

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 132 of 2006**

1. Krishna Kumar S/o Jay Kishan Sharma, Aged about 25 years, R/o Amin Para, Raipur, District Raipur, Chhattisgarh.
2. Shiv Kumar S/o Jay Kishan Sharma, Aged about 23 years, R/o Amin Para, Raipur, District Raipur, Chhattisgarh.
3. Manoj Kumar S/o Jay Kishan Sharma, Aged about 23 years, R/o Amin Para, Raipur, District Raipur, Chhattisgarh.
4. Smt. Krishna W/o Nand Kishor Sharma, Aged about 30 years, R/o Main Road, Dhamtari, District Dhamtari, Chhattisgarh.

Through Power of Attorney Holder Shri Prakash chand Parekh S/o P.C. Parekh, Advocate R/o Sadar Bazar, Raipur, District Raipur, Chhattisgarh.

---Appellants/Lrs. of Plaintiff**Versus**

1. Vivekanand Vidya Mandir, A Registered Society through the President, Vivekanand Vidya Mandir, Kailashpuri, Raipur, District Raipur, Chhattisgarh.
2. Madhukar Rao Kadam S/o Baburao Kadam, R/o Vivekanand Vidya Mandir, Kailashpuri, Raipur, District Raipur, Chhattisgarh.

---Respondents/Defendants

For Appellants	:-	Mr. A.K. Prasad, Advocate
For Respondents	:-	Mr. Manoj Paranjpe and Mr. Anurag Singh, Advocates

Hon'ble Shri Justice Sanjay K. Agrawal
Judgment on Board

20/12/2019

1. This second appeal preferred by the appellants/plaintiffs was admitted for hearing on the following substantial questions of law :-

“1. Whether the Commissioner's report was not correct for want of proper identification of the land ?

2. Whether the Lower Appellate Court was not justified in reversing the decree passed by the trial Court relying on the said report ?”

(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. Original plaintiff – Ganga Bai filed a suit seeking relief for possession and damages stating *inter alia* that she purchased the suit property which forms part of Khasra No. 1902/1 admeasuring 60'x 30' situated at Kailashpuri, Raipur for valuable consideration from one Prakash Chand Parekh by registered sale deed dated 29/03/1976 (Ex. P/3) and thereafter, pursuant to the order dated 02/03/1984 passed by the revenue officer, plaintiff got her name mutated in the revenue records, but in July, 1984, plaintiff came to know

that her plot (land in question) has been encroached by raising a boundary wall and a kaccha room wherein defendant No. 2 was running a school, as such, she is entitled for decree as claimed.

3. Defendants filed their written statement and averred that defendant No. 2 purchased the land bearing khasra No. 1902/4 area 43 decimals from one Magan Lal Agrawal by registered sale deed dated 16/02/1982 (Ex. D/12) and he has not encroached upon the land held by the plaintiff.

4. During the course of the trial, a Commissioner D.W. 1 namely Yadram Sahu was appointed to make demarcation and he submitted his demarcation report (Ex. D/10) and held that defendant No. 2 has encroached upon the land of the plaintiff.

5. Learned trial Court though did not accept the demarcation report holding that it was not properly conducted but by its judgment and decree dated 07/11/1998, decreed the suit of the plaintiff holding that defendant No. 2 has encroached upon the land of the plaintiff.

6. On appeal being preferred by the defendants, learned first appellate Court vide its judgment and decree dated 31/01/2006 reversed the judgment and decree of the trial Court holding that defendant No. 2 has not encroached upon plaintiff's land.

7. Questioning the judgment and decree of the first appellate Court, this second appeal under Section 100 of the CPC has been preferred by the appellants/plaintiffs in which two substantial questions of law have been framed and set out in the opening paragraph of this judgment.

8. Mr. A.K. Prasad, learned counsel for the appellants/plaintiffs would submit that the local Commissioner, while making demarcation under Sections 124 and 129 of the Chhattisgarh Land Revenue Code did not follow the due procedure as envisaged in the rules framed under Section 129 of the Code and D.W. 1 namely Yadram Sahu has accepted and admitted in his statement that no boundary mark was fixed in the demarcation report as it was not found and the demarcation made was contrary to the rules framed regarding boundary and demarcation marks as well as survey marks and therefore, it deserves to be set aside as it suffers from illegality and infirmity and it could not have been relied upon by the first appellate Court and the substantial question of law deserves to be answered in his favour.

