



2026:CGHC:3251

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

SA No. 488 of 2016

1 - Anantram S/o Late Bisaru, Aged About 56 Years R/o Village Kinjoli Post Kinjoli Tahsil Jagdalpur District Bastar, Chhattisgarh, Chhattisgarh

2 - Gulabi W/o Anantram, Aged About 54 Years R/o Village Kinjoli Post Kinjoli Tahsil Jagdalpur District Bastar, Chhattisgarh, District : Bastar(Jagdalpur), Chhattisgarh

3 - Chameli W/o Anantram, Aged About 53 Years R/o Village Kinjoli Post Kinjoli Tahsil Jagdalpur District Bastar, ChhattisgarhDefendants, District : Bastar(Jagdalpur), Chhattisgarh

... Appellants

versus

1 - Shobha Singh S/o Shree Dhan Singh, Aged About 41 Years R/o Village Kinjoli Post Kinjoli Tahsil Jagdalpur District Bastar, Chhattisgarh, Chhattisgarh

2 - Bhagwati D/o Dhan Singh Aged About 38 Years R/o Village Kinjoli
Post Kinjoli Tahsil Jagdalpur District Bastar, Chhattisgarh, District :
Bastar(Jagdalpur), Chhattisgarh

3 - Smt. Sumitra Wo Shobha Singh Aged About 38 Years R/o Village
Kinjoli Post Kinjoli Tahsil Jagdalpur District Bastar,
ChhattisgarhPlaintiff, District : Bastar(Jagdalpur),
Chhattisgarh

4 - State Of Chhattisgarh, Through Collector Bastar, Collector Office
Jagdalpur District Dug, Bilaspur, ChhattisgarhDefendant
No.4, Chhattisgarh

... Respondent(s)

(Cause title taken from CIS)

For Appellants : Shri Pravin Kumar Tulsyan with Shri
Vikas Patel, Advocates.

For Respondent No. 1 to 3 : Shri Sandeep Patel, Advocate.

Hon'ble Shri Bibhu Datta Guru, Judge

Order on Board

20.01.2026

1. By the present appeal under Section 100 of the CPC, the
appellant/defendants challenging the impugned judgment and
decree dated 02.02.2015 passed by the Learned Second
Additional District Judge, Bastar place at Jagdalpur (C.G.) in Civil

Appeal No. 44-A/2012 (Anantram & Other vs. Shobha Singh & Others) arising out of the judgment and decree dated 05.05.2008 passed by the learned Fifth Civil Judge, Class- II, Bastar, place Jagdalpur (C.G.) in Civil Suit No.21-A/2006 (Shobha Singh & Others vs. Anantram & Others). For the sake of convenience, the parties would be referred as per their status before the learned trial Court.

2. The plaintiffs filed a civil suit seeking declaration of title, partition and delivery of possession in respect of the suit land comprising Khasra Nos. 489, 490, 194/1, 486/2 and 488/2, admeasuring 10.20 acres situated at Village Kinjoli, Tahsil Jagdalpur, which was recorded in the name of Dukhu s/o Thadgu in the revenue records for the year 1931-32, and further land admeasuring 28.27 acres recorded in his name as per Jamabandi of the year 1954-55, making a total area of 41.67 acres. From the first wife of Dukhu, he was having one daughter Subri and after death of first wife he performed second marriage with Dukhi and out of said wedlock they had three daughters namely; Bali, Parvati and Kamla. All four daughters have died. Defendant No.1 Anantaram is the son of Bali, and Kamla had one son, Shobha Singh (Plaintiff No.1), and four daughters, namely Lakshmi, Bhagwati (Plaintiff No.2), Meena and Sharda,

whereas Subri and Parvati died issueless. Dukhu, out of his self-acquired income, purchased 3.40 acres of land in the name of Parvati, and Dukhi purchased 10 acres of land in the name of her minor grandson Anantaram, who is the son of Bali. Dukhu died about 27 years prior to the filing of the suit and, thereafter, his daughters jointly cultivated the entire land described in Schedule 'A' without any partition. After settlement, the Khasra numbers were changed, as detailed in Schedule 'B'. Following the death of Dukhu, the names of the plaintiffs and defendants were recorded over 15.93 hectares, though the plaintiffs' names were not entered along with the defendants in respect of 3.40 acres. The plaintiffs claim cause of action from 23.11.2001 and seek declaration of their respective shares in the suit land described in Schedule 'B' along with delivery of possession of 10.80 hectares in their favour.

