

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 122 of 2008**

Rajkumar Pandey, Aged 76 years, Son of late Shri Bisahuram Pandey, Resident of Vidya upnagar, Bilaspur, Tahsil and District Bilaspur, Chhattisgarh.

--- Appellant/Plaintiff

Versus

1. Parijat Grih Nirman Samiti Maryadit, Bilaspur, Chhattisgarh, through the Secretary, Parijat Grih Nirman Samiti Maryadit, Bilaspur, chhattisgarh, Office at Parijat Colony, Ameri Road, Nehru Nagar, Bilaspur, Chhattisgarh.
2. State of Chhattisgarh, Through the District Collector, Bilaspur, District Bilaspur, Chhattisgarh.

---- Respondents/Defendants

For Appellant/Plaintiff	:	Mr. Somnath Verma, Advocate
For State	:	Mr. Ravi Bhagat, Deputy Government Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

29/08/2019

1. Heard on the question of admission and formulation of substantial question of law in this second appeal preferred by the plaintiff under Section 100 of the CPC.
2. Mr. Somnath Verma, learned counsel for the plaintiff would submit that both the Courts below have concurrently erred in holding that defendant No. 1 has not encroached upon the land of the plaintiff admeasuring 0.17 acre, which he has purchased from Uderam by

a registered sale deed dated 04/05/1968, which being perverse, gives rise to substantial question of law for determination in this second appeal.

3. Plaintiff filed a civil suit for recovery of possession stating *inter alia* that he has purchased a land bearing Khasra No. 371/1, admeasuring 0.85 acre from Uderam by a registered sale deed dated 04/05/1968. He then sold 0.45 acres of the said land and out of the remaining land, 0.17 acre has been encroached by defendant No. 1, which learned trial Court has not found favour with and reasoned that plaintiff has neither filed and proved the sale deed dated 04/05/1968, which could show him to be the title-holder of the alleged encroached land, nor has he been able to establish the extent of encroachment made by defendant No. 1 upon the suit land by filing the demarcation report.
4. Learned first appellate Court agreed with the finding recorded by the trial Court and held that admittedly and undisputedly, plaintiff did not prove on record the sale deed dated 04/05/1968 to establish his title over the alleged encroached area of 0.17 acre and neither filed the demarcation report and nor has he sought appointment of the Revenue Commissioner to get the land measured which has been allegedly encroached by defendant No. 1. As such, the finding recorded by the two Courts below that plaintiff has failed to prove his title over the suit land and has also not established the extent of encroachment that has been made by defendant No. 1 is a finding of fact based on evidence available on

record in which I do not find any perversity or illegality that gives rise to any substantial question of law for determination.

5. The second appeal deserves to be and is accordingly dismissed *in limine* without notice to the other side. No order as to cost(s).

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

Hameet