



CGHC010063192019



2026:CGHC:41780

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

SA No. 159 of 2019

1 - Omprakash S/o Ramswaroop Khemuka, Aged About 64 Years, R/o Main Road
Janjgir, Tahsil Janjgir, District Janjgir-Champa Chhattisgarh

... Appellant(s)

versus

1 - Mahaveer Prasad Agrawal S/o Late Baihnath Agrawal, R/o Station Road, Janjgir,
Tahsil Janjgir District Janjgir Champa Chhattisgarh

2 - State Of Chhattisgarh Through The Collector Janjgir, District Janjgir Champa
Chhattisgarh

... Respondent(s)

For Appellant (s)	: Shri Pravin Dhurandhar, Advocate
For Respondent No.1	: Shri Sandeep Patel, Advocate
For State	: Shri Santosh Soni, Govt. Adv.

{{Hon'ble Shri Justice Sachin Singh Rajput}}

Judgment on Board

25/09/2026

Heard on admission.

This appeal under Section 100 of the Code of Civil Procedure, 1908 (for short 'CPC') assailing legality, correctness and judicial propriety of the judgment and decree dated 05/12/2018 passed by the Civil Judge, Janjgir-Champa, CG (for short '1st appellate Court'). By the impugned judgment and decree, learned 1st appellate Court dismissed the appeal filed by the appellant under Section 96 of

CPC and affirmed the judgment and decree dated 31/07/2018 passed by the 1st Civil Judge, Class-I, Janjgir-Champa in civil suit No.49-A/2016.

2. The appellant is the plaintiff, respondent No.1 is the defendant No.1 and respondent No.2 is the defendant No.2 before the learned trial Court. Thus, they are hereinafter referred to as their status before the trial Court.

3. The plaintiff has filed a suit for declaration of title in respect of the suit property which is comprised in piece of khasra No.3739/5 area 0.08 acres situated in P.H.No.41, Tahsil-Janjgir, District – Janjgir-Champa upon which the defendant No.1 constructed a house. The plaintiff has also claimed a relief that the house constructed by defendant No.1 on the suit property be demolished and vacant possession be delivered to him.

4. According to the plaintiff, he is the title holder of the suit property. Demarcation was also conducted by him. It is an open land which has been properly described in schedule-I. On 08/08/2013, the defendant No.1 without any title over the suit property started digging the foundation and when objected, the defendant No.1 showed him the registered sale deed dated 05/08/2013 *inter alia* stating that the suit property was purchased by him and thereafter constructed a boundary wall whereas the defendant no.1 had no title of possession over the suit property. The property which was said to be of one Vishnu Prasad is a part of khasra No.3740/9 and not a part of 3739/5. During pendency of the suit, defendant No.1 has constructed a two storied building. Thus, the suit for declaration of title and delivery of vacant possession after demolition of house was claimed.

5. Written statement was filed by defendant No.1 while denying the averments of the plaint, pleaded that defendant No.1 has purchased the property comprised in part of khasra No.3740/9 vide registered sale deed dated 05/08/2013 for a sale consideration of Rs.225000/- and by virtue of sale deed, he obtained the title and possession of the suit property and thereafter, a boundary wall was constructed. At that time, the plaintiff had not raised any objection. The defendant No.1 has purchased the property and constructed a house in his own property and he is in possession of the same. Therefore, no relief can be granted.

6. Following issues have been framed by the learned trial Court on the basis of above broad pleadings-

“1. Whether the plaintiff is entitled to obtain a declaration of title against the defendant No.1 in respect of the suit land P.H.No.-41, R. N.Man.-Janjgir, Khasra No.-3739/Area 0.08 acre, Village Janjgir, Tehsil Janjgir?

2. Whether the plaintiff is entitled to get the possession of the vacant land by demolishing the house built on the suit land P.H.No.-41, R.N.Man.- Janjgir, Khasra No.-3739 / area 0.08 acre, Village Janjgir, Tehsil Janjgir?

7. The plaintiff examined as many as two witnesses and exhibited 17 documents and the defendant No.1 examined as many as three witnesses and exhibited 8 documents.

8. Learned trial Court found issue Nos.1 and 2 as not proved and ultimately dismissed the suit. Challenging the same, the first appeal under Section 96 of CPC filed by the plaintiff was also dismissed by the learned 1st appellate Court vide impugned judgment and decree.

