

HIGH COURT OF CHHATTISGARH, BILASPUR**FA No. 55 of 2001****Reserved on : 08.05.2019****Delivered on : 21.06.2019**

1. Smt. Tarini Sharma, Wd/o Late B.P. Sharma, aged about 76 years, R/o A-32 Vidya Nagar, Bilaspur (C.G.) (Deleted)
2. Smt. Kiran Tiwari, W/o Dr. P. K. Tiwari, aged about 57 years, R/o A-32, Vidya Nagar, Bilaspur (C.G.)
3. Mr. Rajesh Kumar Sharma, S/o Late B. P. Sharma, aged about 55 years, R/o Gali No. 4, Vinoba Nagar, Bilaspur (C.G.)
4. Smt. Amita Sharma, W/o Arun Sharma, aged about 52 years, R/o 17, Aryapali, Patia, Chandrashekharapur, Bhubaneswar (Orissa)
5. Smt. Sushmita Sharma, W/o J. K. Sharma, aged about 44 years, R/o E-1, Executive Engineer, Jal Parisar, Durg (C.G.)

---- Appellants**Versus**

1. Pranab Kumar Roy, S/o Shri K.M. Roy (Died) through LR's.
 - (1) Sarbani Roy, W/o Pranab Kumar Rai.
 - (2) Palash Roy, S/o Pranab Kumar Rai.
 - (3) Saurobh Roy, S/o Pranab Kumar Rai.

R/o Vinoba Nagar, Bilaspur, Near Former Nalanda Public School, In front of the House of Shri Praphulla Sharma, Bilaspur (C.G.)

---- Respondents

For Appellants	:	Dr. N.K. Shukla, Sr. Advocate with Mr. Vikram Shukla, Advocate.
For respondents	:	Mr. Rajeev Bharat, Advocate.

Hon'ble Shri Justice Ram Prasanna Sharma**CAV JUDGMENT**

1. This first appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against judgment/ decree dated 30.01.2001 passed

by Sixth Additional District Judge, Bilaspur (C.G.) in Civil Suit No. 10-A/1999, wherein the said court dismissed the suit filed by the appellant/ plaintiff for recovery/ possession of vacant land bearing Survey No. 772/2 area admeasuring 1372 sq.ft. situated at Dipupara, Tahsil & District- Bilaspur (C.G.).

2. As per the appellant, he sold 0.06 decimal of land to one Rakesh Ranjan Roy through registered sale-deed dated 31.08.1981 (Ex. P/1) and the same land was purchased by the original respondent namely Pranab Kumar Roy vide sale-deed dated 09.08.1985 (Ex. P/2). It is specifically mentioned in the sale-deed that the plot admeasuring 60 x 40 sq.ft. was sold. When land of the respondent is measured by Commissioner, it is found that he is in possession of 66 x 53 sq.ft. of land. The excess area measured 1372 sq.ft. belongs to the appellant, therefore, he filed a suit before the trial court which is dismissed as mentioned above.
3. Learned counsel for the appellants submits as under:-
 - (i) Land of the appellant is between land of Asharafi Lal Shrivastava and Rakesh Ranjan Roy and as per version of M.K. Pathak (PW-2), land of the appellant is encroached by the original respondent.
 - (ii) The trial court committed error by placing burden of proof wrongly on the appellant which were admitted by the respondent.
 - (iii) The trial court committed error by holding that encroachment by the respondent is not established, therefore, the finding arrived at by

the trial court is liable to be reversed.

4. On the other hand, learned counsel for the respondents submits as under:-
 - (i) The land in question is between land of Asharafi Lal Shrivastava and Rakesh Ranjan Roy and there is no land of the appellant between land of respondent and Asharafi Lal Shrivastava.
 - (ii) The respondent is settled in the land since 1985 and is residing in the house for 30 years. In absence of evidence, it is not proved that any land is owned by the appellant adjoining to the land of the respondent, therefore, pleading of encroachment is not established.
 - (iii) Finding of the trial court is based on proper marshaling of evidence and the same is not liable to be interfered while invoking jurisdiction of the appeal.
5. I have heard learned counsel for the parties and perused the record in which judgment and decree has been passed.
6. Appellant- B.P. Sharma (PW-1) deposed before the trial court that the respondent has encroached 11 ft. of land in north direction and 22 ft. of land in south direction, but no one supported the version of the appellant. Mahanguram Patel (PW-3) and Prafull Chand Sharma (PW-4) have not supported version of the appellant.
7. From the entire evidence, it is not established that any land was in possession of the appellant in north side. One Commission was appointed for measuring the land and from report of the Commissioner and Map (Ex. P/2), it is not established that the respondent has encroached 1372 sq. ft. of land and constructed

boundary wall in the said land.

8. The trial court discussed the entire evidence elaborately and recorded finding that encroachment in the land of the appellant by the respondent is not established and after reassessing the same, this Court has no reason to record contrary finding. Accordingly, the appeal is liable to be dismissed.
9. The decree is passed against the appellants and in favour of the respondents on the following terms and conditions:-
 - (i) The appeal is dismissed with cost.
 - (ii) The appellants to bear cost of the respondents throughout.
 - (iii) Pleaders' fee, if certified be calculated as per certificate or as per schedule whichever is less.
 - (iv) A decree be drawn accordingly.

Sd/-
(Ram Prasanna Sharma)
Judge