3. The defendants, while filing their written statement along with a counter-claim, denied all the averments made in the plaint. The defendants specifically denied that Subri had, during her lifetime, transferred her share of the property in favour of Shobha Singh, who is the son of Kamla. It was pleaded that Anantaram's mother Bali had purchased 10 acres of agricultural land at Village Kinjoli in the year 1959 from Ramdas out of her

self-acquired property and the income earned by her husband Bisaru. The defendants further denied that during the lifetime of Dukhu s/o Thadgu or after his death, his four daughters jointly cultivated the land described in Schedule 'A' without partition. According to the defendants, Dukhu himself cultivated his land admeasuring 28.27 acres during his lifetime with the assistance of his wife Dukhi, grandson Anantaram, daughters Bali and Parvati and their families, and after his death, the land continued to be in the possession and cultivation of Anantaram, Bali and Parvati, and even at present Anantaram remains in possession. It was contended that the plaintiffs are entitled, if at all, only to a share in Dukhu's self-acquired land admeasuring 28.27 acres and have no right or title over the remaining land admeasuring 13.41 acres, which is the exclusive property of Anantaram and Parvati. The defendants further pleaded that the suit is not properly valued and that the plaintiffs have no title over 10.80 hectares of the suit land. Accordingly, the defendants prayed for declaration of Anantaram's exclusive title over 10 acres of land described in Schedule 'C' Part-B and 3.41 acres described in Schedule 'C' Part-C, dismissal of the plaintiffs' suit with costs, and decree of the counter-claim.

4. After appreciating the evidence available on record and after framing the issues, the learned trial Court by the judgment and decree dated 30.11.2013 allowed the suit of the plaintiffs holding that on minute scrutiny of the evidence adduced by the witnesses, it is manifest that while executing the alleged Will Subri Bai was mentally and physically fit and failed to establish that the Will has been obtained by playing fraud and also held that Shobha Singh is entitled for the property pursuant to the Will executed by the Subri Bai, who died issueless. Thereagainst, the Civil Appeal preferred by the defendants has been dismissed vide the impugned judgment and decree by the learned First Appellate Court. Thus, this appeal.
5. Learned counsel appearing for the appellants/defendants would submit that the plaintiffs have not proved the will allegedly executed by Subri. He would submit that the learned both the Courts failed to appreciate the fact that the will executed by Subri only on the basis of its registration, whereas, the version of the witnesses of the will is not supporting the case of the plaintiff. He would also submit that the suit is not maintainable as contradictory grounds have been raised in the plaint. According to learned counsel, both the Courts were not justified in appreciating the material available on record.

6. I have heard learned counsel for the appellants, perused the material available on record.
7. The plaintiffs have produced the original Will dated 17.03.1999 (Ex.P-15) on record. In support thereof, the plaintiffs examined an attesting witness to the said Will. The witness, Jagtaram (PW-02), in paragraph 12 of his examination-in-chief, has categorically affirmed that Subri executed the Will in favour of Shobharam and that he had signed the said Will as an attesting witness. Since the said Will is a registered Will, the same stands duly proved in accordance with Section 68 of the Indian Evidence Act. In order to challenge the genuineness of the said Will, the appellants/defendants have contended that, due to old age, Subri Bai was not in a sound mental condition and that the Will was executed under the influence of Shobha Singh. In such circumstances, the burden to prove that the Will is forged or fabricated squarely lies upon the appellants/defendants. However, they failed to produce any documentary or oral evidence on record to establish that, at the time of execution of the Will, Subri Bai was suffering from ill health or was mentally incapable of understanding and executing the Will. Thus, the appellants/defendants have utterly failed to prove, either by

documentary or oral evidence, that the Will executed by Subri Bai is forged or invalid.

7. 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.
8. 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/plaintiffs 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.
9. 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.

10. 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.
11. 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.
12. 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. 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 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.**

Sd/-

(Bibhu Datta Guru)
Judge

Shoaib/Gowri