

HIGH COURT OF CHHATTISGARH, BILASPUR

MA No. 93 of 2017

1. Mahendra Kumar Jain, Aged About 70 Years.
2. Sanat Kumar Jain Aged About 62 Years.
3. Ashok Kumar Jain, Aged About 57 Years.
4. Anil Kumar Jain, Aged About 54 Years.

Legal Heirs Of Late Shri Sewaram Ji Jain And Late Smt. Chandanshree Jain.

All R/o Narendra Bangle Store, Banjari Road, Raipur, Tahsil And District Raipur, Chhattisgarh.

5. Smt. Sushil Jain W/o Late Sewaram Ji Jain Aged About 68 Years R/o Neminath Sanwalji, Near Jain Mandir, Aamer, Jaipur, Rajsthan ,
6. Smt. Kamlesh Jain D/o Late Sewaram Ji Jain Aged About 65 Years R/o 35, Vrindavan Colony, Jagdalpur, District Bastar, Chhattisgarh.

No. 1 To 6 Through Power Of Attorney Holder Shri Romil Jain, Aged About 33 Years, R/o Banjari Chowk, Gol Bazar, Raipur, Chhattisgarh.

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Versus

1. Kushal Chand Jain (Shri Shreemal) Aged About 50 Years.
2. Visahl Jain (Shri Shreemal) S/o Shri Kushal Chand Jain Shri Shreemal) Aged About 25 Years.
3. Gaurav Jain S/o Kushal Chand Jain (Shri Shreemal) Aged About 20 Years.

R/o Station Road, Mahasamund, Tahsil And District Mahasamund, Chhattisgarh.

4. Smt. Sangeeta Jain D/o Shri Shailendra Jain Aged About 48 Years R/o 21, South Avenue, Choubey Colony , Raipur, District Raipur, Chhattisgarh.

5. Sardar Vallabh Bhai Patel Nirman Evam Vikas Trust, Add. Bais Kurmi Kshatriya Samaj, Chhatrawas Bhawan, Near Sundar Naagr Gate, Raipur Road, Daganiya, Raipur, District Raipur, Chhattisgarh. - Through Chief Manager Trustee And President Pradesh Kurmi Kshatriya Samaj, Raipur, Vijay Baghel, Sardar Vallabh Bhai Patel Nirman Evam Vikas Trust, Near Sundar Nagar Gate, Raipura Road Daganiya, Raipur, District Raipur, Chhattisgarh.

6. Vijay Baghel S/o Late Nammulal Baghel Aged About 56 Years R/o Quarter No. 7/ B, Street No. 38, Sector 5, Bhilai Nagar, Tahsil And District Durg, Chhattisgarh.

7. The State Of Chhattisgarh, Through Collector , District Durg, Chhattisgarh.

8. Nayab Tahsildar, Up- Tahsil Office, Bhilai- 3, District Durg,

Chhattisgarh.

9. Revenue Inspector, Patwari Halka No. 5, Development Block Patan, Tahsil- Patan , Up Tahsil Bhilai- 3, District Durg, Chattisgarh.

10. Patwari, Halka No. 5, Village Amleshwar, Development Block Bhilai, Up Tahsil Bhilai- 3, Tahsil Patan, District Durg, Chhattisgarh.

--- Respondents

For appellants- Shri V.V.S. Moorthy, Sr. Advocate with Shri Shantanu Kumar, Advocates.

For respondent No.4- Shri Amrito Das with Shri K. Rohan, Advocates.

For respondent No.6-Shri Avinash Chand Sahu, Advocate.

For State/respondents No.7 to 10- Shri Aditya Sharma, PL.

None for respondents No.1, 2, 3 & 5 though served.

Hon'ble Shri Justice Goutam Bhaduri

Order

09/10/2018

Heard.

1. Instant appeal is against the order dated 13th July, 2017 whereby an application under Order 39 Rule 1 and 2 of CPC was partly allowed by the 4th Additional District Judge, Durg.

