

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No. 112 of 2016

Smt. Sharda Soni, wife of Surendra Kumar Soni, aged about 50 years, R/o village Balodabazar, Tahsil Balodabazar, District Baloda Bazar – Bhatapara (C.G)

... **Appellant**

Vs.

Ramesh Kumar, son of Shatruhan Lal Agrawal, aged about 54 years, r/o Village Balodabazar, Tahsil Baloda Bazar, District Baloda Bazar – Bhatapara (C.G)

... **Respondent**

For the applicant : Mr. C. K. Kesharwani, Advocate

Hon'ble Shri Justice Goutam Bhaduri

JUDGMENT ON BOARD

01.03.2016

1. The appeal is against the order dated 01.01.2016 passed in Civil Appeal No.H24-A/2015 by the First Additional District Judge, Balodabazar, whereby the judgment and decree dated 07.04.2015 passed by the Second Civil Judge, Class-II in Civil Suit No.124-A/2013 (Ramesh Kumar Vs. Smt. Sharda Rani) has been affirmed. The instant appeal is by the defendant against the concurrent findings of facts recorded by both the Courts below.
2. The facts as would reveal that the plaintiff Ramesh Kumar had filed a suit for declaration and permanent injunction. It was pleaded that the defendant claims to be owner of land bearing Khasra No.1173/10 admeasuring 0.014 hectares which is situated at Baloda Bazar within the Baloda Bazar Nagar Palika at ward No.2. The plaintiff had purchased the land bearing Khasra No.1173/9 admeasuring 0.014 hectares and it was surrounded by the boundary wall and adjacent to it, the appellant herein raised the superstructure. It was

stated that while the boundary wall was constructed, it was never objected by the defendant. Subsequently the plaintiff had received a notice from Tahsil court Baloda Bazar that appellant(defendant) Smt. Sharda Soni had filed an application u/s 250 of the Land Revenue Code to get the possession of the land. Therefore, it was stated that when the plaintiff entered his appearance it came to know that the defendant has filed such proceedings before the Tahsildar to obtain possession of the land of 360 square kadi on the basis of the demarcation. The plaintiff denied the allegation and it was stated that the plaintiff has never encroached upon the land of defendant. It was further stated that neither the land was demarcated properly nor the plaintiff has encroached upon any land of the defendant. It was also stated that after considering the reply, the Tahsildar had dismissed the plea of the defendant alleging encroachment by plaintiff Ganesh Kumar. The said order was further subject of appeal before the SDO which too was dismissed.

3. The plaintiff further stated that the defendant though was claiming right over his title on the basis of demarcation but actually the demarcation had never taken place, neither the plaintiff was given notice of any demarcation nor any presence was recorded while the Panchnama was prepared and consequently even if any proceedings were drawn they were against the provisions of Section 129 of the M.P. Land Revenue Code. It was stated that the defendant does not have any proprietary right over the disputed land in question and only wants to dispossess the plaintiff and demolish the boundary wall of the plaintiff, therefore, the injunction was also prayed for.
4. The defendant in its reply contended that she is the owner of

the land bearing Kh.No.1173/10 admeasuring 0.014 hectares and the land was recorded as an agricultural land. It was further stated that the defendant is in possession of the western part of the land and the defendant after construction of her house has encroached upon the part of land which belonged to plaintiff. It was also stated that in revenue proceedings the plaintiff was branded as an encroacher which came to her notice after demarcation was carried out on 13.12.2000. It was, therefore, pleaded that the plaintiff do not have any right to file the civil suit.

5. The learned trial Court after evaluating the pleadings and evidence allowed the suit of the plaintiff for declaration and injunction. Subsequently on an appeal being preferred by defendant, the appellate Court by order dated 10.08.2011 remanded the case with a direction to demarcate the disputed land by Commissioner and it was further directed that demarcation be carried out by the Patwari or the Revenue Inspector as Commissioner. Subsequent to such remand, on the basis of the report of Commissioner, the trial Court again passed the decree on 07th April 2015 in favour of plaintiff which was further subject of appeal in H24A/2015. The appellate Court too confirmed the finding of the trial Court by affirming the demarcation report. Therefore, the second appeal.
6. Learned counsel for the appellant would submit that there are two demarcation reports existing in this case and the revenue inspector R.K.Verma who was examined as witness had carried out both the demarcation reports and the second demarcation which was carried, it was by the same person and the fact of encroachment has been proved by the plaintiff, therefore, the judgment and decree is wrong.

7. Perused the judgment & decree of the trial Court as also the appellate Court. The appellant has also filed the demarcation report along-with the statement of Revenue Inspector R.K. Verma. Also perused the records.
8. Perusal of the record would show that by order dated 22.09.2011 the trial Court had issued the memo of appointment of commissioner and subsequently on 04.10.2012 in order to demarcate the disputed land the memo was issued. Consequently R.K.Verma had demarcated the subject land and submitted his report. The said commissioner R.K. Verma was also examined before the Court. The copy of deposition is filed in this case as Annexure P-5. Since both the parties claim their right over the land on the basis of demarcation, the demarcation report which is filed along-with the statement is also perused. The defendant contended that the plaintiff has encroached 360 Square Kadi whereas the plaintiff has contended that he is in possession of his own land. In this context, the evidence of Revenue Inspector R.K. Verma alongwith report on perusal would show that he had carried demarcation of lands bearing Khasra Nos.1173/9 & 1173/10. Both the lands are adjacent to each other. The site map (*Najari Naksha*) is also perused and in the cross examination, it is specifically stated and admitted by the Commissioner that according to site map prepared, the parties were in possession of their own land, thereby, it was suggested that they have not encroached upon the land of each other. It is also stated that the defendant appellant had constructed his own house and the suit property was an open land, therefore, according to site map and the demarcation report, which on being considered along-with the statement it would reveal that the plaintiff and defendant

are in possession of their own lands respectively. According to the findings of both the courts below the respective parties are in possession of their own lands which is a finding of fact on the basis of demarcation report carried out at the instance of the court. Consequently on a suit filed by the plaintiff wherein it was prayed that the plaintiff be restrained by permanent injunction to interfere with the possession of plaintiff cannot be faulted.

9. In view of the foregoing discussion, no substantial question of law arises for consideration in this appeal. In the result, the appeal has no merits and it is dismissed at the motion stage itself.

**Sd/-
GOUTAM BHADURI
JUDGE**