

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No. 636 of 2017**

1. Ravi Kumar Dewangan, S/o Late Santram Dewangan, Aged About 30 Years Occupation Private Service, R/o Shanti Laudge Road, Kumharpara, Karbala, Juna Bilaspur, Tahsil And District Bilaspur Chhattisgarh,
2. Shrikant Dewangan, S/o Late Santram Dewangan, Aged About 25 Years Occupation Contractor, R/o Shanti Laudge Road, Kumharpara, Karbala, Juna Bilaspur, Tahsil And District Bilaspur Chhattisgarh,
3. Smt. Nirmala Devi, Wd/o Late Santram, Aged About 50 Years, Occupation House Wife, R/o Shanti Laudge Road, Kumharpara, Karbala, Juna Bilaspur, Tahsil And District Bilaspur Chhattisgarh.

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Versus

- Dwarika Prasad Dewangan, S/o Late Govind Prasad Dewangan, Aged About 68 Years Retired Employee, R/o Kashyap Colony, Gali No. 06, Bilaspur Tahsil And District Bilaspur Chhattisgarh.

---- Respondent

For Appellants	: Shri Ravindra Kumar Sharma, Advocate.
For Respondent	: Shri Ratnesh Kumar Agrawal with Smt. Prabha Sharma, Advocate.

Hon'ble Shri Justice Sanjay Agrawal**Order On Board****06.05.2019**

1. This appeal has been preferred by the defendants under Section 100 of the Code of Civil Procedure, 1908 (hereinafter referred to as the CPC) questioning the propriety of the judgment and decree dated 18.07.2017 passed by the Fourth Additional District Judge, Bilaspur (C.G.) in Civil Appeal No.9-A/2016, by which, the lower appellate Court, while affirming the judgment and decree dated 23.12.2015 passed by the 2nd Civil Judge, Class-01, Bilaspur, in Civil Suit No.302-A/2015, has dismissed the appeal.

2. Briefly stated the facts of the case are that the plaintiff Dwarika Prasad Dewangan instituted a suit claiming declaration of title, injunction and praying further for removal of encroachment made by the appellants/defendants during pendency of the suit. It is pleaded that the property in question was of their grandfather, namely, Pachkoud Dewangan, who partitioned his property on 19.06.1962 (Ex.P.1) and it came in share of his father Govind Prasad Dewangan. It is pleaded further that after the death of Govind Prasad Dewangan, it was inherited by him and his brother, namely, Santram Dewangan and, before the Panchas, the property, inherited by their father, was got partitioned on 06.05.2012 in which, the plaint Schedule 'A' property marked in green colour came in the share of plaintiff. It is pleaded further that the portion marked in red colour of plaint Schedule 'A' has been encroached during pendency of the suit by defendants by raising a pillar and wall. Since the alleged encroachment has not been removed despite request being made by the plaintiff, a suit in the instant nature has been made on 04.07.2012.

3. While denying the aforesaid claim, it is pleaded by the defendants that they have not raised the alleged construction forcibly as shown in the red portion in plaint Schedule 'A'. According to them, the said portion (red ink marked) came in their share where they have raised the alleged construction.

4. In order to establish the aforesaid claim, the plaintiff has examined his witnesses, who in turn, stated very specifically that the alleged portion marked in red colour was encroached by the defendants by raising a pillar and wall. The said fact could not have been rebutted by the defendants as they failed to enter into the witness box.

5. After considering the aforesaid evidence, the trial Court has decreed the suit holding that the alleged portion marked in red colour was forcibly encroached by the defendants by raising a pillar and wall. As a consequence, the claim made by the plaintiff has been decreed.

6. The aforesaid finding of the trial Court has been affirmed further by the lower appellate Court in an appeal preferred by the defendants.

7. Being aggrieved, the defendants have preferred this appeal. Shri Ravindra Kumar Sharma, learned counsel for the appellants/defendants submits that the judgment and decree as passed by the Courts below holding that the defendants have encroached forcibly the alleged portion marked in red colour of plaint Schedule 'A' by raising the alleged construction are apparently contrary to law. According to him, although the defendants have not entered into the witness box but irrespective of the said fact, the plaintiff is required to establish this fact by virtue of cogent and reliable evidence. However, he failed to produce any cogent and reliable evidence in this aspect. He submits further that in absence of mentioning length and width of the land in question in the plaint, the claim as made is liable to be rejected for non-compliance of the provisions prescribed under Order 7 Rule 3 of C.P.C. The judgment and decree passed by the Courts below are, therefore, liable to be set aside.

8. I have heard learned counsel for the appellants and perused the entire record carefully.

9. A suit was instituted by the plaintiff claiming declaration of title, injunction and also for removal of alleged encroachment, marked in red portion of plaint Schedule 'A', as made by the defendants during pendency of the suit. According to the plaintiff, the green portion marked in plaint Schedule 'A' property came in his share in a partition, which took place before the Panchas on 06.05.2012. The factum of said partition is not in dispute. In order to establish the alleged encroachment, the plaintiff has adduced the evidence and his witnesses have deposed that the portion marked in red colour of plaint Schedule 'A' has been encroached by the defendants by raising a pillar and wall. The initial burden, which was upon the plaintiff, was duly discharged by the plaintiff, however, it could not have been rebutted by the defendants as they failed to enter into the

witness box.

10. As far as the contention of Shri Sharma that the land in question is not identifiable and the suit is liable to be dismissed for non-compliance of the provisions prescribed under Order 7 Rule 3 of C.P.C. is, however, noted to be rejected as no defence plea has been taken by the defendant in this regard. What is reflected from a bare perusal of para 3 of the written statement that the alleged construction in the said portion was not made forcefully, in fact it was their own land. In any case, a bare perusal of the plaint averments would show that the alleged portion sought to be removed is specifically shown in red colour of the plaint map and its identification has not been denied specifically. As a consequence of it, no issue in relation to the identification of land in question was framed by the trial Court. In view of the facts and circumstances of the case, I am unable to agree with the contention of Mr. Sharma and as such, it cannot be said that the suit property was not identifiable in the present case. The Courts below have, therefore, rightly come to the conclusion that the alleged portion marked in red colour of plaint Schedule 'A' was illegally encroached by the defendants by raising a pillar and wall. The said finding is based upon due and proper appreciation of the evidence led by the plaintiff. Accordingly, it deserves to be and is hereby affirmed.

10. In view of the foregoing discussions, I do not find any question of law, much less, the substantial questions of law, which arise for determination in this appeal. The appeal, being devoid of merit, is liable to be and is accordingly dismissed at admission stage itself. No order as to costs.

Sd/-

(Sanjay Agrawal)
Judge