

HIGH COURT OF CHHATTISGARH, BILASPUR

Second Appeal No. 108 of 2009

1. Satyanand s/o Late Kanhai, Aged About 65 Years Caste Aghariya, Occupation Cultivation, R/o Village Purena, P. S. Baramkela, Tehsil Sarangarh, District Raigarh, Chhattisgarh., District : Raigarh, Chhattisgarh
2. Keshav Prasad s/o Late Ghasi Ram Patel, Aged About 28 Years Caste Ahariya, Occupation Cultivation, R/o Village Purena, P. S. Baramkela, Tehsil Sarangarh, District Raigarh, Chhattisgarh., District : Raigarh, Chhattisgarh
3. Gopinath s/o Late Ghasi Ram Patel, Aged About 32 Years Occupation Cultivation, R/o Village Purena, P. S. Baramkela, Tehsil Sarangarh, District Raigarh, Chhattisgarh., District : Raigarh, Chhattisgarh

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Versus

1. Bhajan Lal S/o Late Dashrath Nayak, Aged About 45 Years Caste Aghariya Occup.Cultivation R/o Vill.Purena Ps Baramkela, Tah. Sarangarh, Raigarh, District : Raigarh, Chhattisgarh
2. Smt. Lalita Bai D/o Late Dashrath Nayak aged about 50 years, Caste Aghariya Occupation nothing, R/o Village Purena PS Baramkela Tehsil Sarangarh District Raigarh (CG)
3. Name Deleted(Nanku) s/o Bhagat Ram, aged about 85 years Caste Aghariya, Occupation Nothing, R/o Village Purena, P. S. Baramkela, Tehsil Sarangarh, District Raigarh, Chhattisgarh., District : Raigarh, Chhattisgarh
3.1 - Tilak Ram s/o Late Nanku Nayak, Aged About 55 Years Occupation Agriculture R/o Punena, PS & Tahsil Baramkela, District Raigarh (CG)
4. Govardhan s/o Late Kanhai Patel, Aged About 60 Years Caste Aghariya, Occupation Cultivation, R/o Village Purena, P. S. Baramkela, Tehsil Sarangarh, District Raigarh, Chhattisgarh.
5. State Of Chhattisgarh, Through Collector, Raigarh, District Raigarh, Chhattisgarh.

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For Appellants	:	Shri S.N. Nande, Advocate
For Respondents 1 & 3	:	Shri M.K. Sinha, Advocate
For Respondent 5/State	:	Shri Rajendra Tripathi, Panel Lawyer

SB: Hon'ble Shri Justice Ram Prasanna Sharma

Judgment on Board

01.03.2018

1. This Second Appeal is preferred against the judgment and decree dated 8th December, 2008 passed by the Additional District Judge, Sarangarh, Civil District Raigarh (CG) in Civil Appeal No. 24A/2006 wherein the said Court has directed respondents 1 to 4 to remove the barbed wire fencing as shown in Schedule 'A' attached with the plaint filed by respondents 1 to 3 before the trial Court.

2. Respondents 1 to 3 filed a suit before the trial Court, pleading that they are the owners of the land bearing Survey No.74/3, area 0.081 hectares and Survey No.74/5, area 0.049 hectares situated at village Purena, Patwari Halka No.37, Revenue Circle Saria, Tehsil Sarangarh, District Raigarh (CG) and the appellants/defendants obstructed their right of way by constructing the barbed wire fencing in front of their said land as mentioned in Schedule 'A' of the plaint. The trial Court ordered for demarcation of the land and the land was demarcated by one Revenue Officer, namely- P.L. Yadav, Naib Tehsildar, Saria. Basing his report, the trial Court opined that there is no obstruction of road by the present appellants and the suit was dismissed. The present respondents filed an appeal before the First Appellate Court and the said Court vide judgment dated 8th December, 2008 opined that there is obstruction by way of barbed wire fencing and ordered for removal of the said wire fencing.

3. The present appeal is admitted for consideration on the following substantial question of law:-

Whether the finding of the First Appellate Court relating to obstruction on the government land by the appellants is perverse?

4. Schedule 'A' attached with the plaint filed by respondents 1 to 3 is not specific about the Survey numbers of land belonging to respondents 1 to 3 and there is no record of right filed in support of the said map. Though it is pleaded by respondents 1 to 3 that there is obstruction by the barbed wire fencing on the Government land, but as per demarcation report filed by the Naib Tehsildar, there is no obstruction on the spot and movement of public at large is not disturbed by any obstruction. The demarcation report is made as per Section 129 of the Chhattisgarh Land Revenue Code, 1959 and if respondents 1 to 3 were not satisfied with the said report, they have had a right to challenge the same and apply for demarcation by some superior officer. But, no such application was moved before the trial Court after demarcation by the Naib Tehsildar and that demarcation report is final. The demarcation is made as per Land Revenue Code and unless there is cogent reason to reject the said demarcation, the trial Court was right in basing its judgment on the said demarcation report. When there is no obstruction of road, the First Appellate Court was not justified in interfering with the order of the trial Court.

5. From the demarcation report, it is clear that apart from the general road, there is one other road of 12 feet for movement of respondents 1 to 3 from their barn. In this way, the pleading of respondents 1 to 3 was not proved regarding obstruction of road. The finding of the First Appellate Court is not based on any legal document and there was no reason to discard

demarcation report, and therefore, the same is perverse and not sustainable under the law. The substantive question is answered in affirmative.

6. Accordingly, the appeal is allowed. The judgment of the First Appellate Court dated 8th December, 2008 is hereby set aside and judgment of the trial Court dated 28.2.2003 is affirmed/restored, dismissing the suit..

7. Pleader's fee, if certified be calculated as per Schedule or as per notification whichever is less.

8. Parties shall bear their own cost.

9. A Decree be drawn up accordingly.

Sd/

(Ram Prasanna Sharma)
JUDGE