



2026:CGHC:3939

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

SA No. 568 of 2022

Brijraj Kumar S/o Prahlad Prasad Yadav Aged About 63 Years R/o Village
Mudmaar, Tahsil Navagarh, District - Janjgir - Champa Chhattisgarh
... Appellant(s)

versus

- 1. Umeshchand S/o Malikram Yadav Aged About 77 Years R/o Village -
Mudamaar, Tehsil Navagarh, District Janjgir - Champa Chhattisgarh
- 2. Vedvyash S/o Umeshchand Yadav Aged About 42 Years R/o Village -
Mudamaar, Tehsil Navagarh, District Janjgir - Champa Chhattisgarh
- 3. Jawharlal S/o Umeshchand Yadav Aged About 40 Years R/o Village -
Mudamaar, Tehsil Navagarh, District Janjgir - Champa Chhattisgarh
- 4. Hirendra Kumar S/o Brijraj Kumar Yadav Aged About 30 Years R/o Village -
Mudamaar, Tehsil Navagarh, District Janjgir - Champa Chhattisgarh
- 5. Mahendra Kumar S/o Brijraj Kumar Yadav Aged About 27 Years R/o Village
- Mudamaar, Tehsil Navagarh, District Janjgir - Champa Chhattisgarh
- 6. Yogendra Kumar S/o Brijraj Kumar Yadav Aged About 20 Years R/o Village
- Mudamaar, Tehsil Navagarh, District Janjgir - Champa Chhattisgarh
- 7. State Of Chhattisgarh Through Collector, District Janjgir - Champa
Chhattisgarh

... Respondent(s)

For Appellant(s)	:	Mr. Malay Shrivastava, Advocate
For Respondent/ State	:	Mr. Anand Gupta, Dy. G.A.

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

22.01.2026

1. The plaintiff/ appellant has preferred this second appeal under Section 100 of the Code of Civil Procedure, 1908 (for brevity CPC) against the judgment & decree dated 02.09.2022 passed by the Learned First Additional District Judge, Janjgir in Civil Appeal No. 10A/2022 (Brijraj Kumar Vs. Umeshchand and Ors.) affirming the judgment and decree dated 28.02.2022 passed by the Learned Civil Judge Class-II, Navagarh, District Janjgir Champa in Civil Suit No. 15A/2015 (Brijraj Kumar Vs. Umeshchand and Ors.) whereby the learned trial Judge has dismissed the suit of the plaintiff/ appellant herein filed for declaration of title and for permanent injunction. For the sake of convenience, the parties would be referred as per their status before the learned trial Court.
2. The pleadings in suit of the plaintiff, in brief, is that the land comprised in Khasra No. 204, admeasuring 1.29 acres, situated within the revenue estate of village Mudmaar, Tahsil Navagarh (hereinafter referred to as the “suit property”), was purchased by Shivprasad, the great-grandfather of the plaintiff, from Firtu S/o Bodhiram for a consideration of Rs. 99/- on 08.02.1937 with delivery of possession. The suit property was duly recorded in the name of Shivprasad in the revenue records for the year 1937–38 and continued to be so recorded thereafter, including in the Adhikar Abhilekh prepared in the year 1954–55. As the said entries were never challenged within the prescribed period of limitation,

they attained finality. The plaintiff, being the son of Prahlad, son of Mahatama, son of Shivprasad, is the lawful heir and successor and has thus acquired title over the suit property. The suit property is recorded in the name of the plaintiff in the Adhikar Abhilekh, and he is the owner in possession thereof. Though the plaintiff got the land recorded in the names of his sons in the revenue records only for the purpose of cultivation on his behalf, no transfer of ownership or possession was ever effected. In July 2002, defendants No. 2 and 3, sons of defendant No. 1, attempted to dispossess the plaintiff by asserting a false claim over the suit property, compelling the plaintiff to initiate proceedings under Section 145 Cr.P.C., wherein the Sub-Divisional Magistrate, Janjgir, by order dated 26.09.2006, directed delivery of possession to the plaintiff. The challenge to the said order by defendants No. 2 and 3 failed before the Sessions Court, Janjgir, and though the order of the SDM was later interfered with by this Hon'ble Court in proceedings under Section 482 Cr.P.C., the same did not culminate in execution. The plaintiff further contends that defendant No. 1, despite having full knowledge of the plaintiff's ownership and possession, fraudulently obtained a decree of ownership by adverse possession in a separate civil suit without impleading the plaintiff and during the subsistence of attachment proceedings, which decree is not binding upon the plaintiff and is liable to be declared illegal and void. Consequently, asserting his lawful title and possession, the plaintiff has instituted the present suit seeking

declaration of ownership, permanent injunction, and in the alternative, recovery of possession.

