

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**S.A No.478 of 2016**

Sitaram Agrawal S/o Late Ramswaroop Agrawal, Aged About 58 Years
R/o Main Road Saraipali, P.S. & Tahsil- Saraipali, District-
Mahasamund, Chhattisgarh(Plaintiff)

---- Appellant**Versus**

1. Sushmita D/o Hazari, Aged About 50 Years R/o Village- Baitari, P.S. & Tahsil- Saraipali, District- Mahasamund, Chhattisgarh
2. Ramesh S/o Sankirtan, Aged About 52 Years R/o Village Baitari, P.S. & Tahsil Saraipali, District Mahasamund, Chhattisgarh
3. Sajo D/o Satrugan, Aged About 50 Years R/o Village Baitari, P.S. & Tahsil Saraipali, District Mahasamund, Chhattisgarh
4. Smt. Urvashi W/o Prahlad, Aged About 48 Years R/o Village Baitari, P.S. & Tahsil Saraipali, District Mahasamund, Chhattisgarh
5. Upendra S/o Arakshit, Aged About 21 Years R/o Village Baitari, P.S. & Tahsil Saraipali, District Mahasamund, Chhattisgarh
6. Jabdul S/o Bhagi Lal, Aged About 50 Years R/o Village Baitari, P.S. & Tahsil Saraipali, District Mahasamund, Chhattisgarh
7. Mus. Lata W/o Jadu, Aged About 40 Years R/o Village Baitari, P.S. & Tahsil Saraipali, District Mahasamund, Chhattisgarh
8. Geeta D/o Arakshit, Aged About 19 Years R/o Village Baitari, P.S. & Tahsil Saraipali, District Mahasamund, Chhattisgarh
9. State Of Chhattisgarh, Through Collector Mahasamund, District Mahasamund, Chhattisgarh(Defendants)

---- Respondents

For Appellant:	Shri Ravish Verma, Advocate.
For Respondent No.1:	Shri HS Patel, Advocate.
For Respondent No.9/State:	Shri VB Singh, Panel Lawyer.

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

19.09.2017

1. This is the Plaintiff's Appeal preferred under Section 100 of the Code of Civil Procedure, 1908 (for short 'the CPC') against the judgment and decree dated 25.06.2016 passed by the Additional District Judge,

Saraipali, District Mahasamund in Civil Appeal No.6-A/2016, whereby the lower appellate Court, while reversing the judgment and decree dated 23.01.2016 passed by the Civil Judge, Class-I, Saraipali in Civil Suit No.6-A/2014, has dismissed the Plaintiff's suit.

2. Briefly stated, the undisputed facts of the case are that the Plaintiff Sitaram instituted a suit for declaration of title and removal of encroachment as made by the Defendants by submitting *inter alia* that he is the owner of the property in question bearing Khasra No.117/2, 119/01 & 125/2 total admeasuring 0.40 hectares. It is pleaded further that on the basis of the demarcation made on 30.6.2007, he came to know that his property was encroached illegally by the Defendants by raising a '*kaccha*' construction over the suit property, therefore he has filed the suit for removal of the alleged encroachment from the Defendants.

3. The Defendants have contested the aforesaid claim by denying very specifically that they have encroached any piece of the Plaintiff's aforesaid suit land.

4. The trial Court, after considering the evidence led by the parties, has come to the conclusion by relying upon the revenue papers (Ex.P-4, P-8 & P-9) that the Plaintiff is the owner of the suit property. It held further by relying upon the alleged demarcation report that Defendants have encroached Plaintiff's suit land illegally. In consequence, the trial Court has decreed the Plaintiff's claim.

5. Being aggrieved, the Defendants have preferred an Appeal as per the provisions prescribed under Section 96 of the CPC. The lower appellate Court, in turn, has come to the conclusion that the Plaintiff has failed to produce the document in order to establish his ownership and

held further that since the alleged demarcation was made in absence of the Defendants, therefore, based upon the aforesaid demarcation report (Ex.P-5), it cannot be held that the Plaintiff's suit land was encroached by the Defendants. In consequence, the lower appellate Court, while reversing the findings of the trial Court, has dismissed the Plaintiff's claim by allowing the Appeal. Although owing to clerical mistake, it was mentioned at paragraph-18(1) of its judgment that the Appeal of Respondent No.1/Plaintiff is allowed. However, it was Defendants' Appeal which was allowed. The said clerical mistake therefore stands corrected.

6. Being aggrieved, the Plaintiff has preferred this Appeal. Shri Ravish Verma, learned Counsel for the Appellant submits that the judgment and decree as passed by the lower appellate Court by reversing the findings of the trial Court is apparently contrary to law. He submits further that the trial Court has rightly relied upon the demarcation report (Ex.P-5) and then only came to the conclusion that the Defendants have encroached the Plaintiff's land illegally. He submits further that the said finding was not considered in its proper manner, therefore, the appellate Court has erred in reversing the said finding by dismissing the Plaintiff's claim. He therefore submits that the judgment and decree passed by the lower appellate Court be set aside and that of the trial Court Court be restored.

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

8. The Plaintiff's suit was based mainly on the ground that he is the owner of the suit property and based on the demarcation report dated 30.6.2007, it was pleaded by him that his land was encroached illegally by the Defendants. In order to establish the fact that whether the Defendants

have encroached the Plaintiff's land, the burden was heavily upon the Plaintiff to establish the fact that his land was encroached illegally by the Defendants. However, from perusal of the record, particularly the demarcation report (Ex.P-5), vis-a-vis the statement of Surendra Singh Dhruv, the Revenue Inspector would show very specifically that the alleged demarcation was made without noticing the Defendants. Since the demarcation report was made in absence of the Defendants, therefore, it cannot be held based upon the alleged report, that the Defendants have encroached the Plaintiff's land illegally as pleaded by him. In view of this, I do not find any infirmity in the judgment and decree passed by the lower appellate Court which is based upon due and proper appreciation of oral and documentary evidence adduced by the parties.

9 . Consequently, 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