

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No. 841 of 2000**

- Vijay Kumar Garg S/o Late Shri Chhotelal, Aged About 42 Years R/o Ram Sagar Para, Raipur, Tehsil & District Raipur, (M.P.) Now Chhattisgarh(Plaintiff)

---- Appellant**Versus**

- Horilal Alias Bisauha Prasad (Dead) Through Lrs
 1. **(A)** Anil Kurm Aged about 35 Years S/o Horilal, R/o Goverdhan Chowk, Sahupara, Near Lord Shankar Temple Kushalpur, Raipur, Chhattisgarh
 1. **(B)** Sunil Kurm Aged about 32 Years S/o Horilal, R/o Goverdhan Chowk, Sahupara, Near Lord Shankar Temple Kushalpur, Raipur, Chhattisgarh
 1. **(C)** Sudhir Kurm Aged about 30 Years S/o Horilal, R/o Goverdhan Chowk, Sahupara, Near Lord Shankar Temple Kushalpur, Raipur, Chhattisgarh
 1. **(D)** Girja Bai (Died - Deleted)

---- Respondents

For Appellant	:	Shri Manoj Paranjpe, Advocate.
For Respondents	:	Shri Harshal Chouhan, Advocate

Hon'ble Shri Justice Sanjay Agrawal**Order On Board****28/03/2017**

Heard on admission.

2. This is plaintiff's second appeal preferred under Section 100 of the Code of Civil Procedure, 1908 (hereinafter referred to as the Code of 1908 in short) against the judgment and decree dated 08.04.2000 passed by the 6th Additional District Judge, Raipur, in Civil Appeal No. 54-A/1998 whereby the appellate Court while affirming the judgment and decree dated 19.02.1998 passed by the trial Court, has dismissed the plaintiff's suit for removal of encroachment and

also for damages.

3. The undisputed facts of the case that the plaintiff's grand-father, namely, Gangaram had purchased the House No.29/188 on 22.01.1938 in the name of his two sons, namely, Bhuwanlal and Chhotelal (plaintiff's father) from one Tingali @ Ramcharan. Further averments of the plaintiff are that the defendant has illegally encroached the portion marked as 'C D E F G H C' shown in the map attached to the plaint, and therefore, a suit for removal of encroachment by the defendant from the said portion and also for damages was instituted on 19.12.1985.

4. The defendant has contested the aforesaid claim and stated that he had not encroached the alleged portion, as claimed by the plaintiff.

5. The Trial Court, by its judgment and decree dated 19.02.1998, has come to the conclusion that the plaintiff has failed to establish with regard to the alleged encroachment as made by the defendant and while arriving at such conclusion the trial Court has examined the statement of witnesses of parties,, particularly, examined plaintiff's own statement para 16, where it was stated by the plaintiff that he is unable to say that the defendant had encroached the alleged portion. Consequently, the trial Court by examining the evidence adduced by both the parties, has categorically come to the conclusion at para 25 of its judgment that the plaintiff has failed to establish that the defendant has illegally encroached the alleged portion. In consequence, the claim of the plaintiff was dismissed.

6. The aforesaid findings of the trial Court have been affirmed by the lower appellate Court in an appeal preferred by the plaintiff.

7. I have examined the contention of learned counsel for the appellant and perused the entire record carefully.

8. From perusal of the record, it is evident that the factum of alleged encroachment was not established by the plaintiff. He was even unable to say that which portion was encroached by the defendant, as stated by the plaintiff himself (P.W.1) as evidenced by para – 16 of his statement. The trial Court accordingly held at para 25 of its judgment that plaintiff has failed to establish the fact that the alleged portion as marked as 'C D E F G H C' shown in the map attached to the plaint was illegally encroached by the defendant. The said finding was affirmed further by the lower appellate Court. In consequence, both the Courts, upon due appreciation of evidence, have come to the conclusion that the alleged encroachment as claimed by the plaintiff was not made by the defendant.

9. The aforesaid findings are purely findings of fact, and therefore, the same cannot be held to be perverse by re-appreciating the evidence led by both the parties in Second Appeal under Section 100 of the Code of 1908.

10. Consequently, I find no question of law, much less, the substantial questions of law involved in this appeal. Therefore, the appeal, being devoid of merit, is liable to be and is hereby dismissed.

11. No order as to costs.

Sd/-
(**Sanjay Agrawal**)
Judge