2. Facts of this case are that plaintiffs/appellants filed a suit for declaration and permanent injunction and for damages on the ground that they purchased a land from Sangeeta Jain on 28/03/2000 which was bearing khasra No.42/2 admeasuring 1.25 hectares at village Amleshwar. It was contended that while sale deed was executed the four corners of the boundary were shown in the sale deed. It is further contended on behalf of the plaintiffs that subsequently another sharer of the land filed an application before the revenue officer that in the earlier point of settlement the same land which was earlier bearing khasra no.17/11-17, the area was reduced to 3.73 hectare instead of 4.14 as actually 4.14 hectare was original land. On the basis of said application the area of the khasra was amended whereby area was inflated to 4.14 by addition of 0.41 hectare. It

is further stated that subsequently on the additional part of the land so carved out, the defendants No.2 and 3 filed an application for demarcation and had appointed defendant No.6 to be their power of attorney holder to carry out the demarcation. It was stated that while the original area of land was amended, no notice was served to the plaintiffs or interested party or villagers, therefore after increase of the area of land taking advantage of the same defendants No.2 and 3 in connivance with the revenue officers encroached upon the land of the plaintiffs though it was demarcated and shown in the sale deed by its four corners of the boundary. It is stated that learned court below though had held prima facie case is in favour of the plaintiffs but failed to appreciate the fact that plaintiffs are not in possession as no document has been shown.

3. Learned counsel submits that defendant No.5 now has started construction of boundary wall over the land which would diminish the right of the plaintiffs as if any superstructure is raised it would lead to obstruct the enjoyment of free hold right by the plaintiff as such defendant No.5 be restrained by injunction order not to raise any superstructure over the land or change the nature of land.

4. Learned counsels for respondents No.4 and 6 supports the order of the court below.

5. Perused the documents connected to this appeal.

6. Entire reading of the order would reveal that there is no dispute that plaintiffs had purchased khasra no.42/2 admeasuring 1.25 hectares at village Amleshwar on 28/03/2000. Subsequently, the original seller filed an application for correction of the map on the ground that on the earlier point of settlement original holding of the land was reduced which may be restored. On the basis of such application, area of the land which was numbered as 42- A part was inflated from 3.73 hectare to 4.14 hectare

and 0.41 hectare of additional land was subsequently recorded in the name of defendants No.2 and 3. Trial court observed that khasra No.42/1 is recorded in the name of the plaintiffs. It is settled proposition that preparation of field map is governed by Section 107 of the C.G. Land Revenue Code, 1959. Sub section 5 of Section 107 purports that once the field map is prepared it is to be revised by the settlement officer and otherwise by the Collector and to carry out such process the rules of natural justice has to be followed by hearing the interested parties. Apart from it certain other safe guard are also provided for such revision of the field map. The plaintiffs have averred that before revision of field map neither the notice were served nor they were heard. Those averments goes to the root of the conflict to decide the lis. It is a settled proposition of law when there is conflict on area and boundary, boundary will prevail over measurement. Photographs filed with this appeal shows that certain poles are being erected over the open land. In respect of the open land possession of a particular person cannot be easily inferred. Finding of the trial court that plaintiffs are not in possession therefore appears to be completely without any basis. After purchase of immovable property by sale deed in respect of open land when boundaries are shown, presumption will follow that purchaser is in possession of the same unless proved otherwise. It is a matter of evidence to be gone into. Further more the way demarcation was carried out whether statutory procedure was followed or not it is also to be adjudicated during evidence. In the meanwhile, if defendant No.5 who has chosen to remain ex-parte before this court, if he is allowed to raise superstructure, then it will lead to irreparable loss and may also cause inconvenience to plaintiff and nature of property may be changed. Consequently the balance of convenience and irreparable loss which may be caused to plaintiff supports the grant of

injunction.

7. Accordingly, the appeal is allowed. Defendant No.5 is further directed not to raise any superstructure over the disputed land till final adjudication of the civil suit. No order as to cost.

Sd/-

(Goutam Bhaduri)

JUDGE