

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No. 542 of 2015

- Smt. Gayatri Bai wife of Shri Manharan Lal, Aged About 58 Years Caste - Bramhad, Resident of Block Road, Takhatpur, District Bilaspur (Chhattisgarh) **Appellant**

Versus

1. Mahaveer Prasad son of Late Basant Lal, Aged About 49 Years Caste - Agrawal, R/o Village Barela, Tahsil Mungeli, District Mungeli (Chhattisgarh).....(Plaintiff)
2. State of Chhattisgarh through the Collector Bilaspur, District Bilaspur (Chhattisgarh).....(Respondent No. 2)

--- Respondents

For the appellant	:	Mr. Mirza Hafeez Baig, Advocate
For Respondent No.1	:	Mr. M. K. Sinha, Advocate
For the State/R-2	:	Mr. Anant Bajpai, Panel Lawyer.

Hon'ble Shri Justice Goutam Bhaduri

JUDGMENT ON BOARD

21.03.2016

1. The instant appeal is against the judgment & decree dated 31.07.2015 passed in Civil Appeal No. 139A/2014 by the VII Additional District Judge, Bilaspur (C.G) whereby the judgment and decree dated 28.07.2014 passed by the Civil Judge, Class-II, Bilaspur in Civil Suit No. 42-A/2010 has been affirmed. The appeal is by the defendant against the concurrent finding of fact recorded by both the courts below.
2. Brief facts of this case, as pleaded by the plaintiff, are that a civil suit was filed for declaration of title and possession that the suit land which was subsequently numbered as Khasra No.91/110 admeasuring 0.006 hectares as shown in plaint schedule-A was purchased by the plaintiff from defendant no.1 on 24.11.1990 for a sale consideration of Rs.4500/-.

The said land was in size of 15 x 40 i.e., 600 sqft., wherein the defendant had left over a land admeasuring 40 x 3 sqft for approach to the land purchased by the plaintiff since the said land which was purchased by the plaintiff was situated behind the superstructure owned by the defendant. It was pleaded that the land of 40 x 3 which was left over by defendant for approach of the plaintiff, all of a sudden, was obstructed by the defendant by raising superstructure and when it was objected, the defendant contended that he is in possession of the land from the beginning. In order to remove such encroachment, the plaintiff approached the Tahsildar and the Tahsildar after the demarcation of the land held that the defendant had encroached upon the land which was left for approach to the land purchased by the plaintiff. Consequently, it was directed by the Tahsildar to remove the encroachment. Subsequently, the encroachment having not been removed, the civil suit was filed by the plaintiff for possession of the said land.

3. The defendant denied the contention of the plaintiff. It was stated that no such agreement was arrived at between the plaintiff and defendant to leave certain part of the land as an approach road to the plot purchased by the plaintiff and if such statements are contained in the sale deed, it was fabricated. It was further stated that the demarcation if so made was done with the connivance of Patwari and the Revenue Inspector and the defendant is in possession of the said disputed land of 40 x 3 sqft for the last 21 years and therefore the defendant contended that the suit be dismissed.
4. The trial Court after evaluating the evidence came to a finding that the defendant has encroached upon the part of

land which was agreed to be left over according to the sale deed which was meant for approach road to the land purchased by the plaintiff and the said land stood behind superstructure owned by the defendant. It was further held that since the land which was left over as an approach road was adjacent to the government land consequently it was held that the defendant has encroached upon the land and it was directed that the encroachment be removed and the plaintiff be allowed to use the land as an approach road. Against such finding the first appeal was filed. The first appellate court also dismissed the appeal. Therefore, the second appeal.

5. Learned counsel for the appellant would submit that the demarcation report alongwith Panchnama so placed before the trial Court marked as Ex.P-1 & P-2 cannot be admitted in evidence as the Revenue Inspector, who prepared the map was not examined. He further submits that the land so situated was adjacent to the government land and in fact, the Government has encroached upon the road and not the defendant, therefore, the findings so arrived at by the both the courts below are perverse and hence, the appeal be admitted on the proposed substantial questions of law.
6. Perused the judgment and decree, pleadings and evidence placed before the trial Court.
7. Perusal of the record would show that the sale deed is marked as Ex.P-8 which purports that part of the land bearing Khasra No.91/104 admeasuring 0.006 hectares was purchased by the plaintiff from Gayatri Devi for a sale consideration of Rs.4500/-. On perusal of such sale deed, the property described at page No.2 would show that it was an open plot of 600 sqft (15 x 40 in size) and the boundaries

have been shown that towards north 40 x 3 sqft of road which was adjacent to Government land has been left for road. A perusal of the plaint map is also in conformity with such property shown in the sale deed which shows that towards east the house and shop of defendant exist and behind that plot of plaintiff exists and towards north, the boundary wall of civil court, Takhatpur exists and adjacent to the north from the boundary wall a road has been shown to be left over to make an approach to the land of defendant which is situated behind the plot of the plaintiff. Manoharlal who is examined as D.W.2, is an attesting witness to the sale deed. At para 6, he admitted the description given in the sale deed Ex.P.8 and also admitted the fact that the road of 3 x 40 ft., towards north existed which is shown in the sale deed. The sale deed Ex.P-8 is not under any challenge, therefore, the reading of sale deed Ex.P-8 along-with statement of D.W.2, cross examination would show the fact that the land admeasuring 40 x 3 ft., meant for road was left over which was made for approach for the plot purchased by the plaintiff.

8. The demarcation report and Panchnama are marked as Ex.P-1 & Ex.P-2 along-with the order of Tahsildar dated 25.10.2010 which is marked as Ex.P-7. On the basis of demarcation report Ex.P-1 & P-2, the Tahsildar came to a finding that the defendant has encroached upon the subject land and has obstructed the road, therefore, it was directed to remove such encroachment in a proceeding u/s 250 of the Land Revenue Code. Hence, prima facie it appears that admittedly there has been a proceeding for demarcation before the Revenue Officer and the Revenue Officer came to a finding of fact that the defendant has encroached upon

such subject land. In the statement of D.W.1 Gayatri Bai, it is stated that against such order she has denied the suggestion of appeal before the SDO and dismissal thereof. Ex.P-7 would show that the finding was recorded that while the demarcation was carried out the defendant was also present on the spot but she refused to sign the demarcation. Consequently as would be evident from the initial demarcation, the Tahsildar found it that the defendant has encroached upon the land and ordered for eviction of the defendant on an application filed by the plaintiff wherein this finding is recorded that the defendant has encroached and the same was subject of challenge in appeal before the SDO by the defendant/appellant herein and the same was dismissed. Consequently perusal of Ex.P-7 & P-8 would lead to show that the defendant had encroached upon the land of plaintiff which was made to be left over as an approach road to the plot of the plaintiff.

9. In the result, the concurrent findings of fact arrived at by both the courts below do not appear to be illegal and the said findings cannot be faulted with. No substantial question of law arises for consideration in this appeal. Accordingly, the appeal is dismissed at the motion stage.

Sd/-

**GOUTAM BHADURI
JUDGE**