

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No. 184 of 2014

- Santosh Dhuri S/o Late Aghnuram, Aged About 43 Years R/O Lodhipara, Old Sarkanda, Bilaspur, Civil & Revenue Distt. Bilaspur (C.G.)

---- Appellant

Versus

1. Sanjay Awasthi, Aged About 42 Years R/O Nutan Colony, P.S. Sarkanda, Bilaspur (C.G.)
2. Mohan Patel S/o Dhaniram, Aged About 40 Years R/O Arvind Nagar, Jorapara, P.S. Sarkanda, Bilaspur (C.G.)
3. Rashmi Awasthi W/o Sanjay Awasthi, Aged About 41 Years R/O Nutan Colony, P.S. Sarkanda, Bilaspur (C.G.)
4. Premlal Patel S/o Dhaniram Aged About 51 Years R/O Baima Nagoi, P.S. Sarkanda, Tah. And Distt. Bilaspur (C.G.)
5. Keshri Kumar Swanrkar S/o Jeevdhan, Aged About 55 Years R/O Back Side Of Muskan Bhawan, Gaya Vihar, Bangali Para, P.S. Sarkanda, Bilaspur (C.G.)
6. State Of Chhattisgarh Thru- Collector, Bilaspur (C.G.)

---- Respondents

For Appellant : Shri Neeraj Choubey, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

30/06/2016

1. The plaintiff's suit for permanent/mandatory injunction for demolition of boundary wall and further that the defendants be restrained from interfering the suit land came to be dismissed by the trial Court with a finding that the plaintiff has failed to prove that the defendants have encroached upon their suit land bearing Khasra No.443, Area .75 acre. It has also been held that the plaintiff has submitted the inspection report demarcated by the Revenue Inspector (Ex. P-2) but it was not duly proved to be prepared by the Revenue Officer within the meaning of Section 129 of the Chhattisgarh Land Revenue Code, 1959 and the Revenue Officer was also not examined to prove the said report.

2. On appeal being preferred, the first Appellate Court concurred with the finding of the trial Court and dismissed the first appeal and the appellant/plaintiff preferred second appeal under Section 100 of the Code of Civil Procedure (for short 'CPC').

3 Learned counsel for the appellant would submit that the application under Order 26 Rule 9 was wrongly rejected by the trial Court by order dated 06-05-2008 and the first Appellate Court has also not considered the said ground in its proper perspective.

4. I have heard on the point of substantial question of law.

5. The plaintiffs claimed ownership title over the suit land bearing Khasra No.443 area 0.75 decimal of land and pleaded that the defendants have encroached and constructed boundary wall upon some part of the land and thereby interfering with their peaceful possession.

6. The defendants have claimed that the suit land in party Khasra Nos. 445/12 and 446/16, the trial Court on application dated 06-05-2008 rejected that application holding that the owner of khasra No.445/12 and 446/16 were not made party to the suit. Thereafter, the plaintiff submitted demarcation report vide Ex. P-2. The said report was rejected by the trial Court holding that the demarcation under Section 129 can be made by the Revenue Officer. Ex. P-2 Report was made by Revenue Inspector and not by the Revenue Officer as required under Section 129 of the C.G. Land Revenue Code. The first appellate Court has also given the valid reason for not accepting the plea of the plaintiff in this regard. The appellant/plaintiff after rejection of his application,

has submitted the inspection report in which the said inspection report was not duly proved in accordance with law. Therefore, the trial Court and the Appellate Court have disbelieved that inspection report Ex. P-2.

7. After hearing learned counsel for the parties, in view of the aforesaid fact that the plaintiff has already got the land demarcated under Section 129 of the C.G. Land Revenue Code but he failed to prove the said report by adducing evidence, I do not find any substantial question of law for determination of this appeal. The appeal is accordingly dismissed as there is concurrent finding based on the material available on record leaving the parties to bear their own cost(s).

Sd/-

(Sanjay K. Agrawal)
JUDGE