

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****First Appeal No.37 of 2001**

1. State of Chhattisgarh through Secretary Deptt. of Revenue, Govt. of Chhattisgarh, Mantralaya (DK Bhavan) Raipur
2. S R Badh, Tehsildar, Balod
3. G P Tiwari, Nayab Tahsildar, Balod

----Appellants**Versus**

1. Than Singh S/o Jalam Singh R/o. Village-Naragaon, Tah-Gurur, Distt. Durg (CG)
2. Fagani Bai (died and deleted)
3. Naresh Kumar S/o Bodhiram, R/o. Sonhpur, Tah-Gurur, Distt.Durg (CG)
- (4a) Sukhbatu Bai Wd/o Late Dasarum Ram
- (4b) Sravan Kumar S/o Late Dasarum Ram,
Both are residents of village Kosmi, Tahsil-Gurur, District Balod (CG)
5. Sitaram S/o Kalyan R/o. Village-Naragaon, Tah-Gurur, Distt. Durg (CG)
- (6a) Dukhi Bai Wd/o Late Parasram,
- (6b) Domar Singh S/o Late Parasram,
- (6c) Surendra Singh S/o Late Parasram
- (6d) Surekha D/o Late Parasram
All are residents of village - Naragaon, Tahsil-Gurur, District Balod (CG)
7. Bainsingh W/o Bhagat, R/o. Village-Naragaon, Tah-Gurur, Distt. Durg (CG)
- (8a) Lata W/o Toman, R/o Village Limora, District Balod (CG)

---- Respondents

For Appellants	:	Mr.Arun Sao, Dy.A.G.
For Respondents	:	Mr.Manoj Paranjape and Mr.Anurag Singh, Advocates

Hon'ble Shri Justice Sanjay K. Agrawal**Judgment on Board**

17/09/2018

1. Taking exception to judgment & decree dated 22.8.2000 passed by the Additional District Judge, Balod in Civil Suit No.3-B/98 in the matter of Than Singh v. State of M.P. and others, this first appeal under Section 96 of the Code of Civil Procedure has been preferred by the appellants/defendants.
2. The imperative facts required for determination of above-stated first appeal are as under:-

[For the sake of convenience, the parties would be referred hereinafter as per their status shown in the suit before the trial Court]

3. The respondent No.1/plaintiff filed a bare suit for damages before the trial Court stating inter-alia that the Tahsiildar, Balod has initiated encroachment proceedings against him without authority of law being Revenue Case No.173-A/68/86-87, in which he filed reply stating inter-alia he has not encroached upon the government land, yet the order dated 5.2.1987 was passed by the Tahsildar, Balod without making any enquiry and in compliance of that order, portion of the plaintiff's house was demolished, whereas the dispute ought to have been referred to the Sub Divisional Officer under Section 57 (2) of the Chhattisgarh Land Revenue Code, 1959 (hereinafter called as "the Code").
4. The defendants filed their written statement stating inter-alia that revenue proceeding was duly initiated against the plaintiff, in which he was found encroacher in khasra No.142, area 0.040 decimal and has constructed varandah on encroached land. It has further been pleaded that after providing an opportunity of hearing order dated 5.2.1987 was

passed by the Tahsildar, Balod and encroachment was removed, which is strictly in accordance with law, therefore, the plaintiff is not entitled for damages.

5. The trial Court framed as many as five issues for deciding the *lis* between the parties and after appreciating the evidence available on record came to the conclusion that only varandah owned by the plaintiff has been demolished and encroachment made by the plaintiff has not been established and held that the plaintiff is entitled for compensation of ₹ 20,000/- from defendants No.1 to 3.
6. Questioning legality and validity of the judgment & decree passed by the trial Court, this first appeal under Section 96 of the CPC has been preferred in which question for consideration would be whether the trial Court is justified in granting decree of damages of ₹ 20,000/- in favour of the plaintiff.
7. Mr.Arun Sao, learned Deputy Advocate General for the appellants/defendants No.1 to 3, would submit that the trial Court is absolutely unjustified in granting decree of damages in favour of the plaintiff as the Tahsildar, Balod has initiated proceedings under Section 248 of the Code and passed the order dated 5.2.1987 Ex.P/2 in Revenue Case No.173A/68/86-87 holding that the plaintiff has encroached upon the government land to the extent of 0.040 decimal and removing him from the said encroachment has attained finality as neither it was challenged by the plaintiff in the revenue Courts by filing appeal or revision nor it has been questioned in civil suit seeking declaration of the order dated 5.2.1987 to be null and void. In absence of challenge to that order, no damage could have been granted by the trial Court. Therefore,

the impugned judgment and decree passed by the trial Court is unsustainable and bad in law.

8. On the other hand, Mr.Manoj Paranjape and Mr.Anurag Singh, learned counsel for the respondents, would support the impugned judgment & decree and submit that the trial Court is absolutely justified in granting decree of damages in favour of the plaintiff.
9. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also gone through the records with utmost circumspection.
10. It is apparent on the face of record that demolition proceeding was initiated against the plaintiff by the Tahsildar, Balod on the basis of report of Patwari Ex.P/3 and proceeding under Section 248 of the Code was initiated. The plaintiff filed reply vide Ex.P/4 and after following due process of law order dated 5.2.1987 (Ex.P/2) was passed holding that the plaintiff has encroached upon 0.040 decimal and also encroached upon 0.16 hectare of the land and directed for removal of encroachment and also imposed penalty of ₹1400/- and in compliance of that order, encroachment has been removed. The plaintiff ought to have challenged the order dated 5.2.1987 passed by the Tahsildar, Balod directing removal of encroachment under Section 248 of the Code either by filing appeal or revision before the revisional or the appellate authority, but he did not do so. Even the plaintiff has filed a bare suit for damages without seeking any declaration that order dated 5.2.1987 is null and void. In absence of that, order dated 5.2.1987 is valid, binding and effective between the parties. Unless the order of Tahsildar, Balod directing eviction of encroachment is challenged successfully, no decree

could have been granted by the trial Court granting damages in favour of the plaintiff.

11. In view of aforesaid legal analysis, the judgment & decree passed by the trial Court are hereby set aside and the plaintiff's suit would stand dismissed leaving the parties to bear their own cost(s).
12. The first appeal is allowed to the extent indicated hereinabove. A decree be drawn up accordingly.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-