

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.726 of 2003

Radhey Shyam, S/o Garib Das Gupta, aged about 42 years, R/o Belgahna, Tehsil Kota, District Bilaspur (C.G.)

(Defendant)

---- Appellant

Versus

1. Shankar Lal Gupta, S/o Ram Manohar Gupta, aged about 70 years, R/o Belgahna, Tehsil Kota, District Bilaspur (C.G.)

(Plaintiff)

2. State of Chhattisgarh, through Collector, Bilaspur, District Bilaspur (C.G.)

(Defendant)

---- Respondents

For Appellant: Mr. Gautam Khetrapal, Advocate.

For Respondent No.1: None present.

For Respondent No.2 / State: -

Mr. Vimlesh Bajpai, Government Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

25/01/2019

1. This second appeal preferred by the defendant under Section 100 of the CPC has been admitted by formulating the following substantial question of law for determination which states as under:

“Whether on the facts and in the circumstances of the case, the 1st appellate Court was justified in reversing the judgment and decree of the trial Court and holding that the plaintiff is the owner of the disputed property and the appellant herein had encroached upon the disputed land of the plaintiff?”

(For the sake of convenience, parties would be referred as per their status and ranking shown in the plaint before the trial Court.)

2. The plaintiff filed suit for possession based on title that he is owner of Khasra No.77/1, area 1.27 acres, situate at Village Belgahna, Tahsil

Kota, District Bilaspur of which he is the title holder and out of which 2 decimals has been illegally encroached by defendant No.1 and despite having requested to vacate has not vacated leading to filing of suit for possession in which defendant No.1 filed his written statement and stated that defendant No.1 is title holder of the suit land, as he has purchased that land by registered deed dated 22-6-1976. The trial Court dismissed the suit that the plaintiff has failed to establish that defendant No.1 has encroached upon the suit land. The first appellate Court on appeal being preferred by the plaintiff firstly, partly remanded to prove the documents Exs.P-5 to P-8 and called for the report of the trial Court and thereafter allowed the appeal holding that defendant No.1 has encroached upon 2 decimals of land owned by the plaintiff against which this second appeal has been preferred in which the substantial question of law has been formulated and which has been set-out in the opening paragraph of this judgment.

3. Mr. Gautam Khetrapal, learned counsel appearing for the appellant herein / defendant No.1, would raise a singular contention that Exs.P-5 to P-8 demarcation report has not been proved by calling the revenue officer and therefore the first appellate Court is absolutely unjustified in holding that defendant No.1 has encroached upon the suit land.
4. None present for the plaintiff / respondent No.1 herein.
5. I have heard learned counsel for the appellant / defendant No.1 and perused the entire records with utmost circumspection.
6. Ex.P-4 is the panchnama – demarcation report on which the first appellate Court did not rely upon holding that same does not appear to have been done at the instance of revenue officer, but in order to prove Exs.P-5 to P-8, the matter was remanded and after examination

of the plaintiff, those documents were marked and exhibited and second time, the first appellate Court relied upon those documents and held that defendant No.1 has encroached upon 2 decimals of the plaintiff's land. The first appellate Court also said that the plaintiff has proved the documents.

7. Ex.P-5 is the nazri naksha prepared by the Patwari and countersigned by the Tahsildar showing that defendant No.1 has encroached upon the suit land. Likewise, Ex.P-6 is the document attested by Tahsildar, Ex.P-7 is the demarcation report submitted to the Tahsildar by the competent revenue inspector and Ex.P-8 is again Panchnama. But none of these documents have been proved by calling the person who has prepared the said report(s).
8. In the matter of Laxman Singh v. Jagannath¹, it has been held by the M.P. High Court that in order to prove the demarcation report, examination of the officer who has demarcated the land is necessary and rejected the plaint at the second appeal stage. It was observed as under: -

“12. The plaintiff alone has entered the witness box. In his deposition, he has not specified the specific portion encroached upon by the defendant. He has submitted a document Ex. P-1 which is a certified copy of demarcation of the lands at village Bamuliya-Uda sent by the Office of Revenue Inspector to the Naib-Tahsildar. Ex. P-2 is a certified copy of Panchanama. Original documents and records were not called from the Revenue Courts. The Revenue Officers, who measured the land were also examined. The plaintiff in his deposition has stated that he does not remember the survey number of suit land and has stated that it must be recorded in the map. In the plaint, sufficient specifications of the land encroached is not mentioned and no map is furnished.”

9. Following the judgment of the M.P. High Court, it is quite vivid that the documents Exs.P-5 to P-8 which is the demarcation report showing encroachment by defendant No.1 have only been marked as exhibits

¹ 2000(1) M.P.H.T. 384

and they have been relied upon by the first appellate Court holding that defendant No.1 has encroached upon the plaintiff's land, but it has not been proved in accordance with law by calling and examining the revenue officer, who has made demarcation and thereafter prepared and signed the report, before the Court by which defendant No.1 has been deprived the opportunity to cross-examine and to question the correctness of the demarcation report (Exs.P-5 to P-8) submitted by the plaintiff and relied upon by the first appellate Court. The revenue officer who has made demarcation report ought to have been summoned and examined to prove the fact of encroachment by defendant No.1 upon the land owned by the plaintiff vide Exs.P-5 to P-8. In absence of examination of the revenue officer demarcating the suit land, before the trial Court, it cannot be held that the plaintiff has succeeded in proving encroachment by defendant No.1. Therefore, the first appellate Court has committed legal error in granting decree on the basis of mere exhibiting of documents Exs.P-5 to P-8 – demarcation report and relying upon the same for granting decree for possession in favour of the plaintiff. The plaintiff's suit stands dismissed resultantly and the substantial question of law is answered accordingly.

10. The second appeal is allowed. No order as to cost(s).

11. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge