

**HIGH COURT OF CHHATTISGARH, BILASPUR****SA No. 238 of 2015**

Ganesh Prasad, son of Banshidhar Agrawal, aged about 68 years resident of Shivrinarayan, Tahsil Nawagarh, District Janjgir-Champa(Chhattisgarh. ... **Appellant**

**Versus**

1. Nathmal Agrawal, aged about 50 years, s/o Satyanarayan Agrawal, Chartered Accountant, R/o Shivrinarayan, presently resident of near Gayatri Mandir, Vidya Upnagar, Bilaspur (Chhattisgarh).
2. State of Chhattisgarh, through the Collector, Janjgir-Champa, District Janjgir Champa ( Chhattisgarh) ... **Respondents**

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| For the Appellant    | : | Mr. Saurabh Sharma, Advocate   |
| For Respondent No. 1 | : | Mr. B.P. Sharma, Advocate.     |
| For the State/R-2    | : | Mr. Anant Bajpai, Panel Lawyer |

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**Hon'ble Shri Justice Goutam Bhaduri****Judgment on Board****02.03.2016**

1. The instant appeal is against the order dated 06.04.2015 passed in Civil Appeal No. 12-A/2015 by the Second Additional District Judge, Janjgir Champa whereby the judgment and decree passed on 31.03.2014 in Civil Suit No.111A/2007 (Ganesh Prasad Vs. Natmal Agrawal) passed by the Second Civil Judge, Class-II in Civil Suit No.69-A/2009 has been affirmed.
2. The instant appeal is by the plaintiff Ganesh Prasad Agrawal against the concurrent finding of fact of both the courts below. The suit was filed by Ganesh Prasad Agrawal, the present appellant. As per the pleadings, the plaintiff contended that he is owner of the land bearing Khasra No.587/1 and in the eastern side of the said land Khasra

No.587/2 and 588/1 situates which is the land of defendant No.1 Nathmal. The suit land has been shown in Schedule-A of the plaint. It was the case of plaintiff that the plaintiff had raised superstructure over the land along-with house and shops and the adjacent land bearing Khasra Nos. 587/2 and 588/1 admeasuring 0.90 acres was purchased by one Vishwa Dayal and defendant Natmal from Ganesh Son of Hanuman Prasad. It was further pleaded that though the area of 0.90 acres was purchased but actually in the spot the land was less and only 0.80 acres of land was available. It was further pleaded that when defendant No.1 Natmal Agrawal, got the disputed land demarcated on 18.11.1999, it was found that the plaintiff is in possession. It was also stated that while the demarcation was carried out it was found that instead of 0.45 acres of the land which was purchased by Natmal Agrawal along with Vishwa Dayal, only 0.34 acres was available on the spot which led to a dispute and when the defendant tried to encroach upon the land of the plaintiff, proceedings u/s 145 Cr.P.C. was initiated and the demarcation was further carried out on 10.06.2000 contrary to survey rules and on the basis of such demarcation report, the defendant wanted to take over the land of the plaintiff.

3. In reply, the defendant denied allegations of the plaintiff and a counter claim was also made. It was stated that the plaintiff has encroached upon the land belonging to the defendant. It was further stated that the defendant had purchased the land along-with one Vishwa Dayal after demarcation from one Ganesh Prasad and the said land of 0.90 acres was got divided in between the parties and both Vishwa Dayal and defendant partitioned the suit property

equally. After such partition the defendant contended that he mutated his name in respect of 0.45 acres that is half of the land which is comprised in Khasra No.587/2 and 588/1. It was further stated that when the demarcation was carried out on 14.11.1999 it was found that the plaintiff has encroached upon a part of 0.11 acres of land belonged to the defendant. The defendant further stated that the plaintiff assured to remove construction which was made and encroached upon the land of the plaintiff but it was not done and when the defendant wanted to sell the said land to one Vishnu Sharma, the encroachment was not removed which led to police report. The police on enquiry found that the land has been encroached by the plaintiff as such the counter claim was made that encroachment of plaintiff from Kh.No.582 & 588/1 admeasuring 0.11 acres be removed. Consequently it led to filing of the suit.