3. The defendant No. 1 and 2 have filed their joint written statement, before the trial court and have denied the material facts of plaint and further pleaded that father of defendant Malikram and his brothers namely Siriram, Shivprasad, Harihar Prasad, Koushal Prasad and Kashiram have partitioned their properties, including suit property prior to the birth of defendant No.1 and under the said partition suit property has fallen in the share of Malikram and since then he was owner in possession of suit property, but inadvertently, it remained in the name of Shivprasad in the revenue record. After death of his father Malikram, defendant No. 1 being owner is in possession of suit property and in his life time Shivprasad never raised any objection about the same. After death of Shivprasad, plaintiff wrongly got entered the suit property in the name of his sons i.e. defendant No. 4 to 6. Plaintiff has never come in possession of suit property, therefore, question of delivery of possession to his sons does not arise at all. In July, 2002, the defendant No. 2 and 3 had gone for cultivating the suit property then plaintiff asserted his right and refused them to cultivate the suit property. In compliance of order dated 11.08.2009, passed by this Court in Writ No. 214/2006, Supurdar Rathram has delivered possession of suit property to defendants. Defendant No.6 was minor at the time of filing of civil suit No. 899A/2007, but plaintiff

was appointed his guardian and he was pursuing the litigation on his behalf. Plaintiff has filed the suit only to harass the defendants, therefore, suit deserves dismissal with cost.

4. On the pleadings of the parties, the learned trial Judge framed as many as 5 issues and given opportunity to the parties to adduce evidence, both oral and documentary and after a full fledged trial dismissed the suit of the plaintiff mainly on the grounds that plaintiff could not prove the impugned decree and judgment illegal, null and void and could not prove his ownership and possession over the suit property. Against the judgment and decree passed by the trial Court the plaintiff/ appellant has preferred first appeal before the First Appellate Court which has been dismissed vide judgment and decree impugned herein affirming the findings of the trial Court. Aggrieved by the judgment and decree passed by the First Appellate Court, the present Second Appeal has been filed.
5. I have heard learned counsel for the parties, perused the material available on record.
6. Learned counsel for the appellant submits that the plaintiff had no knowledge of the earlier civil suit and was deliberately not impleaded therein, despite being a necessary and proper party. It is argued that although the suit land stood recorded in the names of the sons of the plaintiff, namely defendants No. 4 to 6, the ownership and possession had never been transferred to them and continued to vest with the plaintiff. Therefore, any adjudication in the said civil suit, in the absence of the plaintiff, is not binding

upon him. Learned counsel further contends that the Learned Trial Court as well as the Learned First Appellate Court failed to appreciate these material facts and committed a gross error in law and on facts in dismissing the claim of the plaintiff/appellant.

7. From the material available on record, it is evident that, upon due appreciation of the oral and documentary evidence adduced by the parties, the Court has recorded a categorical finding that the plaintiff had voluntarily relinquished his right, title and possession, if any, over the suit property in favour of his sons and, therefore, ceased to have any concern with the ownership or possession of the suit property. Consequently, the plaintiff could not be declared the owner of the suit property and was rightly held to have no locus standi to maintain the suit. The plea of the plaintiff that he was unaware of the earlier civil suit was also found to be false, inasmuch as defendant No. 3 was a minor and the plaintiff himself was appointed as his guardian, clearly establishing that the plaintiff was well aware of the pendency of the said litigation. The Court further observed that if the plaintiff intended to assert any right over the suit property, he could have sought impleadment under Order I Rule 10 of the Code of Civil Procedure and contested the matter, which he consciously failed to do. In view of these circumstances, it was held that the plaintiff, in his individual capacity, had no right to challenge the decree passed in the earlier suit. Additionally, the plaintiff failed to place any document on record to establish his possession over the suit land at the time of filing of the suit.

8. 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.
9. In the present case, both the Trial Court and the First Appellate Court have recorded concurrent findings, on the basis of evidence available on record. The appellants have failed to demonstrate any perversity, illegality, or misapplication of law in the concurrent findings so recorded.
10. 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.
11. 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 appellants 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.

12. Accordingly, the present appeal is liable to be and is hereby **dismissed** at the motion stage itself.

SD/-
(Bibhu Datta Guru)
Judge

Jyoti