

HIGH COURT OF CHHATTISGARH, BILASPUR**MA No. 101 of 2018**

- M/s Arihant Developers Proprietor - Smt. Sandhya Parakh W/o Shri Narendra Kumar Parakh, Aged About 52 Years R/o Parakh Mension, Gudhiyari , District- Raipur Chhattisgarh

---- Appellant**Versus**

1. Chhattisgarh Housing Board Through Housing Commissioner, Headquarter Shankar Nagar, Raipur, District Raipur Chhattisgarh
2. The Executive Engineer Chhattisgarh Housing Board, Veer Sawarkar Nagar, Heerapur, Raipur, District Raipur Chhattisgarh, At Present Address Division No.3, Saddu, Raipur, District Raipur Chhattisgarh
3. The Estate Officer Chhattisgarh Housing Board, Veer Sawarkar Nagar, Heerapur, Raipur, District Raipur Chhattisgarh, At Present Address Division No.3, Saddu, Raipur, District Raipur Chhattisgarh

---- Respondents

For Appellant	:	Shri H.S. Patel, Advocate
For Respondents	:	Shri Sanjay Patel, Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****28/11/2018**

1. Heard.
2. The present appeal is against the order dated 31.08.2018 passed by the learned Additional District Judge, Raipur in Civil Appeal No.14-A/2018, whereby the appellate Court has remanded the case for retrial for demarcation.

3. The appellant/plaintiff filed a suit that he owns a land at village Saddu, P.C. No.109 and different Khasra Nos. were shown that he is the owner is in possession thereof. It is further stated that out of the Khasra No.227 an area of 23,196.80 sq. feet have been illegally encroached upon by the defendant/Chhattisgarh Housing Board. It was stated that when possession was objected, the parties agreed that the demarcation be carried out, however, the construction was carried out from 01.02.2006 by the housing board and without any ownership over the land in question, the housing board constructed the house over the land. The suit for injunction was filed that the housing board be restrained to carry out their construction over the suit land, if the construction is carried out then the plaintiff would suffer irreparable loss. The trial Court order further reflect that during the pendency of the suit, the plaintiff had completed his construction over the part of the land in question and further the trial Court came to a finding that the defendant has encroached upon the 23,196.80 sq. feet of the land and was directed to remove the construction made over the said land.
4. The respondent Housing Board in their reply contended that along with other lands Khasra No.227, admeasuring 22.34 acres was allotted to the housing board by the State of Chhattisgarh at village Saddu and after the allotment, it was demarcated and thereafter the possession to the housing board was handed over by the State. Thereafter housing board carried out the construction over the said land. It was stated that the defendant has not encroached upon any private land of the plaintiff/appellant and the possession

is over the land which was allotted after the demarcation of the land in question.

5. Both the parties adduced their evidence and on the basis of the evidence and the pleading, the trial Court decreed the suit and directed for removal of the construction made over the suit land. The same was subject of appeal before the appellate Court, wherein the appellate Court interfered in the order of the trial Court and came to a finding that the demarcation report, which the trial Court has relied was private in nature and directed for fresh demarcation of the Khasra No.227 to adjudicate the actual dispute in between the parties and remanded the case. The appellant herein is against such remand order.
6. Learned counsel for the appellant would submit that the demarcation on which the trial Court has relied has been exhibited in the evidence and would show that both the parties were heard while the demarcation was carried out. He further submits that in the presence of the parties the demarcation was carried out, the same cannot be questioned further by the housing board, therefore, the finding of the appellate Court to that extent is wrong.
7. Per contra, learned counsel for the respondent opposes the arguments and submits that the order of the appellate Court is well merited, which do not call for any interference.
8. Perused the order of the appellate Court. Perusal of the order of the appellate Court shows that the housing board contended that they have constructed the house over the allotted land which was given to them after demarcation of the part of the land bearing Khasra No.227. The perusal of the order would show

that the dispute over the possession of the land bearing Khasra No.227 is in question. The appellate Court has taken the cognizance of the document Ex. P-2 & P-3 and has observed that certain Khasra numbers other than Khasra No.227 is recorded in the name of the plaintiff. The appellate Court further observed that the Khasra No.227 has been allotted to the housing board by the State according to the document Ex. D-1 to D-12. The observation made by the Court that khasras so claimed by the plaintiff and the Khasra No.227 of the housing board are adjacent to each other.

9. Reading of the order of the appellate Court would show that the trial Court by an order dated 25.04.2007 has allowed the application of the plaintiff filed under Order 26 Rule 9 CPC and directed the Revenue Inspector to demarcate the disputed land including the land bearing Khasra No.227 and pursuant to such direction a demarcation report was placed before the Court on 22.03.2014. However, the said demarcation report did not find place in the order of the trial Court, instead the trial Court has relied on a private document of demarcation placed by the plaintiff and has passed the order. The appellate Court further observed that in the demarcation report no map has been given, therefore, it was not clear on which part the construction has been made by the defendant and observed that the demarcation report on which the trial Court had acted upon was too vague. The appellate Court further observed that when the demarcation is carried out, it has to be according to the Chhattisgarh Land Revenue Code and at the spot i.e. Chandamunara has to be taken into account while location of a land is ascertained. The order shows that in the demarcation

report no such procedure was adopted, therefore, which land belong to the plaintiff and which land belong to the defendant is not clear.

10. The appellate Court further observed that before the demarcation was done, the adjacent land owners were not heard and the demarcation report so relied by the trial Court also do not bear the signature of any official of the defendant housing board, therefore, the appellate Court observed that the demarcation on which the trial Court has relied is completely erroneous. It was further observed that until & unless the particular part of the possession of the land and the demarcation of the land are made, the decree in such case could not be executed as it would be vague and un-executable.
11. The appellate Court further observed that the suit was only for permanent injunction and plaintiff had admitted that on 23,196.80 sq. feet the housing board has completed their construction, but no such amendment was carried out in the plaint but the trial Court has given the decree for possession and for possession decree neither the suit was valued nor the Court fee was paid. The appellate Court further observed that since the construction has already been made over the land, therefore, it cannot be taken to be a agricultural land and it would be a deemed diverted, therefore, when the possession decree has been given, it should have been valued and the court fee should have been paid. Consequently, the direction was made that the Khasra No.227 which is disputed should be demarcated in its entirety as in absence thereof no finding can be given about the possession.

12. Considering the nature of the order passed by the Court below, when apparently it has been observed that the procedure of Chhattisgarh Land Revenue Code was not followed and the possession decree has been passed on the basis of a different private demarcation report, then order of demarcation afresh of the disputed land bearing Khasra No.227 cannot be faulted. When the plaintiff come out with a fact that the defendant has encroached upon certain part of land, then demarcation report has to be sacrosanct and if ambiguity exists it cannot be acted upon. The appellate Court observed that different demarcation report though was on the record it was not taken cognizance thereof, however, the subsequent report was acted upon thereby different demarcation report of same land exists one which was made under order of Court and another demarcation report filed by the plaintiff. There is no reason assigned as to why the demarcation report obtained under order of Court was not taken cognizance.

13. In view of this, the order of remand by the Court below do not appears to be faulty which needs interference. The appeal has no merits, it is accordingly dismissed.

Sd/-

Goutam Bhaduri
Judge

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