4. The learned trial Court after evaluating the pleadings and evidence came to conclusion that the plaintiff has encroached upon the part of land and decreed the counter claim in favour of defendant while the suit filed by the plaintiff for declaration and injunction was dismissed. Such judgment and decree was further assailed before the court of Appeal and the appellate Court also affirmed such order of the trial Court. Therefore, the second appeal.
5. Learned counsel for the appellant would submit that the decree which is based on demarcation report cannot be relied upon as it was not statutorily protected, therefore, the plaintiff had all the right to challenge such demarcation. It is further submitted that according to witness D.W.3 while demarcating the land neither the scale was used nor any

fixed Chanda was also used, therefore, the demarcation itself loses its efficacy. He further submits that when the matter was agitated before the first appellate Court, the first appellate court should have exercised its appellate power to look into it and such illegality should have been set aside. He further submits that there is specific allegations that the demarcation is not correct and consequently such demarcation cannot be read in favour of the defendant to allow the counter claim and therefore, the appeal be admitted.

6. Perused the judgment and decree of the court below and the evidence. Ganesh Prasad, the plaintiff in this case was examined as P.W.1. It is stated on pleadings and evidence is also adduced to prove that the plaintiff is owner of the land bearing Khasra No.587/1 and adjacent lands bearing Khasra No.587/2 and 588/1. It was further stated by the plaintiff that when defendant Nathmal had demarcated the land, at that time, it came to his notice that his land is less than 45 decimal. It was pleaded by the plaintiff that the records of Khasra No.587/2, 588/1 which is stated to be purchased by the defendant Nathmal alongwith Vishwa Dayal shows the land admeasuring 0.90 decimal but according to site map, 0.80 acres was available on the spot. It is further stated that Vishwa Dayal had constructed his own house over 0.45 decimal of land i.e., half of the land.
7. As per the defendant, he purchased the land bearing Khasra No.587/2 & 588/1 along-with Vishwa Dayal which was of area 0.90 acres. Further evidence is on record that after such purchase, Vishwa Dayal and defendant Nathmal Agrawal partitioned the land equally of 45 decimal and Vishwa Dayal

had constructed his house over such 45 decimal and 45 decimal remained with defendant No.1. Now reverting to the statement of P.W.1 Ganesh Prasad who was the plaintiff he in his cross examination, has admitted that in the year 1999 the disputed land was demarcated in the presence of both the plaintiff and defendant. The demarcation report is marked by plaintiff as Ex.P-1.

8. Bare perusal of Ex.P.1 (demarcation report) at paras 1, 3, 4 & 6 of it says that plaintiff Ganesh had encroached upon the part of land of defendant which is bearing Khasra No.587/2, 588/1 of 475 square kadi and 140 square kadi. The plaintiff though had stated that the demarcation is not correct as it was stated that it was not outcome of legal procedure but this fact cannot be ignored that the plaintiff has himself produced the document which is a demarcation report and marked it as Ex.P.1 as his document. The plaintiff had further admitted that against such demarcation report which shows that the plaintiff has encroached upon some part of land of defendant has not been subject of appeal.
9. Therefore, as per Ex.P-1, the plaintiff himself had encroached upon the land of defendant, thereby the averments of counter claim was admitted by the plaintiff. The report further en-grafts that while Ex.P-1 was prepared, the plaintiff himself was present on the spot along-with defendant. Therefore, this plea cannot be entertained that the said demarcation report is not correct. Admittedly there is no challenge to such demarcation report. So, in failure to challenge the same before the appellate Court, such demarcation report has reached its finality. The caption of demarcation would show that the demarcation proceedings

were carried out in pursuance of proceeding u/s 145 of Cr.P.C. Consequently, one demarcation report having been filed in this case and it has been exhibited by the plaintiff, the plaintiff could not go out of it on the principles of acquiescence and waiver. The plaintiff further had admitted that Nathmal and Vishwa Dayal had jointly purchased the land, the land was admeasuring 0.90 acres and P.W.2 Laxman had admitted the fact that the land of defendant was owned by defendant No.1 Nathmal and Vishwa Dayal jointly. So according to the evidence adduced by the plaintiff, the land ad-measuring 0.90 acre was purchased by defendant jointly and thereafter the land was divided equally between them to 0.45 acre each and another person had constructed his house over such part of land devolved on him and remaining part remained with defendant which admeasures 0.45 acres.

10. Therefore, both the trial court and the appellate Court have believed the document of demarcation report which was filed by the plaintiff himself vide Ex.P-1 and came to conclusion that the plaintiff himself has placed on record that he has encroached upon some part of the land of defendant. So if the plaintiff having known the fact has accepted and exhibited the document, the plaintiff cannot go back from his own document and cannot set up a new plea before this Court that such document was not legal and outcome of statutory proceeding. Consequently the findings of facts of both the Courts below in respect of demarcation report cannot be faulted with. Therefore, in my opinion, no substantial question of law arises for consideration in this appeal.

11. In the result, the appeal has no merit and it is dismissed at the motion stage itself.

**Sd/-  
GOUTAM BHADURI  
JUDGE**

Rao