

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 543 of 2005**

1. Smt. Ravinder Kaur, Aged about 27 years, W/o Shri Gurvinder Singh Ghai.
2. Smt. Harleen Kaur, Aged about 24 years, W/o Shri Harpreet Singh Ghai.

Both R/o "U Like Auto Care" Amanaka, G.E. Road, Raipur, District Raipur, Chhattisgarh.

---Appellants/Plaintiffs

Versus

Shri Poonaram Vishwakarma, Aged about 45 years, S/o Shri Kunjlal Vishwakarma, R/o Amanaka, G.E. Road, Raipur, District Raipur, Chhattisgarh.

---- Respondent/Defendant

For Appellants	:	Mr. B.D. Guru, Advocate
For Respondent	:	Ms. Upasna Mehta, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

13/09/2019

1. The two substantial questions of law involved, formulated and to be answered in this second appeal preferred by the plaintiffs state as under :

"1. Whether the Courts below committed error of law by not reading the contents of the Demarcation Report (Ex. P-14) ?

2. Whether the plaintiffs have been able to prove the encroachment on the passage left at the southern portion of their plot and they were entitled for a suitable prohibitory decree in their favour ?”

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

2. The two plaintiffs instituted civil suit No. 399-A/2004 for declaration of sale deed dated 23/03/2000 as null and void and for issuance of mandatory injunction to direct the defendant to remove stones/metals/boulders from the suit land and to further restrain defendant from raising any construction in the suit land and creating obstruction in plaintiff's enjoyment of the suit land. Plaintiffs pleaded that the suit land situated at village Doomartalab belonged to one Mehfooz Bi and the suit land which is a road/gali and is part of khasra No. 383/1 was fraudulently purchased by the defendant by sale deed dated 23/03/2000 and he started collecting building materials causing obstruction in the plaintiffs' enjoyment in the suit road/gali. It was further pleaded that Mehfooz Bi died on 31/07/1992 and therefore, the power of attorney in favour of Abde Ali was not inoperative and alive to be used for executing any deed in favour of any other person including the defendant for the purpose of conveying the property and as such, the sale deed dated 20/03/2000 is void, inoperative and illegal having been

executed by a person not competent in law to execute the sale deed.

3. Defendant filed his written statement and pleaded that plaintiffs have no workshop on sheet No. 9 belonging to Gyneshwar Dewangan and the land which has been referred by the plaintiffs as road/gali is in fact a plot belonging to the defendant and there is no road on the said plot and it was also pleaded that defendant is in possession of the land bearing khasra No. 383/1 and 383/3 area 2100 sq.ft. and plaintiffs' suit is not maintainable for want of joining Abde Ali as a defendant.
4. Learned trial Court, upon appreciating the oral and documentary evidence on record, dismissed the suit of the plaintiffs by judgment and decree dated 13/05/2005 against which plaintiffs preferred civil appeal No. 29-A/2005 whereby learned first appellate Court affirmed with the findings recorded by the trial Court and dismissed the appeal of the plaintiffs by judgment and decree dated 08/09/2005, being aggrieved by which, this second appeal under Section 100 of the CPC has been preferred by the plaintiffs in which two substantial questions of law were framed and formulated on 12/07/2006 and are set out in the opening paragraph of this judgment.
5. Mr. B.D. Guru, learned counsel appearing for the plaintiffs/appellants herein would submit that both the Courts below have erred in not relying upon Exhibit P/14 to demonstrate that the

suit land is a road/gali and part of khasra No. 383/1 which was fraudulently purchased by the defendant by sale deed dated 20/03/2000 and in dismissing the suit as well as appeal of the plaintiffs. Both the Courts below ought to have relied upon Exhibit P/14 which is a demarcation report to hold that suit land is a road/gali and part of khasra No. 383/1 and ought to have granted decree as aforesaid in favour of the plaintiffs.

6. Ms. Upasna Mehta, learned counsel for the defendant would support the impugned judgment and decree passed by both the Courts below and submit that both the Courts below have concurrently and rightly dismissed the suit of the plaintiffs which needs no interference as the findings recorded by both the Courts below are based on evidence available on record.
7. I have heard learned counsel appearing for the parties, considered their rival submissions made herein-above and perused the records with utmost circumspection.
8. In a civil suit filed by the plaintiffs claiming declaration of sale deed dated 20/03/2000 as null and void and for mandatory injunction to direct the defendant to remove stones/metals/boulders from the suit land and to further restrain him from raising any construction, learned trial Court recorded a finding that the suit land, being part of khasra No. 383/1, is owned by the defendant and is not a road/gali which has been upheld by the first appellate Court in the appeal preferred by the plaintiffs.

9. Plaintiffs have heavily relied upon Exhibit P/14 to Exhibit P/17 to demonstrate that the suit land is a road/gali but both the Courts below have not accepted this plea raised by the plaintiffs. P/14 is a demarcation report and it has been noticed by the first appellate Court that it is not signed by any of the officers who conducted demarcation. Likewise, Exhibit P/15 is a map in which after the land of the plaintiffs, a 30 feet road/gali has been shown with red ink in which defendant is said to have constructed a wall. Exhibit P/17 is a panchnama of spot inspection which is neither signed by the officer who has prepared the demarcation report nor by the revenue officer who has prepared the said records.

10. In the matter of ***Laxman Singh Vs. Jagannath***¹, it has been held by the Madhya Pradesh 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

¹ 2000 (1) M.P.H.T. 384

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.”

11. From the aforesaid judgment of the Madhya Pradesh High Court, it is quite vivid that Exhibits P/14 to P/17, which are demarcation reports, map and panchnama, though have been marked and exhibited at the instance of the plaintiffs, but these documents have not been relied upon by the first appellate Court holding that these documents have not been proved in accordance with law by calling and examining the revenue officer who has prepared and/or signed the reports. In the considered opinion of this Court, the revenue officer who has prepared the demarcation report (Exhibits P/14 to P/17) ought to have been summoned and examined to prove the said report/fact, as mentioned in Exhibits P/14 to P/17 that the suit land is a road/gali, therefore, it cannot be held that plaintiffs have succeeded in proving their case before the trial Court which the first appellate Court has rightly affirmed by not granting decree in favour of plaintiffs on the basis of documents i.e. Exhibit P/14 to Exhibit P/17 unless these documents are proved in accordance with law, as such, both the Courts below have rightly dismissed the suit as well as the appeal preferred by the plaintiffs.
12. The second appeal deserves and is accordingly dismissed with no order as to cost(s).

13. A decree be drawn up accordingly.

**Sd/-
(Sanjay K. Agrawal)
Judge**

Harneet