



2026:CGHC:10501

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

SA No. 33 of 2016

1. Budhu S/o Beniram Nirmalkar, Aged About 55 Years R/o Village Semariya, Tahsil Dhamdha, Sub Tahsil Ahiwara, District Durg Chhattisgarh, Chhattisgarh

2. Pawan S/o Ramu Sahu, Aged About 32 Years R/o Village Semariya, Tahsil Dhamdha, Sub Tahsil Ahiwara, District Durg Chhattisgarh, District : Durg, Chhattisgarh

3. Murli S/o Budhram Nirmalkar, Aged About 37 Years R/o Village Semariya, Tahsil Dhamdha, Sub Tahsil Ahiwara, District Durg Chhattisgarh.

... Appellant(s)

versus

1. Baratu And Others S/o Ramu Sahu, Aged About 42 Years R/o Village Semaraiya, Post Semariya, Tahsil Ahiwara, District Durg Chhattisgarh

2. Dev Singh S/o Ramdayal Sahu, Aged About 22 Years R/o Village Semaraiya, Post Semariya, Tahsil Ahiwara, District Durg Chhattisgarh.

3. State Of Chhattisgarh Through The Collector Durg Tahsil And District Durg Chhattisgarh.

4. Anand Ram S/o Ramu Sahu, Aged About 40 Years R/o Village Mantara, Tahsil Saja, District Durg Chhattisgarh.

5. Shivbati Wd/o Shobha, Aged About 42 Years R/o Village Semaraiya, Post Semariya, Tahsil Ahiwara, District Durg, Chhattisgarh, District : Durg, Chhattisgarh

6. Gopendra S/o Shobha, Aged About 23 Years R/o Village Semaraiya, Post Semariya, Tahsil Ahiwara, District Durg Chhattisgarh, District : Durg, Chhattisgarh

7. Bhagirathi S/o Shobha, Aged About 21 Years R/o Village Semaraiya, Post Semariya, Tahsil Ahiwara, District Durg Chhattisgarh, District : Durg, Chhattisgarh

8. Chhabiram S/o Shobha, Aged About 19 Years R/o Village Semaraiya, Post Semariya, Tahsil Ahiwara, District Durg Chhattisgarh.....Lrs Of Shobha Sahu

... Respondent(s)

For Appellant(s)	:	Ms. Swati Agrawal on behalf of Mr. Pankaj Agrawal, Advocate
For Respondent/ State	:	Mr. Anand Gupta, Dy. G.A.
For Respondents No. 5 to 8	:	Mr. Amit Nayer on behalf of Mr. Avinash Chand Sahu, Advocate

Hon'ble Shri Bibhu Datta Guru, Judge
Judgment on Board

28.02.2026

1. The defendants/ appellants have preferred this second appeal under Section 100 of the Code of Civil Procedure, 1908 (for brevity CPC) against the judgment & decree dated 15.10.2015 passed by the Learned Second Additional District Judge, Durg in Civil Appeal No. 13-A/2013 (Budhu & Ors. Vs. Baratu & Ors.) affirming the judgment and decree dated 28.01.2005 passed by the Trial Court in Civil Suit No. 213-A/99 (Baratu & Ors. Vs. Budhu & Ors.) whereby the learned trial Judge has allowed the suit of the plaintiffs/ respondents. For the sake of convenience, the parties would be referred as per their

status before the learned trial Court.

2. The plaintiff, who is the son of Keja Bai (original plaintiff) preferred the present suit seeking declaration of ownership, permanent injunction and possession of agricultural land situated in the village Semariya pleading inter alia that the deceased plaintiff, Keja Bai, was the granddaughter of Ramnath, who had two sons, namely Ramdayal and Ramcharan. Ramcharan had only one daughter, Keja Bai. It is pleaded that Keja Bai's father died during her childhood, and thereafter her mother contracted a "chudi marriage" with Ramdayal, the father of defendant No. 4, Dev Singh. After the death of Ramcharan, the joint family land continued to be recorded in the name of Ramdayal, and subsequently, in the year 1997-98, the names of Keja Bai and defendant No. 4 were mutated in the revenue records vide order dated 21.05.1998 passed by the Naib Tahsildar. Thereafter, on an application filed by Keja Bai for partition of her share, and on the basis of a compromise, the Naib Tahsildar, by order dated 08.06.1998 effected partition and separated the shares of Keja Bai and defendant No. 4, issuing separate bhumiswami rights and revenue records in their respective names. It is further pleaded that when Keja Bai went to take possession of the land and house that had fallen to

her share, she discovered that the defendants No. 1, 2 & 3 had taken illegal possession of the agricultural land bearing Survey No. 1038 and the house situated over abadi land bearing Khasra No. 974, as well as other portions of the suit property. The defendants No. 1, 2 & 3 claimed to have purchased the land from defendant No. 4 but failed to produce any valid documents in support of such claim. During the pendency of the dispute, defendant No. 3 allegedly obtained a land ownership certificate from the Naib Tahsildar clandestinely. Despite notice sent by the plaintiff, the defendants refused to accept the same and declined to deliver possession. Hence, alleging unlawful dispossession and unauthorized occupation by the defendants, the present suit has been instituted seeking appropriate relief.

