

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No.170 of 2001**

1. Smt. Shardha Bai Gupta, W/o Shri Ramsharan Gupta, S/o Late Chandulal, Aged About 48 Years R/o Gandhi Nagar Ratanpur Distt. Bilaspur C.G.
2. Shri Rajkumar Gupta S/o Late Chandulal Aged About 51 Years R/o Gandhinagar Ratanpur Distt. Bilaspur C.G.
3. Smt. Durga Bai Gupta, W/o Shri Dayaram Gupta, Aged About 40 Years, D/o Late Chandulal, R/o Gandhinagar Ratanpur Distt. Bilaspur C.G.
4. Smt. Shivkumari Gupta, W/o Chedi Gupta, Aged About 38 Years, D/o Late Chandulal, R/o Gandhinagar Ratanpur Distt. Bilaspur C.G.
5. Shri Ramesh Gupta, S/o Late Chandulal, Aged About 35 Years, R/o Gandhinagar Ratanpur Distt. Bilaspur C.G.
6. Shri Purushttam Gupta S/o Late Chandulal Aged About 30 Years R/o Gandhinagar Ratanpur Distt. Bilaspur C.G. --- **Appellants/Defendants**

Versus

1. Shri Shrikumar Agrawal, S/o Aged About 50 Years, R/o Ratanpur Distt. Bilaspur C.G.
2. Shri Makhan Gopal Agrawal Aged About 48 Years R/o Ratanpur Distt. Bilaspur C.G.
3. Shri Ram Gopal Agrawal Aged About 42 Years R/o Ratanpur Distt. Bilaspur C.G.
4. Shri Girdhar Gopal Agrawal Aged About 40 Years R/o Ratanpur Distt. Bilaspur C.G.
5. Shri Sudhir Kumar Agrawal Aged About 36 Years R/o Ratanpur Distt. Bilaspur C.G.
6. Shri Prakash Kumar Agrawal Aged About 36 Years R/o Ratanpur Distt. Bilaspur C.G.
7. Smt. Subhadra Devi Agrawal (Died)
8. State Of Chhattisgarh, Through: The Collector, Bilaspur C.G.

....Respondents/Plaintiffs

For Appellants/Defendants	:	Mr. C.K. Kesharwani, Advocate
For Respondents/Plaintiffs	:	Mr. Somnath Verma with
		Mr. Prasanjeet Dutta, Advocates
For State	:	Mr. Aditya Bharadwaj, Panel Lawyer

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****11.07.2019**

During the course of hearing today, both the parties agreed that the matter requires framing of additional question of law and following additional substantial question of law was framed :

“Whether the learned Lower Appellate Court was justified in law in relying upon the Commissioner's report in Ex.C/1 which suffered from serious irregularities and illegalities.

With the consent of the parties, the parties were heard on this question of law also.

1. This appeal is directed against impugned judgment and decree dated 07.02.2001 passed by learned Lower Appellate Court in Civil Appeal No.4A/2001 whereby the plaintiffs' appeal has been partly allowed and suit partly decreed.

2. On 13.10.2014, following substantial question of law was framed :

“Whether the first appellate Court was justified in reversing the judgment and decree of the trial Court ignoring the demarcation report of the Commissioner ?”

3. The respondents/plaintiffs filed a suit seeking decree of possession and *mesne profit* on the pleadings, inter alia, that initially, the plaintiffs owned 1.15 acres of land situated in Khasra No.602 of village Ratanpur. In course of time, 0.15 acres of the said land was sold to one Suganchand and thereafter, the partition of holding had taken place, in which, land remaining in the hands of the plaintiffs was renumbered as Khasra No.602/1 admeasuring 1 acre. The part of the land purchased by Suganchand was numbered as Khasra No.602/2. In the plaint, it was alleged that the defendants had encroached upon 10 decimal of land comprised in Khasra No.602 without any authority of law and when the plaintiffs came to know about such illegal encroachment on his own land by defendants, a legal notice was served. Thereafter, when the defendants did not vacate the encroached part of his land, the suit was filed seeking decree of eviction.

4. The contesting defendant-Chandulal filed a written statement denying claim of the plaintiffs that no encroachment of Khasra No. 602/1 was made by

him. His case was that he was granted lease of a Government land admeasuring 30 x 30 sq.ft. on a land comprised in Khasra No.3456 for the purposes of constructing house on 14.08.1975 and he was given possession of the same. In that year, itself, defendants constructed a house and since then, he was residing in the said house. He has been issued certificate by the Government and therefore, the plaintiffs' suit is liable to be dismissed.

5. As the title of the plaintiffs over the land comprised in Khasra No.602/2 and lease hold title of the defendants over the land comprised in Khasra No.3456 was not in dispute and it was essentially a matter relating to aspect of alleged encroachment of the defendants on plaintiffs' land, learned Trial Court obtained report of commissioner by appointing Commissioner. The Commissioner submitted a report. He was examined as Court witness. After examining the oral and documentary evidence led by the plaintiffs and defendants and also examining the report of the Commissioner, learned trial Court came to the conclusion that the report of the Commissioner is not reliable. In the result, the plaintiffs' suit was dismissed by holding that the plaintiffs failed to prove that defendants encroached upon plaintiffs' land.

6. On First Appeal being filed by the plaintiffs, learned Lower Appellate Court, upon re-appreciation of evidence on record, particularly the Commissioner's report Ex.C/1 and his evidence, came to the conclusion that though, there were certain minor irregularities, the report of the Commissioner was reliable. As in the Commissioner's report, 780 sq.ft. of land comprised in Khasra No.602/1 alone was found to be encroached upon, learned Lower Appellate Court partly decreed the suit of the plaintiffs.