9. Mr. Manoj Paranjpe and Mr. Anurag Singh, learned counsel for the respondents/defendants would support the impugned judgment and decree and submit

that the demarcation report has rightly been accepted by the first appellate Court and no illegality has been committed in accepting that report and would rely upon the decision rendered by the Supreme Court in the matter of **Ram Lal and Ors. v. Salig Ram and Ors.**¹ and submit that the appeal deserves to be dismissed.

10. I have heard learned counsel for the parties, considered their rival submissions made hereinabove and went through the records with utmost circumspection.

11. The question is whether the demarcation made by the Commissioner appointed by the trial Court at the instance of the defendants could have been accepted by the first appellate Court, which the trial Court did not accept ?

12. Section 124 of the Land Revenue Code provides for construction of boundary marks of villages and survey numbers or plot numbers which reads as under:-

124. Construction of boundary marks of villages and survey numbers or plot numbers. -(i) Boundaries of all villages shall be fixed and demarcated by permanent boundary marks.

(ii) The State Government may, in respect of any village by notification, order that

the boundaries of all survey numbers or plot numbers shall also be fixed and demarcated by boundary marks.

(iii) Such boundary marks shall, subject to the provisions hereinafter contained, be of such specification and shall be constructed and maintained in such manner as may be prescribed.

(iv) Where the rules prescribed boundary marks of a specification different from that prevailing in any village, the new specification shall not be enforced in such village except upon application to a Tahsildar made by not less than half the number of holders of land in the village. When such application is made, the Tahsildar shall have new boundary marks constructed throughout the village and shall distribute the cost thereof proportionately among the holders of land in the village in accordance with rules made under this Code. The share of each holder shall be recoverable as an arrear of land revenue.

(V) Every holder of land shall be responsible for the maintenance and repair of the permanent boundary and survey marks erected thereon.

13. Sub-section (2) of Section 124 of the Code provides that the State Government may, in respect of any village by notification, order that the boundaries of all survey numbers or plot numbers shall be fixed and demarcated by boundary marks. Sub-section

(1) of Section 124 of the Code provides that boundaries of all villages shall be fixed and demarcated by permanent boundary marks. The aforesaid provisions are specific which provide two types of boundaries, one of village and another of all survey number or plot numbers in the village. The State has also framed rules regarding boundaries and boundary marks, survey marks. Rule 2 of the aforesaid Rules provides boundaries of all villages and boundaries of survey numbers or plot numbers in villages notified under sub-section (2) of section 124 shall be demarcated by :-

- (a). an unploughed strip 1.50 metre in width; or
- (b). a dhura .50 metre high, 1.50 metre wide at the base and 1.00 metre at the top; or
- (c). a strong fence or wall, or
- (d). boundary stones.

14. Rule 3 provides that near each corner of a survey number or plot number shall be erected two mounds or teelas pointing along the field boundaries. The Rule 9 provides that between the 1st November and the 15th December each year, the patel and patwari shall jointly inspect every boundary or survey mark in each survey number or plot number in the village and shall prepare a statement in Form A of defective or missing marks, and shall give a

written notice in form B to the holders concerned.

Rule 13 provides how construction and maintenance of boundary marks in the village shall be regulated.

15. Aforesaid provisions specifically provide two types of boundary marks, one of village and another of each survey number in the village. The local Commissioner performing work of demarcation of the suit land ought to have firstly ascertain whether there are permanent marks as per section 124 of the Code or not and in absence of such boundary marks, he is required to ascertain the correct boundaries of nearby survey numbers and after asceratining the boundaries of such lands, three sides of disputed property, he has to ascertain the correct location of the disputed land and only thereafter, he has to submit his report before the Court.

16. The Madhya Pradesh High Court in the matter of **Jagdish Prasad v. State of M.P. and Anr.**² laid down the mode and manner in which demarcation has to be made by the Commissioner appointed by the Court keeping in view the provisions contained in Section 124 of the Code.

17. Likewise, in the matter of **Ram Lal** (supra), the Supreme Court has clearly indicated that if the

report of the local Commissioner was suffering from an irregularity i.e. want of following the applicable instructions, the proper course for the High Court was either to issue a fresh commission or to remand the matter for reconsideration but the entire suit could not have been dismissed.

18. Reverting to the facts of the present case, it is quite vivid that the Commissioner Yadavram Sahu (D.W.1) conducted demarcation and submitted the demarcation report and he was examined before the trial Court with regard to the fixing of the boundary mark of the lands held by plaintiff as well as defendant No. 2.

