

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**S.A No.393 of 2017**

1. Uderam S/o Budhram, Aged About 40 Years R/o Village Tenganmada, Tahsil Kota, District Bilaspur, Chhattisgarh
2. Umendram S/o Uderam, Aged About 30 Years R/o Village Tenganmada, Tahsil Kota, District Bilaspur, Chhattisgarh(Defendants)

---- Appellants**Versus**

1. Ganga Prasad S/o Mahavir, Aged About 72 Years R/o Kotaod, Tehsil Pamgarh, Revenue & Civil District Janjgir-Champa, Chhattisgarh (Plaintiff)
2. State Of Chhattisgarh, Through: Collector Janjgir-Champa, Revenue & Civil District Janjgir-Champa, Chhattisgarh(Defendant No.2)

-----Respondents

For Appellants:	Shri PP Sahu, Advocate.
For Respondent No.1:	Shri SD Rajas, Advocate.
For Respondent No.2/State:	Shri VB Singh, Panel Lawyer.

Single Bench:Hon'ble Shri Sanjay Agrawal, J
Order On Board

03.11.2017

1. This is the Defendants' Second Appeal preferred under Section 100 of the Code of Civil Procedure, 1908 (for short 'the CPC') against the judgment and decree dated 19.04.2017 passed by the Fifth Additional District Judge, Bilaspur, District Bilaspur in Civil Appeal No.08-A/2016 by which, the lower appellate Court, while affirming and modifying the judgment and decree dated 21.12.2015 passed by the Civil Judge, Class-II, Kota, Distt. Bilaspur in Civil Suit No.3-A/2007, has decreed the Plaintiff's claim.
2. The undisputed facts of the case are that the Plaintiff-Ku. Kamla

Nirmalkar instituted a suit claiming possession and injunction with regard to the suit property bearing Khasra No.38/12 admeasuring 1 acre by submitting *inter alia* that the said property was purchased by her from one Shiv Singh by virtue of the registered deed of sale dated 18.9.2001. It is pleaded further that she came to know that Defendants have encroached her suit land i.e. part of said Khasra No.38/12 admeasuring 0.16 acre when she demarcated the said land. It is pleaded further that on the basis of the said demarcation, she applied for obtaining the possession before the Tahsildar, who in turn, while registering the case as Revenue Case No.7/A-70/02-03, has rejected the said application vide order dated 31.10.2003 by observing that the alleged demarcation report is not an appropriate one. After rejection of the said application, the Plaintiff has moved another application for demarcation of her land and based on the subsequent demarcation report dated 7.8.2004, it was again found that Defendants are in illegal possession of the Plaintiffs' land giving rise to an instant action.

3. The Defendants have contested the aforesaid claim and stated that they are not in unauthorized possession over the Plaintiff's land and pleaded further that the alleged demarcation was not the appropriate one and therefore, suit as framed deserves to be dismissed.

4. The trial Court, after considering the evidence led by the parties, has come to the conclusion that the Plaintiff is the owner of the suit property and acquired her interest by virtue of the registered deed of sale executed in her favour on 18.9.2001 by one Shiv Singh. It however held further that since the author of the demarcation was not examined, therefore, the alleged demarcation report cannot be accepted. As a

consequence, the trial Court, instead of decreeing the Plaintiffs' claim as a whole, has decreed the suit in part by holding that the Plaintiff is the owner and in possession of the suit land.

5. Being aggrieved, the Plaintiff has preferred an Appeal as per the provisions prescribed under Section 96 of the CPC. The lower appellate Court, in turn, has examined the alleged demarcation report and came to the conclusion that Defendant Uderam has refused to sign the *panchnama* which was prepared at the time of demarcation and accordingly, while accepting the said demarcation report, has decreed the suit in its entirety as claimed by the Plaintiff.

6. Being aggrieved, the Defendants have preferred this Appeal. Shri PP. Sahu, learned Counsel for the Appellants submits that the judgment and decree as passed by the lower appellate Court by accepting the said demarcation report is apparently contrary to law. He submits further that the trial Court has disbelieved the alleged demarcation report by observing that since the author was not examined and witnesses of it have also not supported the said document, therefore, under such circumstances, the same ought not to have been accepted. However, the lower appellate Court did not consider this material piece of evidence in its proper perspective while reversing the findings of the trial Court in this regard, therefore, the findings of the lower appellate Court deserves to be set aside.

7. I have heard learned Counsel for the Appellants and perused the entire record carefully.

8. The Plaintiff's suit is essentially based on the ground that by virtue of the registered deed of sale dated 18.09.2001 (Ex.P-1), she has acquired

valid title upon the land bearing Khasra No.38/12 admeasuring 1 acre and came to know at the time of its demarcation that the part of it admeasuring 0.16 acres, the suit land, has been encroached by the Defendants. She therefore, filed an application before the Tahsildar for obtaining the possession of suit land but the Tahsildar vide its order dated 31.10.2003 has refused to grant her the said relief by observing that the demarcation is not properly done. The Plaintiff has therefore applied for another demarcation and in view of the demarcation report dated 07.08.2004, it was again found that the Defendants are in unauthorized possession over the suit land. Based upon title, the Plaintiff has filed the suit for possession and injunction. The trial Court, while disbelieving the alleged demarcation, has decreed the suit in part only. However, in Appeal preferred by the Plaintiff, it has been observed by the appellate Court that the Defendants are in unauthorized possession over the alleged piece of suit land and Defendant Uderam has refused to sign the *panchnama* at the time of the said demarcation and observed further that the validity of the same has not been questioned. By considering the evidence as such, the appellate Court while accepting the alleged demarcation report, has decreed the Plaintiffs' claim in its entirety. The findings so recorded by the appellate Court, therefore, cannot be held to be perverse as the same are based upon due and proper appreciation of the evidence led by the parties. Consequently, the findings of the appellate Court deserve to be and are hereby affirmed.

9. In view of the foregoing discussions, I do not find any question of law, much less the substantial questions of law which arise for determination in this Appeal. Accordingly, the Appeal being devoid of

merits is hereby dismissed at the admission stage itself. There shall be no order as to costs.

Sd/-
(Sanjay Agrawal)
JUDGE

Priya