9. Learned counsel for the appellant vehemently argued that the learned trial Court as well as the 1st appellate Court committed an error of law in dismissing the suit as well as the appeal filed by the plaintiff. Both the Courts below have not appreciated the evidence brought on record by the plaintiff to its proper perspective. He submits that the dispute in this case is with regard to identity of the land. For ascertaining the actual position of the suit property, an application under Order 26 Rule 9 CPC was filed by the plaintiff before the learned trial Court which in the year 2013 itself was dismissed. However, that order was not put to challenge by the appellant and the 1st appellate Court also observing the same that the order of appointment of the Commissioner as rejected by the learned Civil Judge has not been put to challenge, thus no relief can be granted and ultimately dismissed the appeal. He submits that in order to ascertain the actual location and identity of the suit property, learned Courts have ample power to issue commission for inspection of the suit property. Even if the appellant has not

challenged the order rejecting his application for appointment of the Commissioner for inspection of the suit property, this Court in its second appeal can pass such an order for demarcation of the suit land for ascertaining the location and identity of the suit property. He places reliance on the judgment of Hon'ble Supreme Court in the case of **Haryana Waqf Board vs. Shanti Sarup and ors, (2008) 8 SCC 671**. Thus, he submits that the substantial question as proposed in the memo of appeal as to whether the learned Courts below were justified in rejecting the application for commission or himself ought to have proceeded for issuance of commission by appointing a Commissioner to ascertain the location and identity of the land must have been proved. Thus, the appeal may be admitted.

10. Shri Sandeep Patel supports the impugned award.

11. Learned State counsel submits that the dispute is between the plaintiff and the defendant No.1 and the State is a formal party.

12. Heard learned counsel for the parties and perused the record.

13. The plaintiff brought a suit for declaration of title and possession after demolishing the house constructed according to him over the suit property whereas the defendant denied the assertion *inter alia* on the ground that he has purchased the suit property by virtue of sale deed. According to the plaintiff, the suit property is comprising in khasra No.3739/5 whereas the defendant's claim is that the suit property purchased by him is in piece of khasra No.3740/9 and he is in possession of the suit property. It is well settled position of law that the plaintiff is required to establish its case on its own merits and cannot succeed on the weakness of the defendant. Thus, the burden to prove issue Nos.1 and 2 was upon the plaintiff to prove the same in accordance with law by cogent and prudent evidence. A submission has been made on behalf of learned counsel for the appellant that though the application was earlier rejected which also formed basis for rejection of the first appeal, this Court has ample power to pass an order of issuance of commission and substantial question of law involved. For this, he placed reliance on the judgment of Hon'ble Supreme Court in the case of **Haryana Waqf Board** (supra).

14. In the case in hand, the suit was filed in the year 2013 and the application for commission was rejected in the year 2013 itself which was never subject to challenge meaning thereby plaintiff accepted the order of the Civil Judge and wanted to prove its place by other evidence. The issue Nos.1 and 2 are required to be proved by the plaintiff. It is also settled position of law that the Courts would not do any exercise to collect the evidence in favour of the plaintiff which the plaintiff could have done by virtue of his own evidence. Thus, the case law cited in the given facts circumstances of the case does not come to rescue the plaintiff.

15. The issue nos.1 and 2 are with regard to finding of fact. After meticulous examination of evidence and documents available on record, issue Nos.1 and 2 have been decided against the appellant/plaintiff as not proved. These findings of fact recorded by the learned Civil Judge have been duly approved by the learned 1st appellate Court. It is well settled position of law that in order to admit an appeal under Section 100 of CPC, involvement of substantial question of law is *sine qua non* as held by the Supreme Court in the case of **Sir Chunilal vs. Mehta and Sons Ltd. vs. Century Spinning and Manufacturing Co. Ltd.** reported in **AIR 1962 SC 1314** and in the matter of **Chandrabhan (Deceased) through LRs & Ors. vs. Saraswati & Ors.** reported in **2022 SCC OnLine SC 1273**.

16. Thus, after faithful scrutiny of the evidence, this Court is unable to accept the submission made by learned counsel for the appellant. No substantial question of law arise for consideration. Appeal thus fails and is hereby dismissed. Decree be drawn. Parties to bear their own cost.

Sd/-

(Sachin Singh Rajput)
JUDGE

Deepti