3. Defendant Nos. 4, 5 and 7 were proceeded ex parte. The defendants Nos. 1, 3 & 6, while admitting certain formal facts, denied the plaintiff's claim and contended that a prior partition had already taken place between Ramdayal and Keja Bai. It was pleaded that Keja Bai had sold the land fallen to her share to third parties. After the death of Ramdayal, his son Dev Singh (defendant No. 4) succeeded to his estate and transferred portions of the land to defendant No. 6 and others for consideration, who

came into possession as bona fide purchasers. It was further asserted that defendant No. 3 was granted a patta by the Naib Tahsildar in accordance with law. Alleging that the suit was false and instituted to harass them, the defendants prayed for its dismissal.

4. After framing the issues and upon due appreciation of the oral as well as documentary evidence available on record, the learned Trial Court held that the plaintiff successfully proved her title and entitlement over the agricultural lands bearing Survey Nos. 573, 835/1 and 1038, but failed to establish any right over the abadi land. The suit was accordingly decreed in part in respect of the agricultural land and dismissed to the extent of the abadi land. Aggrieved by the said judgment and decree dated 28/01/2005, the defendants preferred a First Appeal under Section 96 of the Code of Civil Procedure before the learned First Appellate Court. The learned First Appellate Court, on re-appreciation of the entire evidence on record, affirmed the findings recorded by the Trial Court and dismissed the appeal by the impugned judgment. Hence, the present appeal.
5. Learned counsel for the appellants submits that the lower appellate Court erred in not clubbing and deciding the two connected suits together, which has resulted in

inconsistent and controversial findings. It is further contended that the application under Order 41 Rule 27 CPC was wrongly and mechanically rejected without proper consideration. It is also argued that the findings recorded in paragraphs 7 to 10 of the impugned judgment, affirming the Trial Court's decree and directing restoration of the land to the legal heirs of Keja Bai, are illegal, perverse and contrary to the evidence on record. Hence, it is prayed that the judgments and decrees passed by the Courts below be set aside.

6. I have heard learned counsel for the appellants on the question of admission, and the impugned judgments and decrees passed by the learned trial Court as also the learned First Appellate Court have been carefully examined.
7. In the present case, both the learned Trial Court and the learned First Appellate Court, upon due appreciation of the pleadings and the oral as well as documentary evidence available on record, have concurrently held that the suit land stood recorded in the joint names of Dev Singh and Keja Bai pursuant to the order dated 21.05.1998 passed by the Naib Tahsildar, and that in the subsequent partition proceedings the land fell to the share of Keja Bai. The revenue records, including the Kishtbandi Khatauni and

loan passbook, clearly reflected that the suit land was entered in the name of Keja Bai. The First Appellate Court has further held that the appellants' application under Order 41 Rule 27 read with Section 151 CPC was rightly rejected, as the documents sought to be produced were neither original nor certified copies, and no sufficient cause was shown for their earlier non-production. It was also observed that non-acceptance of those documents would not cause any irreparable prejudice to the appellants.

8. On merits, both the Courts below have recorded a categorical finding that appellants No. 2 and 3 claimed purchase of the suit land from Dev Singh on the basis of agreements dated 28.10.1997 and 15.12.1997; however, no registered sale deed was executed in their favour. In view of Section 54 of the Transfer of Property Act and Section 17 of the Registration Act, transfer of immovable property valued above Rs.100/- requires compulsory registration. Since the alleged transactions were unregistered, no valid title passed to the appellants. It also observed that title cannot be acquired on the basis of an unregistered sale deed. It has therefore been concurrently held that the alleged sale in favour of appellants No. 2 and 3 was invalid and that the Trial Court rightly declared the transfer void and directed restoration of possession of the

suit land to the legal heir of Keja Bai. The findings recorded by the Courts below are based on proper appreciation of evidence and settled principles of law. No illegality, perversity or substantial question of law arises so as to warrant interference under Section 100 of the Code of Civil Procedure, and the appeal was accordingly dismissed.

9. 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.
10. 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 appellants/ defendants failed to establish their case by placing cogent and sufficient material. The appellants have failed to demonstrate any perversity, illegality, or misapplication of law in the findings so recorded.
11. 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.

12. 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.
13. 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.
14. Be that as it may, the argument advanced by learned counsel for the appellants 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 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 appellant herein. The

judgments impugned passed by the learned trial Court as well as by the learned First Appellate Court are just and proper and there is no illegality and infirmity at all.

15. Having heard learned counsel for the appellants and on perusal of the record of the case and in view of the above settled legal proposition, I find absolutely no merit in this appeal, involving no question of law much less substantial question of law within the meaning of Section 100 of the CPC. In my view, the judgment and decree passed by both the Courts appear to be just, proper and legal. The findings recorded are based on proper appreciation of evidence available on record and there is no illegality or perversity in the same and they does not call for any interference.
16. Consequently, the Second Appeal fails and is hereby **dismissed** resulting in upholding of the judgment and decree of the trial Court as well as the Appellate Court.

Sd/-
(Bibhu Datta Guru)
Judge