

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

S.A. No. 25 of 2015

Dau Lal, S/o. Uday Ram, Caste-Satnami, aged about 58 years,
R/o. Village-Kukda, P.S. and Tahsil – Palari, District – Baloda
Bazar- Bhatapara (C.G.)

----Appellant

Versus

1. Lal Singh, S/o. Bisouha, Satnami, aged about 63 years, R/o.
Village-Kukda, P.S. and Tahsil – Palari, District Baloda-Bazar,
(C.G.)
2. State of Chhattisgarh, Through : Collector, Baloda Bazar-
Bhatapara, District – Baloda Bazar – Bhatapara (C.G.)

----Respondents.

For Appellant : Mr. H.V. Sharma, Advocate.
For Respondent No.1 : Mr. Awadh Tripathi, Advocate
For Respondent No.2/State : Mr. Anil S. Pandey, Govt. Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

05/02/2016

Heard on admission.

1. This is an appeal against the judgment and decree dated
29.11.2014, passed by 3rd Additional District Judge, Baloda Bazar,
District Balodabazar-Bhatapara, in Civil Appeal No.40-A/2012,
whereby the judgment and decree dated 13.07.2012, passed in
Civil Suit No.9A/2012, passed by Civil Judge, Class-I, Balodabazar,
was affirmed.

2. The appeal is by the defendant against the concurrent finding of facts.
3. Briefly stated facts was that the plaintiff, Lal Singh had filed a suit stating that he is the owner of the land bearing Kh. No. 321 admesuring 0.57 hectares, which was shown in the schedule-A of the plaint, wherein the defendant/appellant has encroached upon the part of the land admeasuring 145 x 8 kadi and therefore, the plaintiff be placed in possession of the same. It was the case of the plaintiff that the defendant had constructed boundary wall on his land bearing Kh. No. 321, and thereafter, has raised plinth and as such has encroached upon the land of Kh. No. 321.
4. The case of the appellant/defendant is that he has not encroached upon the land of Kh. No. 321 and he is in peaceful possession of the land bearing Kh. No.322 only, which was purchased from erstwhile owner, Punni Bai. Therefore, the suit be dismissed.
5. Learned both the Courts below after going through the demarcation report, which is placed on record came to a finding of fact that the defendant/appellant herein had encroached upon the part of the land, which bears Kh. No. 321, admeasuring 145 x 8 kadi (i.e. 1 Kadi = 9 inches) and decreed the suit for possession.
6. Learned counsel for the appellant would submit that demarcation report is not correct and the said demarcation report has not been relied upon by the Collector when the demarcation of land bearing Kh. No. 321 was made out. He would further submit that the suit simplicitor for possession would not lie in view of Section 250 of the

Land Revenue Code as the land, which is agricultural land, the possession should have been obtained by taking recourse under Section 250 of the Land Revenue Code, therefore, the entire finding of both the Courts below is perverse.

7. Upon hearing, in order to appreciate the argument advanced, the judgment as also the evidence and the pleadings are perused.
8. The ground which has been raised by the learned counsel for the appellant that the suit is barred has been raised for the first time before the Court. Neither the issue has been framed in this regard nor any pleading was made. On the contrary, it is the case of the plaintiff that defendant has raised plinth over the land, therefore, the very nature of the suit land is doubtful that whether it remains agricultural land or not. Consequently, the finding of fact as the construction has been raised over the part of the encroached land can not be disturbed on the mere submission of the appellant. Further more perused the documents, the demarcation report Ex.P/3, which is on record. The document, Ex.P/3, the demarcation report purports that the defendant has encroached upon the land 145 x 8 kadi by constructing the boundary wall over the land apart from his land bearing Kh. No.322. The demarcation report specifically shows that the defendant had encroached upon the land. This Ex.P/3, the demarcation report has not been challenged instead it has been stated in such report that while the demarcation was carried out, the defendant was also present. Therefore, the report of the Commissioner specifically records finding that the appellant has encroached upon the land. Such

finding of fact is further supported by the oral evidence. Taking into the evidence on record, the finding of facts of both the learned Courts below appears to be correct, which is based on the demarcation report and such finding of fact can not be stated to be perverse merely on the assertion of the appellant.

9. The finding, which was arrived at by both the Courts below are finding of fact and after perusal of evidence in my considered opinion it do not call for any interference. In a result no substantial question of law arises for consideration in this second appeal.
10. Accordingly, the appeal is dismissed at admission stage itself.

Sd/-
(Goutam Bhaduri)
JUDGE