and proper and there is no illegality and infirmity at all.

13. Accordingly, the present appeal is liable to be and is hereby **dismissed** at the motion stage itself. Sd/-

(Bibhu Datta Guru)
Judge