

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 87 OF 2017**

Derharam son of John Singh Gond aged about 60 years resident of Raytum Police Station Patewa Tahsil and District Mahasamund (Chhattisgarh)

---- Appellant**Versus**

1. Yadram Sahu son of Thaku Sahu aged about 40 years resident of Raytum (Paterapali) Police Station Patewa (wrongly mentioned as Patewar) P.H.No.10 Tahsil and District Mahasamund (Chhattisgarh)
2. State of Chhattisgarh through the Collector Mahasamund District Mahasamund (Chhattisgarh)

---- Respondents

For Appellant	:	Mr. Vikash Pradhan, Advocate.
For Respondent No.2/State	:	Mr. V.B. Singh, Panel Lawyer.

Hon'ble Shri Justice Sanjay Agrawal**Judgment On Board****25/04/2017**

1. This is plaintiff's appeal under Section 100 of the Code of Civil Procedure, 1908 against the judgment and decree dated 09/11/2016 passed by the District Judge, Mahasamund, District Mahasamund (C.G.) in Civil appeal No. H-23-A/2015, by which, the appellate Court while affirming the judgment and decree dated 07/07/2015 passed by the Second Civil Judge, Class-I, Mahasamund in Civil Suit No. 07-A/2014, has dismissed the appeal.

2. The undisputed facts of the case are that the plaintiff- Derharam instituted a suit for declaration of title and removal of superstructure raised by the defendant No.1 by encroaching 0.02 hectare of his land bearing Khasra No. 1335, area 0.08 hectare. It is pleaded further that he came to know about the alleged encroachment only when he applied for demarcation of his land before

the Additional Tahsildar, Patewa. In the said demarcation report (Exhibit P-2), it was found that defendant- Yadram Sahu has encroached upon the alleged 0.02 hectare of his land. It is pleaded further that for removal of the encroachment, the plaintiff had earlier initiated a proceeding as per the provision prescribed under Section 250 of the C.G. Land Revenue Code, 1959. However, the said application was rejected by the Revenue Authority on 28/02/2014 (Exhibit P-1), giving rise to an instant action for declaration of title and removal of alleged encroachment.

3. Defendant No.1 has contested the aforesaid claim and denying very specifically that he has encroached any portion of the plaintiff's land as claimed by him. It is contested further that an earlier occasion also, the plaintiff had initiated the proceedings for removal of encroachment against him, in which, it was found that the plaintiff's land was not encroached by defendant No.1.

4. The trial Court after considering the evidence of both the parties and also by considering the demarcation report (Exhibit P-2) has observed that, it cannot be held that the defendant No.1 has encroached upon the plaintiff's land. The trial Court observed further that even upon the said demarcation report, it cannot be held that which is the specific portion that has been encroached by the defendant No.1. Consequently, the trial Court has dismissed the plaintiff's claim.

5. The aforesaid finding of the trial Court has been affirmed further by lower appellate Court in an appeal preferred by the plaintiff.

6. Being aggrieved, the plaintiff has preferred this appeal.

7. Mr. Vikash Pradhan, the learned counsel for the appellant submits that both the Courts below without considering the said demarcation report (Exhibit P-2) in its proper manner, has erred in dismissing the plaintiff's claim. He further submits that the said demarcation report would reveal very specifically that the

defendant No.1 has encroached upon 0.02 hectare of plaintiff's land, therefore, the judgment and decree passed by both the Courts below deserves to be set aside.

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

9. Undisputedly, the plaintiff is the owner of the property in question bearing Khasra No. 1335, admeasuring 0.08 hectare. The plaintiff's entire case is based upon the premises that the defendant No.1 whose land is adjacent to him, has encroached upon the part of his land i.e. admeasuring 0.02 hectare by constructing a house. The burden to establish the fact that the defendant has encroached the alleged piece of land was upon the plaintiff and that for proving the said fact, the plaintiff has applied for demarcation of the land before the Additional Tahsildar, Patewa who in turn has submitted its report vide Exhibit P-2.

10. A bare perusal of the said report would reveal that the plaintiff's land bearing Khasra No. 1335 was demarcated along with Khasra No. 1342. However, the defendant's land i.e. Khasra No. 1331 was not considered at the time of said demarcation. Even otherwise, it is difficult to ascertain based upon the said report (Exhibit P-2) that which is the portion, that was encroached by the defendant No.1. Besides, neither any map nor any relevant papers are attached with the said demarcation report so as to come to the conclusion that the defendant No.1 has encroached upon the plaintiff's alleged piece of land.

11. The trial Court as well as the lower appellate Court have rightly come to the conclusion that the plaintiff has failed to establish the said fact with regard to the alleged encroachment of land by defendant No.1. The findings so recorded by the Courts below was based upon proper appreciation of the evidence of the parties. The said finding is a pure finding of fact and cannot be held to be a

perverse one. Therefore, findings of the Courts below deserves to be and are hereby affirmed.

12. In view of the foregoing discussions, I do not find any question of law, much less the substantial question of law involved in this appeal. Consequently, the appeal being devoid of merit is hereby dismissed at admission stage itself. There shall be no order as to costs.

Sd/-

(Sanjay Agrawal)
Judge