7. Against the said judgment and decree of learned Lower Appellate Court, the plaintiffs and defendants both have approached this Court. In this appeal filed by defendants, the plaintiffs also filed cross-objection to the extent the learned Lower Appellate Court dismissed the plaintiffs' suit except 780 sq.ft. alleged encroachment.

8. Learned counsel for the appellants would argue that learned Lower Appellate Court, while recording a finding that to the extent of 780 sq.ft., encroachment of the defendants is found proved, is perverse and suffers from patent illegality because it has not properly appreciated the demarcation report and has not assigned cogent reasons to reverse the finding of learned Trial Court with regard to the demarcation report. He would argue that the

demarcation report was not proper inasmuch as the demarcation report was based on a demarcation adopting a method other than use of "*Chanda Munara*" i.e. points of fixation. He would further argue that the said report did not contain any material to show whether the report was in respect of possession of the entire land comprised in Khasra No.602/1 or Khasra No.3456. Relying upon the decision of **Madhya Pradesh High Court in M.P. Weekly Notes 284 [S.A. No.98 of 1972 (Gulabsingh v. Ranchhod) decided on 21.11.1977]**, it has been argued that the demarcation report is clearly illegal.

9. Learned counsel for the respondents argued that the demarcation report of the Commissioner was not proper and it was objected to because the Commissioner instead of carrying out demarcation by using established method of "*Chanda Munara*", had followed another method and the learned Lower Appellate Court despite having recorded a finding that if the demarcation would have been done in accordance with the established method of use of "*Chanda Munara*", there was bound to be difference in the demarcation and the ultimate report with regard to measurement of the land, ought to have rejected commissioner's report and obtained new report.

10. Learned counsel for the respondents also argued that the demarcation was not in accordance with specific writ issued to the Commissioner. Referring to order dated 22.09.1997, it has been argued that the Court directed the Commissioner to give a report whether the house (hut) constructed by defendants is situated in Khasra No.602/1 or in Khasra No.3456. The Court also directed the Commissioner to submit report as to on how much of land, defendants are in possession and on which Khasra number. The demarcation report was not in accordance with this order because the Commissioner did not report regarding possession of the defendants and it confined the demarcation only in respect of the house and not in respect of the entire land. It is further argued that in all fairness to both the parties, the Commissioner ought to have carried out inspection and demarcation to find out, who was in possession of the land comprised in Khasra No.601/2 and as to who was in possession of the land comprised in Khasra No.3456 and give a complete report which alone would have made it clear. It is argued that the demarcation report is thus illegal and the matter requires fresh report so as to do complete justice to both the parties.

11. I have heard learned counsel for the parties and perused the records.

12. The order dated 22.09.1997 of the learned Trial Court was that the Commissioner has to conduct spot inspection and submit a report before the Court as to whether the house was constructed in Khasra No.602/1 or on Khasra No.3456. The other direction issued by the Court was that the Commissioner should also give report regarding the possession of the plaintiffs on the spot and clearly state as to on which Khasra number and to on what extent defendants are in possession.

13. When the Commissioner prepared report by carrying out demarcation at the spot, it confined its report only to the house. The Commissioner was required to not only give demarcation report with regard to the land on which house was situated but also with regard to the complete aspect of possession of the defendants.

14. In the case of *Gulabsingh Vs. Ranchhod (supra)*, it was found that the Commissioner did not measure the total area in possession of each of the parties claiming as their field to find out whether there was any excess area in possession of the defendant.

15. The object and purpose of obtaining demarcation report by way of spot inspection through the Commissioner is to find out the possession of the parties over the disputed land. For this purpose, it is necessary that the lands involved in dispute are properly demarcated and possession of the parties to the suit over the lands involved in dispute is clearly mentioned in the report. The Commissioner's report Ex.C/1 only records that the defendants had encroached upon 780 sq.ft. of Khasra No.602/1. Entire inspection, report is very cryptic. It does not contain as to who is in possession of land comprised in Khasra No.602/1 nor does it contain as to who is in actual and physical possession of the land comprised in Khasra No.3456. Whether the plaintiffs and defendants are exceeding their possession in their respective land is also not clear. The very purpose of obtaining spot inspection report seems to have been frustrated. The Commissioner was required to measure the entire land comprised in Khasra No.602/1 as also entire land comprised in Khasra No.3456. Upon measurement, it was required to find out as to who is in possession of these lands in two Khasra numbers. This part has not at all been touched by the Commissioner in its report and its report seems to be confined only with regard to where the house is situated and nothing more.

16. In view of the above, though this Court, on the first question of law

answers that the learned Lower Appellate Court has taken into consideration the Commissioner's report and it cannot be said that it ignored, on the second question of law, this Court has framed today itself and heard with the consent of the parties, it is found that learned Lower Appellate Court was wholly unjustified in law in placing reliance upon the Commissioner's report which itself was illegal.

17. In the result, the impugned judgment and decree of learned Lower Appellate Court is set aside. The matter is remanded to the trial Court. The Trial Court shall obtain a comprehensive Commissioner's report by appointing a Commissioner and shall thereafter decide the matter on the basis of pleadings, oral and documentary evidence already on record as also taking into consideration the new report. The additional evidence by the parties would be allowed only in respect of the new report of the Commissioner.

18. Records of the Trial Court be remitted forthwith.

19. The Trial Court is directed to conclude the trial and decide the matter within an outer limit of four months.

Sd/-

(Manindra Mohan Shrivastava)
Judge