19. Paras-3 and 4 of statement of Yadavram Sahu (D.W.1) state as under:-

“3. प्र. डी. 7 पटवारी नक्शा है। पटवारी नक्शे में गोल घेरे को बीच में बिन्दु मारकर दर्शाया गया है। वह सर्वे मार्क है। प्र. डी. 7 के नक्शे में ख. नं. 1906 के ऊपर में दु डाटेड लाईन से बताया गया हिस्सा सड़क है। प्र. डी. 7 के ए से ए भाग पर दर्शाया गया सड़क टिकरापारा की ओर जाती है। ब से ब भाग पर दर्शाया गया सड़क बूढ़ेश्वर मंदिर के तरफ जाता है। यह बात सही है कि प्र. डी. 10 में किसी भी सीन पर सर्वे मार्क नहीं दर्शाया गया है। यह बात भी सही प्र. डी. में टिकरापारा जाने का रास्ता एवं बूढ़ातालाब जाने का रास्ता नहीं दर्शाया गया है।

4. मैं नाप शुरू करने के पहले पटवारी नक्शे के मुताबिक सीमा चिन्हों की जानकारी प्राप्त नहीं किया। स्वतः कहा कि जानकारी प्राप्त की पर चिन्ह नहीं मिला। मैंने खुदाई करके सीमा चिन्ह के वास्तविक जानकारी प्राप्त करने के लिए पटवारी नक्शे में दर्शाये सीमा चिन्हों को यह जानकारी हासिल नहीं किया कि सीमा चिन्ह के पहचान के लिए कोयला, चूना, बाल रखे जाते हैं वो उपलब्ध है या नहीं यह बात सही है कि किसी भी स्थान की वास्तविक स्थिति पता लगाने के लिए 3 सीमा चिन्हों से नाप किया जाना आवश्यक है।

सीमांकन करने के बाद मैं सीमांकन के समय फील्डबुक और नक्शा तैयार नहीं किया था। चूँकि परिवर्तित भूमि के आधार पर नाप किया और जिसका नाप वर्गफूट के आधार पर होता है, इसलिए परिवर्तित भूमि के आधार पर नाप किया और फील्ड बुक चैनसर्वे पर बनता है जो कि पटवारी अभिलेख के अनुसार होता है। यह बात सही है कि मैंने अपने परिवर्तित भूमि विभाग के नक्शे के आधार पर 3 सीमा चिन्हों के आधार पर नाप नहीं किया। मौके पर वादपत्र के साथ संलग्न नक्शे में आम रोड खुली जमीन नाला दर्शाया गया है, वह मौके पर उपलब्ध है। पर उसका कोई चिन्ह हमारी परिवर्तित शाखा के नक्शा प्र.डी. 10 में नहीं है। ”

20. The aforesaid statement given by the Commissioner Yadavram Sahu (D.W.1) before the trial Court would clearly show that he has failed to conduct demarcation in accordance with the rules noticed herein-above. He has clearly admitted that he did not ascertain whether there is boundary marks as per Section 124 of the Land Revenue Code, either of the Village or of the survey number of the land owned by the plaintiff and the defendant though he also admitted that while conducting demarcation, three boundary marks were necessary. He has also admitted that he further did not prepare any field book or map and he did not make demarcation as per three boundary marks, as such, the demarcation conducted by D.W. 1 cannot be said to be in accordance with the rules.

21. As a consequence and fallout of the aforesaid legal discussion, the judgment and decree of both the Courts below are hereby set aside and the matter is

remitted to the trial Court with the following directions:-

(i) The trial Court shall ascertain the fact of encroachment by defendant No. 2 by issuing a fresh commission in this regard.

(ii) The Commissioner so appointed by the trial Court shall ascertain whether there exists permanent boundary marks of the village and in absence of such permanent marks he shall ascertain the boundaries of survey number of three sides around the disputed land and thereafter, he shall measure the location and area of the disputed land. After following aforesaid procedure, the Commissioner shall furnish his report to the trial Court.

(iii) The Commissioner while demarcating the land shall look into the provisions of section 124 of the Code and the rules made thereunder.

(iv) The fees of newly appointed Commissioner shall be borne by the petitioner/plaintiff. After receiving the Commissioner's report, the trial Court shall proceed in the matter in accordance with law.

19. The second appeal is allowed to the extent indicated herein-above leaving the parties to bear their own cost(s).

20. A decree be drawn up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet