

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment reserved on 15-11-2018****Judgment delivered on 17-05-2019****FA No. 14 of 2009**

1. Smt. Neelam Agarwal, W/o Shri Balkrishna Agrawal, aged about 37 years, R/o Dunga Ji Colony, Raipur, Tehsil & Dist. Raipur (CG).

---- Appellant**Versus**

1. Municipal Corporation, Raipur, through the Commissioner, Municipal Corporation, Raipur (CG).

---- Respondent

For Appellant

Shri Rajeev Shrivastava, Advocate

For Respondent

Shri H.B. Agrawal, Sr. Advocate with
Ms Deepali Dubey, Advocate**Hon'ble Shri Prashant Kumar Mishra, J****Hon'ble Smt. Vimla Singh Kapoor, J****C A V Judgment**

The following judgment of the Court was passed by ***Prashant Kumar Mishra, J.***

1. This is plaintiff's first appeal under Section 96 of the Code of Civil Procedure, 1908 (for brevity 'the CPC') challenging the judgment and decree dated 6-1-2009 passed by the 10th Additional District Judge (Fast Track Court), Raipur, in civil suit

No.13-A/2006 whereby and whereunder the appellant/plaintiff's suit for declaration and permanent injunction has been dismissed.

2. Plaintiff filed the suit for declaration for restraining the defendant – Municipal Corporation, Raipur (for brevity 'the Corporation'), not to demolish the building constructed by her on the land owned and possessed by her bearing khasra No.221/10 and 221/14 situated at village Mathpuraina, Tahsil & District Raipur. Plaintiff also prayed that the said part of the building which has already been damaged by the Corporation be rebuild and compensate the plaintiff with further prayer for declaration that the memo issued by the Zone-6 of the Corporation dated 1-5-2006 treating the plaintiff as encroacher of the Government land, is illegal and contrary to law.
3. According to the plaintiff she is the owner in possession of land bearing khasra No.221/10 area 0.485 hectares and khasra No.221/14 area 0.324 hectare, situated at PH No.105, village Mathpuraina, Tahsil & District Raipur, which has been diverted for non-agriculture purposes was subjected to illegal demarcation and thereafter the part of the building constructed over the suit land has been demolished and the Corporation intends to demolish the remaining part although the plaintiff has obtained required building permission from the concerned Gram Panchayat as at the relevant time the area was included within the geographical limits

of the Gram Panchayat and was later on included within the limits of the Corporation. Plaintiff further stated that the demarcation report obtained by the Corporation in collusion with the Revenue authorities is, *prima facie*, illegal for the reason that notice of the said demarcation was sent to the plaintiff at a different address than the one at which previous notices were served to the plaintiff.

4. Plaintiff had earlier preferred WP No.1867 of 2004 wherein interim order was allowed in her favour restraining the respondents therein from demolishing the structure without following the prescribed procedure. The writ petition was eventually disposed of on 11-4-2005 recording the submission of the Corporation's counsel that the plaintiff shall not be evicted from the disputed land without following the procedure prescribed under the law reserving liberty to the plaintiff to file appropriate proceedings available under the law in the event of accrual of new cause of action.
5. Plaintiff thereafter preferred WP No.3048 of 2005 in which an order of *status quo* was passed on 15-7-2005 and subsequently, the writ petition was disposed of by this Court on 24-8-2005 allowing the Corporation to approach the Revenue Department for demarcation of the land belonging to the respondent No.4 therein (defendant herein) as well as the petitioner therein (plaintiff herein) in presence of both the parties. Petitioner, thereafter, preferred yet another writ petition bearing WP No.2735 of 2006 in

which an interim order of maintaining *status quo* was passed on 12-6-2006, however, the writ petition was disposed of on 10-7-2006 holding that there being disputed questions of facts involved in the matter the petitioner (plaintiff) is required to approach the civil Court for redressal of her grievance, but at the same time restraining the Corporation from carrying out any further demolition for a further period of 7 days.

6. Plaintiff thereafter filed an application under Order 39 Rule 1 & 2 of the CPC before the Court below which was registered as MJC No.30 of 2006, however, the application was dismissed on 14-7-2006 on the ground that only an application under Order 39 Rule 1 & 2 of the CPC without filing the plaint is not maintainable. Plaintiff then preferred MAC No.868 of 2006 before this Court wherein an order of *status quo* was allowed on 17-7-2006 and eventually the appeal was allowed on 20-9-2006 quashing the order passed by the trial Court and remitting the matter back to decide the application preferred by the plaintiff on merits after affording opportunity of hearing to the parties. In the meanwhile, the Corporation was restrained from undertaking any demolition proceeding. On remand, the plaintiff's application under Order 39 Rule 1 & 2 of the CPC was dismissed by the trial Court on 29-3-2017, however, similar application was allowed on 11-5-2007 restraining the Corporation to interfere with the plaintiff's possession over the suit land.

7. On these factual matrix, plaintiff averred that she is entitled to maintain her possession over the suit land and the Corporation should be restrained from demolishing the structure.
8. The Corporation contested the suit by denying the plaintiff allegations. It was stated by the Corporation that the demarcation was carried out in accordance with law after issuing notice to the plaintiff and in the same demarcation plaintiff was found to have raised construction by encroaching the land belonging to the Government.
9. The trial Court framed four issues for determination. The 1st issue is about plaintiff's ownership over the suit land which has been decided in her favour. The 2nd, 3rd and 4th issue is to the effect as to whether the demarcation was illegal and the memo dated 1-5-2006 issued by the Corporation treating the plaintiff to have encroached the Government land is illegal and whether the plaintiff is entitled for permanent injunction. The trial Court has recorded a finding that the plaintiff is owner of the suit land, however, in respect of other issues the trial Court has held that the demarcation carried out by the Revenue authorities does not suffer from any illegality and that on the basis of said demarcation the plaintiff has encroached the Government land, therefore, decree for permanent injunction cannot be granted to the plaintiff.

10. Learned counsel appearing for the appellant/plaintiff would submit that the demarcation was not conducted in accordance with law, therefore, the demarcation report itself being faulty, the consequent notice issued by the Corporation has also been rendered illegal and the plaintiff's suit should have been decreed in her favour.
11. Learned counsel appearing for the respondent/defendant, *per contra*, would submit that the plaintiff has failed to point out the illegality with which the demarcation report would allegedly suffer, therefore, the plaintiff having not discharged the burden the suit has rightly been rejected. Learned counsel would also submit that notices were issued to all the parties and the demarcation report is signed by four persons, therefore, it is now established that the plaintiff has encroached the Government land.
12. The bone of contention between the parties is the demarcation report (Ex.D/3), which, according to the plaintiff, is not done properly, but the defendant would support the said demarcation. Plaintiff's ownership of khasra No.221/10 & 221/14 is really not an issue. What is to be decided is whether the plaintiff has encroached the Government land over and above her land.
13. The panchnama (Ex.D/1) prepared at the spot at the time of carrying out the demarcation on 24-4-2006 would refer to the High Court's order permitting the Corporation to apply for

demarcation before the Revenue authorities. It says that RI Nand Kumar Dubey & B.R. Sahu, Patwari Neeraj Pratap Singh and two other personnel of the Revenue Department namely; Tikaram Dewangan & Vishnu Thakur conducted the demarcation. It also records that at the time of demarcation Yogendra Verma, Sub Engineer of the Corporation, and one Kailash Manikpuri representing the plaintiff were also present. The panchnama carries the signature of Kailash Manikpuri as an approval of his presence. The report (Ex.D/3) also records that plaintiff's representative Kailash Manikpuri was present at the time of demarcation. According to the report, khasra No.220 & 221/1 area 0.263 hectares and 14.929 hectares respectively has been allotted to the Corporation for tracing ground for use by the Corporation for Gokul Nagar Yojana and the plaintiff has encroached an area admeasuring 10,100 sq.mtr. over the said khasra numbers.

14. The appellant would mainly attack the demarcation report submitting that the demarcation was not carried out in accordance with law, however, record of the trial Court including the order sheet nowhere discloses that the appellant had ever moved any objection against the demarcation report when the same was carried out by the Revenue Authorities under the orders passed by the High Court on 24.08.2005 in WP No.3048/2005. The appellant neither moved any appeal before the superior Revenue Authorities

or any further writ petition specifically challenging the demarcation report (Ex.D/3). The appellant has, thus, acquiesced with the report. Even otherwise the Panchnama (Ex.D/1) prepared by the Revenue Officers would clearly show the name of Kailash Manikpuri, as the person who appeared at the time of demarcation representing the appellant/plaintiff Smt. Neelam Agrawal.

