

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MA No. 53 of 2019

Reserved on : 05.09.2019

Delivered on : 18.09.2019

Umend Lodhi, S/o Janak Lodhi, aged about 50 years, R/o Village-Gangdwari, Tahsil- Pathariya, District- Mungeli (C.G.)

---- Appellant

Versus

1. Khorbahra, S/o Tigali Teli, aged about 65 years, R/o Village-Bhatgaon, Tahsil- Pathariya, District- Mungeli (C.G.)
2. State of Chhattisgarh, through Jiladhyaksh, Mungeli (C.G.)

---- Respondents

For Appellant	:	Mr. Vijay Mishra & Mr. Krishna Kumar Khatri, Advocates.
For respondent No. 1	:	Mr. Pallav Mishra, Advocate.
For State/ respondent No. 2	:	Mr. Afroj Khan, Panel Lawyer.

Hon'ble Shri Justice Ram Prasanna Sharma

CAV ORDER

1. This miscellaneous appeal is preferred under Order 43 Rule 1 of the Code of Civil Procedure, 1908 (for short "the C.P.C., 1908") against order dated 29.01.2019 passed by District Judge, Mungeli, District- Mungeli (C.G.) in Civil Appeal No. 21-A/2018, wherein the said court remanded the case for demarcation of land in dispute and for rehearing of the matter.
2. As per the appellant, the suit was filed by respondent No. 1/ plaintiff before the court of Second Civil Judge Class-I, Mungeli (C.G.) which was registered as Civil Suit No. S-93A/2015. It is pleaded that the

appellant/ defendant had encroached land area 200 x 150 sq.ft. of land bearing Survey No. 1253 area admeasuring 0.41 acre situated at Village- Gangdwari. The trial court dismissed the suit on the ground that no demarcation report was filed before the said court, therefore, encroachment on the land of the respondent is not established. An appeal was preferred before First Appellate Court and case was remanded by the said court directing demarcation of the land and for providing opportunity of adducing evidence.

3. I have heard learned counsel for the parties and perused the record in which judgment/ decree has been passed.
4. First question for consideration before this Court is whether the remand order passed by First Appellate Court is proper or not. It is a suit regarding encroachment of land of Survey No. 1253. Survey No. 1252 is adjoining land which is owned by the appellant/ defendant while Survey No. 1253 area admeasuring 0.41 acre is owned by respondent No. 1. Whether the land of respondent No. 1 is encroached or not, the same can be decided by demarcating boundary of the survey number, as per Section 129 of the Chhattisgarh Land Revenue Code, 1959. As per provision of this Section, the Tahsildar or any other Revenue Officer empowered to act may, on the application of a party interested, demarcate the boundaries of a survey number or of a sub-division or of a plot number and construct boundary marks thereon.
5. As per Section 75 of the C.P.C., 1908, the Court may issue

commission to make a local investigation. As per Order 26 Rule 9 of the C.P.C., 1908, the Court can issue commission to make local investigation for the purpose of deciding of any matter in dispute. Both the provisions empowers the Court to issue commission to make local investigation even if the parties have not applied for. Order 41 Rule 23A of the C.P.C., 1908 empowers the court to remand the case where retrial is considered necessary.

6. In the present case, the core issue between the parties is encroachment of land which can be decided only by way of demarcation. When the Court is empowered for local investigation by commission, the First Appellate Court is right in remanding the case for the said purpose. Argument advanced on behalf of the appellant is not sustainable.
7. In view of the above, the instant miscellaneous appeal is liable to be and is hereby dismissed.

Sd/-
(Ram Prasanna Sharma)
Judge