

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No. 282 of 2016

Ramlal Aged About 70 Years (Age Not Mentioned In Impugned Judgment) S/o Shri Sukra Aheer, R/o Village Lodha-Amba, Tahsil- Kunkuri, Distt. Jashpur, Chhattisgarh

---- Appellant/Defendant

Versus

1. Lakhuram S/o Bhosho Ram, Caste- Rautiya, R/o Village- Tamasingha, Tahsil- Kunkuri, Distt. Jashpur, Chhattisgarh(Plaintiff)
2. State Of Chhattisgarh, Through The District Collector-Jashpur, Chhattisgarh(Defendant No.2)

---- Respondents/Plaintiffs

For Appellant/Defendant	:	Mr. A.N. Bhakta, Advocate
For State	:	Mr. Manish Nigam, Panel Lawyer

S.B.:Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

05/12/2016

Heard on admission.

1. This appeal has been filed by the appellant aggrieved by the judgment and decree dated 05.11.2015 passed in appeal whereby the learned Lower Appellate Court has affirmed the judgment and decree of the trial Court granting decree in favour of respondent/plaintiff.

2. The respondent/plaintiff filed a suit for declaration of title and possession in respect of the land in dispute on the pleadings *inter alia* the disputed land comprised in Khasra No.564 of Village Tamasingha is in his ownership and title and defendant/appellant herein, has encroached upon a part of land. The appellant, in his written statement, denied allegations and stated that he has not encroached upon any

part of the land of the plaintiff and possession, if any, is on a Government land comprised in Khasra No.513 and not on the land of the plaintiff.

3. After framing of issue, learned Trial Court recorded a finding of fact that the defendant/appellant herein, encroached upon a part of land comprised in Khasra No.564 and the title of the plaintiff being undisputed, he was entitled to a decree for appropriate declaration of title and possession. Aggrieved by the judgment and decree of the trial Court, the appellant preferred an appeal which has also been dismissed.

4. Learned counsel for the appellant argued that the Courts below committed gross illegality in recording a finding of encroachment by the appellant over the land comprised in Khasra No.564 on the basis of oral evidence of the plaintiff and the demarcation report (Ex.P/2) which has not been duly proved and therefore, legally inadmissible. It is also submitted that the defendant has led evidence to prove that a case of encroachment on Government land comprised in Khasra No.513 was initiated against him, in which, fine was also imposed. These two material evidence on record have not been properly appreciated by the learned Courts below and therefore, this appeal involves substantial questions of law whether the panchnama (Ex.P/2) is legally admissible and whether the Courts below were justified in ignoring the relevant oral and documentary evidence of appellant having been found in possession of Government land comprised in Khasra No.513.

5. Both the Courts below relied upon the oral and documentary evidence which included demarcation report (Ex.P/2) and Panchnama report (Ex.P/4) bearing signature of the appellant that the defendant has encroached upon a part of land comprised in Khasra No.564 of Village Tamasingha. This concurrent finding of encroachment is based on as well as documentary evidence and is essentially a concurrent finding of fact. The demarcation report (Ex.P/2) is a certified copy of public document and therefore, it cannot be said that unless the concerned R.I. proved his signature, the document would not be

admissible in evidence. The aspect of evidentially value may be different matter but it cannot be said that the document was inadmissible in evidence. Moreover, there is overwhelming evidence on record which shows that a Panchnama was prepared in Ex.P/4 which has been proved by the plaintiff, himself. The appellant, in his examination, has stated that he has no house or land in Village Tamasingha.

6. Appreciating the aforesaid oral and documentary evidence on record, the Courts below have recorded finding of encroachment by the appellant over the land of the plaintiff leading to declaration of title and granting a decree of possession. Therefore, no substantial question of law is involved in this second appeal and the second appeal is dismissed in limine.

Sd/-

(Manindra Mohan Shrivastava)
Judge