



2026:CGHC:17800



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NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

SA No. 334 of 2017

Fagudas Vaishnav S/o Harihar Das, Aged About 43 Years R/o Village Harda, Tahsil Sakti, District Janjgir Champa, Chhattisgarh.....
Appellant/defendant

... Appellant(s)

versus

1 - Kunjram S/o Chhedilal Sahu, Aged About 40 Years R/o Village Parsakhurd, Tahsil Sakti, District Janjgir Champa, Chhattisgarh

2 - State Of Chhattisgarh Through Collector, Janjgir, District Janjgir-Champa, Chhattisgarh..... Respondent/plaintiff

.... Respondent(s)

(Cause title is taken from CIS)

For Appellant(s) : Mr. Rahul Mishra, Advocate

Hon'ble Shri Justice Bibhu Datta Guru

Judgment on Board

20/04/2026

1. The present Second Appeal has been preferred by the defendant under Section 100 of the Code of Civil Procedure, 1908, assailing



the impugned judgment and decree dated 16.03.2017 passed by the learned 2nd Additional District Judge, Sakti, District Janjgir-Champa (C.G.) in Civil Appeal No. 32-A/2015 (Fagudas vs. Kunjram & Anr.), affirming the judgment and decree dated 30.07.2013 passed by the learned Civil Judge Class-I, Sakti, District Janjgir-Champa (C.G.), in Civil Suit No. 15-A/2012 (Kunjram vs. Fagudas & Anr.), whereby the civil appeal filed by the appellant/ defendant was dismissed. For the sake of convenience, the parties shall hereinafter be referred to as per their status before the Trial Court.

2. The plaintiff instituted the suit against the defendants seeking specific performance of contract and, in the alternative, recovery of Rs. 48,200/-, pleading *inter alia* that the plaintiff, engaged in the business of manufacturing bricks in Village Parsadakhurd, supplied bricks to defendant No.1 for construction purposes at agreed rates, totaling Rs. 48,200/-. Owing to cordial relations, the defendant assured lump sum payment, but despite repeated demands and a subsequent promise dated 03.04.2009, no payment was made. Thereafter, in the presence of village elders, defendant No.1 executed an agreement dated 16.09.2009 undertaking to pay the amount by 24.03.2010, failing which he agreed to execute a registered sale deed of his land bearing Khasra No. 85/2 admeasuring 0.45 acre along with the house in favour of the plaintiff. However, the defendant neither paid the amount nor executed the sale deed and continued to evade



performance. The plaintiff issued a registered legal notice dated 05.09.2012, which was duly received, but remained unanswered. Hence, the suit has been filed seeking specific performance of the agreement or, alternatively, recovery of the said amount.

3. *Per contra*, defendant No.1, in his written statement, has denied the material averments made by the plaintiff and has pleaded that the plaintiff's alleged brick manufacturing activity at Village Parsadakhurd was illegal and had been stopped by the authorities. It is further contended that no agreement dated 16.09.2009 was ever executed by him, nor was any stamp purchased by Shyamlal Gond for such purpose, and that he never agreed to sell his land or house to the plaintiff. The alleged agreement is stated to be false and fabricated, giving no cause of action to the plaintiff. It is also pleaded that relations between the parties were strained and that the plaintiff, with the help of one Shatrudhan Lal Dhritlahare, had earlier lodged a false caste-related complaint against him on 12.11.2011. The defendant has further alleged that the plaintiff had trespassed into his house and committed assault and abuse, in respect of which a case is pending before the Court, and the suit has been filed only to pressurize him into a compromise. Hence, dismissal of the suit has been prayed for.
4. Defendant No.2/ State is a formal party to the proceedings and therefore, the matter proceeded ex parte against it.



5. After framing the issues and upon due appreciation of the oral as well as documentary evidence available on record, the learned Trial Court allowed the suit in part filed by the plaintiff, holding that the plaintiff established his claim partly over the suit land. Aggrieved by the said judgment and decree dated 30/07/2013, the defendant 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.
6. (a) Learned counsel for the appellant submits that both the learned trial Court as well as the First Appellate Court have committed grave error in law and on facts in decreeing the suit of the plaintiff, as the findings recorded are perverse and contrary to the evidence available on record. He would submit that the appellant had specifically denied and controverted all the material pleadings of the plaintiff in the written statement, including the execution of the alleged agreement (Ex.P-1), and therefore, the burden was upon the plaintiff to strictly prove the said document in accordance with law. He further submits that once the appellant has denied the execution of the document Ex.P-1, the same could not have been relied upon without proper proof, yet the Courts have erroneously taken the same into consideration.



(b) Learned counsel further submits that the learned First Appellate Court has also erred in rejecting the application by separate order on the same day, which has been filed under Order 41 Rule 27 of the Code of Civil Procedure, whereby the appellant sought to bring on record additional evidence, which was relevant for proper adjudication of the case. Learned counsel thus contends that the dismissal of the said application has resulted in serious prejudice to the appellant. He would lastly contend that the impugned judgments and decrees passed by both the learned Courts are illegal, erroneous and unsustainable in the eye of law, and substantial questions of law, as framed, arise for consideration in the present appeal.

7. I have heard learned counsel for the appellant 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.
8. In the present case, both the learned Trial Court as well as 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 plaintiff had supplied bricks to the defendant for construction purposes and that the defendant had purchased the same for a total consideration of Rs.48,200/-. The Courts have further recorded a categorical finding that the agreement dated 16.09.2009 (Ex.P-1) was duly



executed by the defendant, which has been proved through the testimony of the plaintiff and attesting witnesses, and the defendant has failed to disprove his signatures thereon by any cogent evidence, including expert examination. It has also been held that the defendant received the legal notice (Ex.P-2) but failed to respond or make payment, thereby giving rise to an adverse inference against him.

9. Both the Courts have, however, concurrently held that the plaintiff is not entitled to a decree for specific performance, inasmuch as the alleged agreement relating to transfer of land was not proved with respect to ownership of the suit property, and no documentary evidence was produced to establish that the defendant had valid title over the said land. It has thus been held that the said stipulation was only by way of security for repayment of money and not enforceable as a contract for transfer of immovable property. Nevertheless, the plaintiff has been found entitled to recovery of the agreed amount of Rs.48,200/- along with interest at the rate of 6% per annum, in view of the proved liability of the defendant.
10. Thus, the concurrent findings recorded by both the learned Courts are based on proper appreciation of evidence, including the agreement (Ex.P-1), oral testimonies and surrounding circumstances, and the same do not suffer from any perversity, illegality or material irregularity warranting interference in exercise



of jurisdiction under Section 100 of the Code of Civil Procedure.

11. 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.
12. 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/ defendant failed to establish his case by placing cogent and sufficient material. The appellant failed to demonstrate any perversity, illegality, or misapplication of law in the findings so recorded.
13. 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.
14. 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.
15. 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.

16. 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 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., 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, 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., 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.”

17. 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 appellant 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 as well as by the learned First Appellate Court are just and proper and there is no illegality and infirmity at all.

18. Having heard learned counsel for the appellant 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.
19. Accordingly, 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