

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****Misc. Appeal No.09 of 2015**

- Jagadish S/o Jumuk Sinha Aged About 44 Years Occupation Peon, R/o Village Aatara Tahsil Ambagarh Chowki, Distt. Civil And Revenue Rajnandgaon C.G.

**---- Appellant****Versus**

1. State Of Chhattisgarh Thru- Collector Rajandgaon, Tahsil And District Civil And Revenue Rajnandgaon C.G.
2. Assistant Commission, Thru- Tribal Development Rajnandgaon, Tahsil And Distt Civil And Revenue Rajnandgaon C.G.
3. District Education Officer Thru-Distt Education Officer Rajnandgaon, Tahsil And District Civil And Revenue Rajnandgaon C.G.

**---- Respondents**


---

For Appellant : Shri RN Jha, Advocate.  
 For respondents/State : Shri PK Bhaduri, Govt. Advocate

---

**Hon'ble Shri Justice Ram Prasanna Sharma****Order****16.02.2018.**

1. This miscellaneous civil appeal has been filed under Order 43 Rule 1(u) of the Code of Civil Procedure, 1908 against the order dated 13.12.2014 passed by Additional District Judge (FTC), Rajnandgaon (CG) in Civil Appeal No.14A/2011 wherein the said Court set aside the judgment and decree dated 26.8.2009 passed by Civil Judge Class-I, Ambagarh Chouki, Distt. Rajnandgaon in Civil Suit No.12A/2007.

2. In the present case disputed land is survey No.262 area 0.38 acre situated at Village Atara patwari Halka No.10 Tahsil Ambagarh Chouki, Distt. Rajnandgaon . As per the appellant, he is owner of the said land and 0.03 acres of said land was

encroached by the respondents and constructed one school and kitchen. The trial Court decreed the said portion in favour of the appellant on the basis of demarcation report prepared by the Revenue Inspector. In appeal, the lower appellate Court opined that the demarcation was done in absence of officers of the District Education Department and Tribal Welfare Department, hence the Court below set aside the judgment/decreed of the trial Court and remanded the matter for re-demarcation and deciding the case afresh.

**3.** The core issue is whether the lower appellate Court is right in remanding the case for re-demarcation. It is clear from the record that the Revenue Inspector has not issued notice to the officers of the Education or Tribal Welfare Department before the demarcation. The person who is in actual physical possession of the land has the right to object the proceedings of the demarcation and his objection should be recorded at the time of demarcation. But this is not done by the Revenue Inspector and proceeded ex-parte. For these reasons the first appellate Court remanded the matter for re-demarcation in the presence of the authorities and the same cannot be termed as unreasonable.

**4.** Apart from the judicial process, the Collector Rajnandgaon is under obligation to make it clear whether the school and the kitchen of the said school are constructed over the land of the appellant and if it is so the appellant is entitled for compensation after enquiry in that regard. Moreover, if the appellant files an

application for compensation, the same will be considered and disposed of by the Collector, Rajnandgaon in accordance with law.

**5.** As the lower appellate court has not committed any illegality or irregularity in remanding the matter for re-demarcation, the same is not liable to be interfered with.

**6.** Accordingly, the appeal is liable to be and is hereby dismissed with the above observation.

**Sd/-**

**(Ram Prasanna Sharma)**

**JUDGE**