

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No. 453 of 2007**

(Arising out of judgment/order dated 06.07.2006 in Civil Appeal No. 16-A/2005 of the learned 4th Additional District Judge, Bilaspur)

Shashi Prakash Shrivastava, aged about 40 years, son of late Shri Sunderlal Shrivastava, resident of Chantidih, Bilaspur, Tehsil & District Bilaspur (Chhattisgarh) (Plaintiff)

---- Appellant

Versus

1. Smt. Panch Bai, aged 31 years, wife of Shri Premlal, resident of Chantidih, Bilaspur, Tehsil & District Bilaspur (C.G.)
2. State of Chhattisgarh, through the Collector, Bilaspur (Defendants)

---- Respondents

For Appellant	:	Shri Somnath Verma, learned Advocate.
For Respondent No.2/State	:	Shri V.B.Singh, P.L.

Hon'ble Shri Justice Sanjay Agrawal**Order On Board****06/11/2017**

1. Heard on admission.
2. This is the 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 06.07.2006 passed by the 4th Additional District Judge, Bilaspur, in Civil Appeal No. 16-A/2005, by which, the lower appellate Court, while affirming the judgment and decree dated 16.12.2002 passed by the 3rd Civil Judge, Class-1, Bilaspur in Civil Suit No.37-A/2000, has dismissed the plaintiff's claim.
3. The undisputed facts of the case are that the plaintiff Shashi Prakash

Shrivastava instituted a suit claiming declaration of title, possession and also for permanent injunction by submitting, inter alia, that the suit property bearing Kh.No.263/1 situated at village Chantidih, Tehsil & Dist. Bilaspur (henceforth, the suit land) was recorded in the name of his father Sunderlal and he alone is in peaceful possession over the same. It is pleaded further that the suit property was recorded in revenue papers in the name of his father Sunderlal. It is pleaded further that defendant No.1 while making a paper publication is trying to alienate the suit land, therefore, the plaintiff has been constrained in filing the suit in the instant nature.

4. The defendant No.1 has contested the aforesaid claim denying very specifically that she has encroached any piece of plaintiff's land, as alleged by him.

5. The trial Court, after considering the evidence led by the parties, has come to the conclusion while entertaining issue No.1 that the plaintiff's predecessor's-in-interest, namely, Dwaraka was owner of the property in question and that by entertaining issue No.2 has come to the conclusion that the plaintiff is the owner of the property in question. The trial Court further held that in absence of demarcation report, it is difficult to hold that defendant No.1 has encroached the plaintiff's suit land, as alleged by him. Accordingly, the trial Court has dismissed the suit.

6. Being aggrieved, the plaintiff had preferred an appeal as per the provisions prescribed under Section 96 of the Code of 1908. The appellate Court, in turn, has also observed that in absence of any demarcation report, it cannot be held that defendant No.1 has encroached the plaintiff's suit land. The appellate Court, while examining the statement of parties, has observed that the plaintiff himself has admitted the fact that defendant No.1 has not encroached his land. While considering all these material facts, the lower appellate Court has dismissed the plaintiff's claim.

7. Being aggrieved, the plaintiff has preferred this appeal. Shri Somnath Verma, learned counsel for the appellant submits that the judgment and decree, as passed by the Courts below, without directing for appointment of Commissioner as provided under Order 26 Rule 9 of the Code of 1908 is contrary to law and without issuing such a direction, the Courts below have committed illegality in dismissing the plaintiff's claim. He further submits that the nature of dispute as involved in the present suit, it was the bounden duty of the Courts below to appoint a Commissioner in order to come to a definite conclusion that whether the plaintiff's suit land was encroached by defendant No.1 or not. Without exercising such a

power, the Courts below have erred in dismissing the plaintiff's claim.

8. I have heard learned counsel for the appellant and perused the entire record carefully.

9. The plaintiff's suit was instituted mainly on the ground that he is the owner of the property in question, i.e., bearing Kh.No.263/1 admeasuring 220 sq.ft. According to the plaintiff, the said land was encroached by defendant No.1. In view of this fact, the plaintiff had filed the suit for declaration of title, vacant possession and also for permanent injunction. In order to establish the fact that defendant No.1 has encroached the plaintiff's suit land, it is the duty of the plaintiff to file an application for appointment of Commissioner or to produce the demarcation report, after obtaining the same from the competent revenue authorities. Pertinently to be noted here that during trial, defendant No.1 has moved an application for appointment of Commissioner and despite its withdrawal, the plaintiff has failed to move any such application in order to establish his claim. In absence of any demarcation report, I have no hesitation to hold that neither the appellate Court nor the trial Court has committed any illegality in arriving at a conclusion that defendant No.1 has encroached the plaintiff's suit land. Consequently, the findings recorded by the Courts below deserve to be and are hereby affirmed.

10. In view of the foregoing discussion, I do not find any question of law, much less, substantial question of law, which arise for determination of this appeal. Accordingly, this appeal, being devoid of merit, is hereby dismissed at admission stage itself. No order as to costs.

Sd/-

(Sanjay Agrawal)
Judge