

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 25--02-2019

Judgment delivered on 29-03-2019

FIRST APPEAL No. 210 of 2005

Smt. Sita Bai Agrawal, aged about 72 years, w/o. Shrin Shyam Kishore Agrawal, occupation Agriculturist, r/o,. village Saloni, Tehsil Abhanpur, Turi Hatri, Purani Basti, District Raipur, CG (died and deleted) through following Lrs.

1. Shri Shyam Kishore Agrawal s/o. Late Shri Ramsewak Lal Agrawal, aged about 76 years.
2. Shri Jyoti Narayan Agrawal s/o. Shyam Kishore Agrawal, aged about 53 years.
3. Kriti Narayan Agrawal s/o. Shri Shyam Kishore Agrawal aged about 50 years.
4. Pradeep Narayan Agrawal s/o. Shri Shyam Kishore Agrawal, aged about 47 years.
5. Aditya Narayan Agrawal, s/o. Shri Shyam Kishore Agrawal 44 years.
6. Smtt. Geeta Agarwal, d/o. Shri Shyam Kishore Agrawal, aged about 55 years.
7. Shri Abhishek Agrawal s/o. Late Shri Prakash Narayan Agrawal, aged about 25 years, through the Power of Attorney Holder Shri Kirti Narayan Agrawal s/o. Shri Shyam Kishore agrawal (applicant No.3).

All r/o. Village Saloni, Tah. Abhanpur, Turi Hatri, Purani Basti, Raipur, Dist. Raipur (CG).

---- Appellants.

Versus

1. State of Chhattisgarh through Collector, Raipur.
2. Gram Panchayat Singarbhata, Post Sivani, Tahsil Abhabnpur, Distict Raipur, Chhattisgarh.
3. Harish Chandrakar, aged about 49 years, Sarpanch s/o. Miohanla I Chandrakar, Agriculturist, r/o. Gram Singarbhata, Tehsil Abhanpur, Dist. Raipur, CG.

– Respondents.

For appellant : Mr. Ramkumar Tiwari, Advocate

For respondent/State : Mr. Afroz Khan, Panel Lawyer

SB: Hon'ble Shri Justice Ram Prasanna Sharma
CAV JUDGMENT

1) This appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against the judgment/decreed dated 14-7-2005 passed by 9th Additional District Judge (FTC), Raipur (CG) in Civil Suit No.6-A/2003 wherein the said court dismissed the suit filed by the original appellant/plaintiff for getting vacant possession of land bearing Survey No. 49/1 and 49/10 situated at village Saloni, Patwari Halka No. 134, Tehsil Abhanpur, District Raipur for area measuring two acres and compensation to the tune of Rs.69,200/- .

2) The original appellant/plaintiff filed a suit for recovery of possession and for mesne profits on the pleading that she is the owner of the land in question the total area of survey No.49/1 is 19.523 acres and Survey No. 49/10 area 0.322 hectares. The respondent while constructing the road from village Saloni to village Khilora encroached two acres of land and removed the trees of Koha and Babool that is why she filed the suit which was dismissed by the trial Court.

3) Learned counsel for the appellant would submit as under:

- i) When the dispute arises as to identity the land it should be dissolved by appointing Commissioner but the trial court appointed service Revenue Inspector as Commissioner, who is not impartial person.
- ii) The report of the said Revenue Inspector is not clear as to which Khasra and how much area is used for construction of road. There was no valid report for accepting the report of the said Commissioner.
- iii) The trial Court has not evaluated the entire evidence in its true perspective, therefore, same is liable to be set aside.

Reliance has been placed on the decision of Hon'ble the High Court of MP in the matter of **Kiriti Bai (Smt) vs. Amrit, 1996 (1) MP Weekly Notes 9'**

4) On the other hand, learned counsel for the State would submit that the finding of the trial court is based on proper marshalling of the evidence which does not call for any interference by this court while invoking jurisdiction of the appeal.

5) I have heard learned counsel for the parties and perused the record in which judgment and decree has been passed.

6) The case of the appellant is based on fact that the land measuring two acres has been encroached by the respondent

authorities. The trial court called the report of Revenue Inspector who submitted the report as per Ex.C/1 and C/2 after measuring total area in question. The said Revenue Inspector namely Salikram appeared before the trial Court as court witness and proved his report (Ex.C/2). As per Ex.C/1 and C/2 no encroachment by any of the respondent authorities was found in the land bearing Survey No.; 49/1 and 49/10. It is also clear from his report that road is constructed in Survey no. 50, 52, 51, 2/11, 43/2 and 43/1. This court witness has been cross examined by the appellant side but remained unshaken and this witness is firm to his report. This witness has answered a number of questions regarding measurement and there is nothing on record to reject the report filed by this witness. There is no other report contrary to report of this Commissioner. It is alleged by the appellant before the trial court that one Ram Singh Thakur was present at the time of measurement of this Commissioner, but said Ram Singh Thakur was not produced before the trial Court to say anything contrary to opinion of the Revenue Inspector Salikram. The trial court opined that it is not proved that any of the land of the appellant is encroached by the respondent authorities. There is also no evidence that any of the respondent authorities cut the trees standing on the land of the appellant, therefore, no liability can be fastened on any of the respondents.

7) After re-assessing the entire evidence adduced by appellant side, this court has no reason to substitute contrary finding. On over all assessment of the evidence, no liability can be fastened on respondent and no relief can be granted to the appellant. Finding of the trial court is based on factual matrix and legal aspect of the matter which is not liable to be interfered with while invoking jurisdiction of the appeal. The appeal is liable to be dismissed. Argument advanced on behalf of the appellant is not sustainable. The case law cited by learned counsel for the appellant does not help to him as the same is clearly distinguishable from the facts of the present case. .

8) As a fallout and consequence of the aforesaid discussion, the appeal is held to be devoid of merit and same is liable to be dismissed. Accordingly, decree is passed in favour of respondents and against the appellant as under:

- (i) The appeal is dismissed with cost.
- (ii) Parties to bear their own costs.
- (iii) Pleader's fee., if certified, be calculated as per Schedule or as per certificate whichever is less.
- (iv) A decree be drawn up accordingly.

Sd/-

(Ram Prasanna Sharma)
JUDGE