15. It is very important to notice that in Para 15 of cross examination of the plaintiff Smt. Neelam Agrawal (PW-1) she clearly admits that Kailash Manikpuri is her relative. Although she denies that Kailash Manikpuri appeared on her behalf at the time of demarcation, but immediately thereafter she states, on her own, that if someone had appeared on her behalf she is not aware of the fact. Even PW-2 Santosh Agrawal, who is brother-in-law of the plaintiff, would state in Para 11 of his cross examination that Kailash Manikpuri had gone to the spot at the time of demarcation to inform that Smt. Neelam Agrawal is not present. Thus, this witness admits the fact that Kailash Manikpuri was present at the time of demarcation. It is for the same reason, there is no denial by the plaintiff that the signature of Kailash Manikpuri is forged or was obtained subsequently.

16. More importantly the plaintiff has not examined Kailash Manikpuri as her witness for which adverse presumption can be drawn. If Kailash Manikpurin had appeared at the time of demarcation only to inform that Smt. Neelam Agrawal is not

present, nothing was coming in the way of the plaintiff to examine Kailash Manikpuri, who was the best witness to say that he has not signed over the Panchnama (Ex.D/1) as the representative of the plaintiff Smt. Neelam Agrawal.

17. To demolish the plaintiff's plea of faulty demarcation the defendant had examined Nand Kumar Dubey, Revenue Inspector (DW-2), who had conducted the demarcation as mentioned in the Panchnama. This witness would clearly depose that one Manikpuri had appeared for Smt. Neelam Agrawal at the time of demarcation. This witness would also state that Manikpuri was present along with complete record of the matter implidely suggesting that he was authorized by Smt. Neelam Agrawal by handing over her own documents to Kailash Manikpuri. It is quite natural to conclude that a person who is possessed of documents belonging to a party to the litigation would appear in any proceeding only after being authorized by the concerned party.
18. When this evidence of DW-2 Nand Kumar Dubey is read along with the admission of PW-1 Smt. Neelma Agrawal and PW-2 Santosh Agrawal to the effect that Manikpuri is relative of the plaintiff and that Manikpuri had gone to inform that Smt. Neelam Agrawal is not present, the irresistible conclusion would be that Manikpuri had appeared at the time of demarcation as the representative of Smt. Neelam Agrawal. DW-2 Nand Kumar Dubey has proved the demarcation papers Ex.D/1 to Ex.D/3.

19. Defendant's another witness Yogendra Verma, Sub Engineer, Municipal Corporation Raipur, (DW-3) has clearly deposed in Para 1 of his statement that based on the demarcation report it was found that the plaintiff has encroached an area of 10,100 sq.mtr. on Khasra Nos. 220 & 221/1. This witness states in Para 5 of his cross examination that Kailash Manikpuri is an employee of the plaintiff and was present at the time of demarcation.
20. First judgment relied by the learned counsel for the appellant in the matter of **Laxman Singh, S/o Meharban Singh v Jagannath, S/o Mansaram**¹ would deal with identity of the property whereas the other judgment in the matter of **Jagdish Prasad v State of M.P. and Another**² would deal with the validity of Commissioner's report when the demarcation has been carried out without ascertaining the correct location.
21. In the case at hand, it has been found that the plaintiff is the owner of khasra No.221/10 & 221/14 and during demarcation plaintiff was found to have encroached 10,100 sq.mtr. of khasra No.220 & 221/1. Thus, the plaintiff's possession over her own land is not an issue. Once encroachment is proved, there is no dispute about the identity or location of land. Therefore, the judgments relied by the appellant would not assist in the matter.

1 2000 (1) MPLJ 79

2 2009 (2) MPLJ 429

22. From the above discussion, it would clearly appear that the plaintiff has failed to prove that the demarcation report was contrary to law or that the same has been prepared in absence of plaintiff or her representative.
23. Once it is established by the demarcation report that the plaintiff has encroached 10,100 sq.mtr. of land on Khasra Nos 220 & 221/1, which has rightly been concluded by the trial Court the plaintiff's suit was required to be inevitably dismissed and the trial Court has not committed any error in dismissing the suit. We have not found any illegality or infirmity in the impugned judgment passed by the trial Court warranting interference in the instant first appeal.
24. As a sequel, the first appeal, *sans* merit, is liable to be and is hereby dismissed.

Sd/-

(Prashant Kumar Mishra)
Judge

Sd/-

(Vimla Singh Kapoor)
Judge

Gowri