

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 394 of 2003**

Lasman (dead) through LRs.

1.A Kishun Ram, S/o. Late Laxman, aged about 32 years, resident of Village Basti, P.S. & Tahsil Baikunthpur, District Korla (C.G.)

1.B Chandramati, D/o. Late Laxman, w/o. Alam Say, aged 25 years, r/o. Village Tiwragudi, Tehsil Surajpur, Distt. Surguja (C.G.)

1.C Sonamati, d/o. Laxman, w/o. Dharampal, aged 44 years, r/o. Village Charcha, Tehsil Baikunthpur, Distt. Korla (C.G.)

1.D Kadam, d/o Late Laxman, W/o. Son Say, aged 42 years, r/o. Village Kachaur, Tehsil Manendragarh, P.S. Kelhari, Distt. Korla (C.G.)

1.E Kailashpati, w/o. Raheeram, d/o. Late Laxman, aged 30 yeas, r/o. Village Kotaktal, Tehsil Baikunthpur, P.S. Patna, Distt. Korla (C.G.)

----Appellants/plaintiff

Versus

1. Pannalal, S/o Late Ramsundar Harijan, aged about 51 years.

2. Bhaiyalal, S/o Late Ramsundar Harijan, aged about 41 years.

Both r/o Village Basti, P.S. & Tehsil Baikunthpur, District Korla (C.G.)

3. The State of Chhattisgarh through, Collector, Korla (C.G.)

---- Respondent

For Appellants : Shri A.K. Prasad & Shri Ravi Mahobia, Advocate.
 For Respondents 1 & 2 : Shri A.N. Bhakta & Shri Vivek Bhakta, Advocate.
 For Respondent No. 3 : None appeared.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

26/10/2018

(1) The substantial question of law involved, formulated and to be answered in this plaintiff's second appeal states as under:

“Whether the lower appellate Court was justified in reversing the finding arrived at by the trial Court only on disbelieving the demarcation report (Document D-2) ?”

(2) The imperative facts required to be noticed for adjudication of this appeal are as under:

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

(2.1) Original plaintiff –Laxman Mandhari filed a suit for recovery of possession based on title and permanent injunction stating *inter alia* that he is title holder of the land bearing Khasra No. 299, area 1.048 hectare and out of which the defendants No. 1 & 2 have encroached upon the land bearing Khasra No. 299, area 0.303 hectare (suit land) and, as such, he is entitled for possession over the suit land and permanent injunction.

(2.2) By filing written statement, the defendants No. 1 & 2 have admitted the title of the plaintiff over the land bearing Khasra No. 299, area 1.048 hectare in paragraph 1 of their written statement. They further pleaded that they are in possession of their own land bearing Khasra No. 298/2, which is adjacent to the suit land. They have alternatively pleaded that if they are found to be in possession over the suit land, then they have perfected their title over the suit land by way of adverse possession.

(3) Trial Court, after appreciating oral and documentary evidence on record, decreed the suit in plaintiff's favour relying upon the demarcation report (Document

Ex.D-2) dated 23.02.1993 conducted by Revenue Officer in Revenue Case No. 9A-12/92-93 (**Laxman, son of Mandhari Vs. State of Madhya Pradesh**), which was reversed by the first appellate Court, by its impugned judgment & decree dated 23.06.2003 holding that the demarcation report (document Ex.D-2) has not been proved in accordance with law.

(4) Questioning the judgment and decree passed by the first appellate court, this second appeal has been preferred by the appellant/plaintiff in which the substantial question of law has been formulated, which has been set out in opening paragraph of the judgment.

(5) Mr. A.K. Prasad, learned counsel appearing for the appellant/plaintiff, would submit that the defendants No. 1 & 2 have already admitted the demarcation report by filing the same in shape of Ex. D-2 and, therefore, formal proof of examining the concerned Revenue Officer was not necessary. He would further submit that the defendants No. 1 & 2 having admitted the title of the plaintiff over the suit land ought to have proved the plea of adverse possession, which they have not proved and, therefore, the first appellate court is absolutely unjustified in allowing the first appeal and dismissing the suit of the plaintiff.

(6) Per contra, Shri A.N. Bhakta, learned counsel appearing for defendants No. 1 & 2 would support the impugned judgment and decree of the first appellate court and submit that the plaintiff ought to have proved the demarcation report (Document Ex.D-2) by examining the Revenue Officer, who has demarcated the suit land.

(7) I have heard learned counsel appearing for the parties and considered their

rival submissions made hereinabove and gone through the record of both the courts below with utmost circumspection.

(8) It is not in dispute that the plaintiff is title holder of the land bearing Khasra No. 299, area 1.048 acres and out of which the defendants No. 1 & 2 have encroached upon the suit land bearing Khasra No. 299, area 0.303 hectare. Title of the plaintiff over the suit land has been admitted by the defendants No. 1 & 2 in paragraph 1 of their written statement. The plaintiff filed certified copy of the demarcation report passed in Revenue Case No. 9A-12/92-93 dated 23.02.1993, in which, it has been indicated that the defendants No. 1 & 2 have encroached upon the suit land bearing Khasra No. 299, area 0.303 hectare, at the instance of Kishun Ram (PW-1), it has been marked as Ex.P-2 and the defendants No. 1 & 2 have also relied upon the said demarcation report, which has also been marked as Ex.D-2 at the instance of Panna Lal (DW-1). Defendant witness No. 1 – Panna Lal has relied upon the document (Ex.D-2) in his evidence. Defendant witness No. 3 -Roopsai has also stated in his evidence that on demarcation, possession of the defendants No.1 & 2 was found over the suit land, as such, the demarcation report (Ex. P-2 & Ex. D-2) are admitted document and, therefore, the demarcation report, which is a public document, has been filed and it has been marked exhibit at the instance of plaintiff as well as defendant vide Ex. P-2 and Ex.D-2, therefore, the formal proof of the said document being the admitted document was not necessary, as such, the first appellate Court is absolutely unjustified in reversing the judgment and decree of the trial Court on the ground that the demarcation report has not been proved by calling the concerned revenue officer, who has demarcated the suit land and, as such, the finding arrived at by the first appellate court in this regard is liable to be set

aside.

(9) It is a suit for recovery of possession based on title and once the title of plaintiff is admitted, proved and duly established, it is for the defendants No. 1 & 2 to plead & establish the adverse possession over the suit land, which they have failed to establish as per findings recorded by the trial Court. Defendants No. 1 & 2 also did not assail the finding of adverse possession successfully before the first appellate Court, as such the first appellate Court is absolutely unjustified in interfering with the well reasoned judgment and decree of the trial Court by disbelieving the demarcation report.

(10) As a fallout and consequence of the aforesaid discussion, the judgment and decree passed by the first appellate Court is set aside and the judgment and decree passed by the trial Court is restored. The second appeal is consequently allowed, the plaintiffs' suit stands decreed. The substantial question of law is answered accordingly. No cost(s).

(11) A decree be drawn-up accordingly.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

