

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Misc. Appeal No. 29 of 2016**

Jeevan Lal Badwani S/o Shri Rakhiyamal Badwani, R/o Fafadih, Raipur, Tahsil And District Raipur, Chhattisgarh, Civil & Revenue District Raipur, Chhattisgarh
(Plaintiff)

---- Appellant**Versus**

1. Mohammed Ali Farooki S/o Late Farookh Ali, Aged About 45 Years R/o Baijnathpara, Raipur, Tahsil And District Raipur, Chhattisgarh
2. Najma Khatun W/o Mohammed Ali, Aged About 40 Years R/o Opposite Vrindavan Complex, Maudahapara, Raipur, Chhattisgarh(Defendants)

---- Respondents

For Appellant : Shri B.P. Sharma, Advocate
None for the Respondents though served as per office note dated 26.10.2016.

HON'BLE SHRI JUSTICE CHANDRA BHUSHAN BAJPAI**Order on Board****04/11/2016**

1. The appellant has preferred the instant Misc. Appeal under the provisions of Order 43 Rule 1 (u) of the Code of Civil Procedure, 1908 (in brevity the Code) against the judgment dated 27.1.2016 passed by the 4th Additional District Judge, Raipur (CG) in Civil Appeal No. 19A/2013 whereby and whereunder the learned appellate Court has remanded the matter to the trial Court with a direction that Commissioner be appointed for demarcation of the land of the plaintiff and defendants and after receipt of the demarcation report, dispose of the matter on its merits.

2. Brief facts are that the appellant/plaintiff had filed Civil Suit No.19A/2009 before the 9th Civil Judge, Class-II, Raipur for grant of permanent injunction against the respondents from making any obstruction, further for vacant possession of the suit land and after dispossessing the respondents/defendants to grant compensation from 19.8.2002 till possession @ Rs.25/- per day. The said suit has been instituted on 18.12.1998. The trial Court vide its judgment and decree dated 14.3.2013 allowed the suit and held that the plaintiff/appellant is entitled to get vacant possession of the suit land as shown in the map annexed along with the plaint shown in yellow colour with marking अ, ब, स, द. The trial Court further directed that the defendants be restrained permanently from interfere in the suit land in the title of plaintiff/appellant. Also, made the suit map annexed with the plaint as the part of the decree and further gave other relief vide para 34 of the judgment. Against the said judgment and decree the respondents preferred Civil Appeal under Section 96 of the Code. The learned appellate Court held that the demarcation report Ex. P/2 was prepared by one Tularam Sahu, retired Revenue Inspector, Dharsiva (wrongly mentioned his surname as Sahu as the said witness is Tularam Pal shown as plaintiff/ witness No.3, mentioned as Tularam Pal in the judgment of trial Court at para 6). But he does not come under the ambit of Public Servant being retired. It was required to obtain a demarcation report from the working Revenue Inspector and held that the reliance placed on the said report is not proper.

With this, set aside the judgment and decree passed by the trial Court and remanded the matter with a direction that the land of plaintiff and defendants be demarcated by appointing Commissioner and after obtaining the demarcation report, the matter be disposed of on its merits.

3. The respondents are not represented though served. The matter is listed on admission.

4. Learned counsel for the appellant submits that on the basis of documents annexed on behalf of the appellant, the matter may be disposed of finally at the motion stage itself.

5. In view of the above submission of learned counsel for the appellant, heard the matter finally at the motion stage itself.

6. Learned counsel for the appellant draws attention of this Court towards the judgment and decree passed by the trial Court and would submit that the demarcation report Ex. P/2 was prepared by the plaintiff/witness No.3 Tularam Pal on 8.10.2009. Subsequently, the said witness has retired on 31.1.2010. On the date of preparation of the said demarcation report, he was working as a Revenue Inspector, Dharsiva as it is apparent from his statement as PW3 before the trial Court in para 1 and 2. He would further submit that after perusal of Ex. P/2, it goes to show that the said witness has prepared the demarcation report on 8.10.2009 and also prepared spot map, panchanama and submitted the copy of Khasra Panchshala in relation to year 2008-

2009. The appellate Court erred in law by not appreciating the above facts, hence, the judgment passed by the appellate Court for remanding the matter for reconsideration after appointment of Commissioner for demarcation of the land of the plaintiff and defendants and thereafter, to dispose of the matter on its merits, is bad in law as undisputedly the said Revenue Inspector was working on the date of demarcation and he retired on 31.1.2010, means after 3 months and 23 days. Any Public Officer/Revenue Officer as defined is treated as officer assigned with the work as per rules immediately till before his retirement.

7. Learned counsel for the appellant would argue that the judgment passed by the appellate Court may be set aside and the first appellate Court may be directed to dispose of the First Appeal on its merits pending before it.

8. Perused the documents annexed, copy of evidence of PW3 Tularam Pal, judgment and decree of the trial Court and the judgment passed by the appellate Court.

9. On due consideration, it appears that the matter has been remanded solely on the ground that Ex. P/2 was prepared by a retired Revenue Inspector and he was not a Public Servant therefore, his report cannot be accepted. On perusal of the statement of PW3 Tularam Pal, Ex. P/2 demarcation report along with the map, copy of Khasra Panchshala, panchanama, judgment passed by the trial Court, wherein the said report was appreciated, it appears that Ex. P/2 dated 8.10.2009 has been

prepared by PW3 Tularam Pal under the directions of higher officials, i.e. Additional Tehsildar, Dharsiva on the date of directions received. On the date of demarcation and preparation of the said report along with the annexed document, PW3, Tularam Pal was well working as Revenue Inspector, Dharsiva and thereby, he was competent to demarcate any land and prepare the report.

10. Ex.P/2 cannot be considered as a demarcation report prepared by a retired Revenue Inspector though at the time of recording his statement the said Revenue Inspector was retired, but on the date of preparation of the said report, he was working as a Revenue Inspector, Dharsiva.

11. Upon consideration of the entire facts, it appears that the appellate Court has committed an error of fact holding that the report is prepared by a retired Revenue Inspector and hence cannot accepted. The judgment of appellate Court setting aside the judgment and decree of the trial Court and order of remand is bad in law which requires interference.

12. Consequently, the judgment passed by the 4th Additional District Judge, Raipur in Civil Appeal No.19A/2013 dated 27.1.2016 is set aside. The said Civil Appeal is restored to its original number. The appellate Court is directed to hear the said civil appeal after issuing notice to the respondents as required under the law and dispose of the said Civil Appeal on the basis of merits as expeditiously as possible.

13. The present appellant/ respondents with the First Appeal are directed to remain present before the appellate Court either in person or through their counsel on **29th November, 2016** to take part in the proceeding of said Civil Appeal. The present appellant may file a copy of this order before the appellate Court for compliance and for summoning the record of the court below as required.

14. Registrar (Judl.) is directed to send the copy of this order to the appellate Court as well as the trial Court through usual and fax mode immediately.

15. The appeal is disposed of.

16. No order as to cost.

Sd/-

(Chandra Bhushan Bajpai)
JUDGE