

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 356 of 2007**

N.B. Mandal, S/o Late J.K. Mandal, R/o Sindhiya Nagar Housing Board, Tah. &
Distt: Durg (C.G.)

----Appellant/Plaintiff

Versus

The Nagar Palika Nigam, Durg (C.G.), Through Ayukta

----Respondents/defendant

For Appellant : Mr. Arvind Kumar Dubey, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

23/10/2019

(1) Heard on the question of admission and formulation of substantial question of law in this second appeal preferred by plaintiff under Section 100 of the Code of Civil Procedure, 1908.

(2) Learned counsel appearing for the appellant/plaintiff would submit that both the courts below have concurrently erred in dismissing the suit filed by the plaintiff, by recording a finding, which is perverse to the record and, therefore, appeal deserves to be admitted for hearing by formulating substantial question of law for determination.

(3) The plaintiff filed a suit for declaration of title and permanent injunction against the respondent – Municipal Corporation, Bhilai (henceforth “Corporation”) stating *inter alia* that the defendant – Corporation is encroaching upon his land and trying to construct the road on the land owned by him.

(4) The trial Court by its judgment & decree dated 30.11.2004 dismissed the suit. Plaintiffs preferred first appeal there-against. The first appellate court, on re-appreciation of evidence available on record dismissed the appeal affirming the judgment & decree of the trial Court, against which, instant second appeal under Section 100 of the CPC has been preferred.

(5) After appreciating the oral and documentary evidence available on record, both the courts below have clearly recorded a finding that the plaintiff has failed to prove that he is title holder of the land bearing Khasra No. 49/10, area 18 decimal, which is a finding of fact based on material available on record and I do not find it either perverse or contrary to the records. However, the First appellate Court has also recorded a finding, in paragraph 14 of its judgment, that the plaintiff has failed to establish that he has constructed the house and boundary wall after obtaining permission from the Municipal Corporation. Further, in paragraph 17, the first appellate Court has also recorded a finding that the Municipal Corporation, Durg has no proposal to construct road near the house of the appellant/plaintiff herein.

(6) Thus, both the courts below have rightly dismissed the suit of the plaintiff and it is held accordingly. However, appellant/plaintiff shall be at liberty to rely upon the observations made by the first appellate Court made in paragraphs 14 & 17 of its judgment.

(7) With the aforesaid observations, the second appeal stands dismissed. No cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

