

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.78 of 2008

1. Smt. Gadaua, W/o Ramnaresh Dwivedi, Aged about 55 years,
2. Ramashankar, S/o Shambhu Prasad, Aged about 45 years, Through power of attorney holder, Smt. Gadaua, W/o Ramnaresh Dwivedi, Aged about 55 years.

Both above R/o Village Kevri, Police Station Lakhanpur, Tahsil Ambikapur, District Surguja (C.G.)

(Plaintiffs)
---- Appellants

Versus

1. Bhagwan Das, S/o Late Dhanushdhari, Aged about 28 years,
2. Shivnarayan Das, S/o Late Dhanushdhari, Aged about 25 years,
3. Krishna Das, S/o Late Rajnath, Aged about 32 years,

All above R/o Village Kevri, Police Station Lakhanpur, Tahsil Ambikapur, District Surguja (C.G.)

4. Shailendra Agrawal, S/o Suresh Agrawal, Aged about 28 years,
5. Mohd. Firdos, S/o Mohd. Idris, Aged about 24 years,

Respondents No.4 & 5 are R/o Village Lakhanpur, Police Station Lakhanpur, Tahsil Ambikapur, District Surguja (C.G.)

6. State of Chhattisgarh, Through Collector, Surguja, Ambikapur, District Surguja (C.G.)

(Defendants)
---- Respondents

For Appellants / Plaintiffs: -

Mr. Manoj Paranjpe and Mr. Anurag Singh, Advocates.

For Respondents No.1, 2, 3 & 5 / Defendants No.1, 2, 3 & 6: -

Mr. Sunil Tripathi, Advocate.

For Respondent No.4 / Defendant No.5 – Shailendra Agrawal: -

None present.

For Respondent No.6 / State: -

Mr. Sanjeev Kumar Agrawal, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

04/03/2020

1. This appeal preferred by the plaintiffs / appellants was admitted by formulating the following substantial questions of law: -

“1) Whether the trial Court was justified in recording a finding that 0.82 acres of land out of Khasra No.69/Ka was acquired for construction of a new road prior to 1973-74, as pleaded by the plaintiffs?

2) Whether the lower Appellate Court was justified in reversing the judgment and decree passed by the trial Court on the ground that in the absence of claiming relief for possession, suit for mere declaration of title was not maintainable?”

[For the sake of convenience, parties hereinafter will be referred as per their status shown and ranking given in the suit before the trial Court.]

2. The suit property bearing Khasra No.69/6, total area 4.25 acres, was originally held by Dhanushdhari – father of defendants No.1 & 2. He sold firstly 3 acres of land to Hardevdas by sale deed dated 13-3-1975 and Hardevdas in turn, sold that 3 acres of land out of 4.25 acres to the plaintiffs by registered sale deed dated 26-2-1977 (Ex.P-2) and thereafter, Dhanushdhari also sold further 43 decimals of land to plaintiff No.1 by registered sale deed dated 5-10-1979 (Ex.P-1) and thereby 82 decimals of land was left in the credit and hands of the defendants after death of Dhanushdhari. Thereafter, dispute arose between the parties leading to filing of suit for declaration and permanent injunction by the plaintiffs. The plaintiffs before the institution of suit, filed an application for demarcation of land on which demarcation was conducted on 13-6-1999, but before the demarcation

report could be submitted and finalised, the plaintiffs brought suit for declaration of title and permanent injunction on 17-1-2000 stating that they are owners and title-holders of 3.43 acres of land purchased from Hardevdas and Dhanushdhari which is being interfered with by the defendants, therefore, they are entitled for declaration of title and permanent injunction. Meanwhile, demarcation report dated 9-2-2000 (Ex.D-7) was prepared which was filed by the defendants and sought to be relied upon by the defendants. In that demarcation report it was reported that some land has been acquired after execution of sale deed. On the basis of said demarcation report, the plaintiffs amended the plaint and sought the amendment based on the demarcation report.

3. Defendants No.1 to 3 and 6 filed their joint written statement and maintained that no land of Dhanushdhari was acquired for construction of road and no compensation was paid to Dhanushdhari or to the defendants, therefore, the suit deserves to be dismissed, as they are in possession of 82 decimals of land.
4. The trial Court after appreciating oral and documentary evidence available on record disbelieving the demarcation report Ex.D-7 decreed the suit against which the defendants preferred first appeal before the first appellate Court and the first appellate Court reversed the judgment & decree of the trial Court basically relying upon Ex.D-7 – demarcation report by holding that since road has been constructed on the plaintiffs' land, therefore, the plaintiffs are not in possession and therefore the suit for bare declaration of title without seeking possession was not maintainable against which this second appeal has been preferred by the plaintiffs in which substantial questions of law have been formulated

which have been set-out in the opening paragraph of this judgment.

5. Mr. Manoj Paranjpe, learned counsel appearing for the appellants herein / plaintiffs, would submit that demarcation report Ex.D-7 which has been heavily relied upon by the first appellate Court and finding has been recorded and decree has been reversed, is totally an inadmissible piece of evidence as demarcation report was made at the instance of the plaintiffs, but the revenue officer who demarcated the land was not noticed and the demarcation report was submitted after filing of suit and therefore in absence of examination of revenue officer, the demarcation report could not have been relied upon in view of the decision of the M.P. High Court in the matter of Laxman Singh v. Jagannath¹. As such, if there is any dispute of identity, the first appellate Court could have directed for appointment of Commissioner under Order 26 Rule 9 of the CPC, but could not have relied upon the unilateral demarcation report of which the plaintiffs were not permitted to cross-examine the said Commissioner for want of his examination. Therefore, the judgment & decree of the first appellate Court deserves to be set-aside.
6. Mr. Sunil Tripathi, learned counsel appearing for respondents No.1, 2, 3 & 5 herein / defendants No.1, 2, 3 & 6, would submit that Ex.D-7 is a report of which demarcation was conducted at the instance of the application filed by the plaintiffs, therefore, the plaintiffs are bound by the said demarcation report and could not disregard that report, as such, the first appellate Court is absolutely justified in accepting and relying upon that demarcation report to non-suit the plaintiffs which should not be interfered with by this Court in exercise of jurisdiction under Section

¹ 2000(1) M.P.H.T. 384

100 of the CPC.

7. None present for respondent No.4 herein / Defendant No.5 – Shailendra Agrawal.
8. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.
9. It is not in dispute that Dhanushdhari – father of defendants No.1 & 2 held 4.25 acres of land i.e. Khasra No.69/6 out of which he sold 3 acres of land firstly to Hardevdas by sale deed dated 13-3-1975 and Hardevdas, in turn, sold that 3 acres of land to plaintiff No.1 by sale deed dated 26-2-1977 and that became Khasra No.29/6Kha and thereafter, Dhanushdhari sold 43 decimals of land to the plaintiffs vide sale deed dated 5-10-1979 (Ex.P-1) and that became Khasra No.69/6Ga, thereby 82 decimals of land left in the credit and in the hands of legal representatives of Dhanushdhari. Dispute arose of this 82 decimals of land. According to the plaintiffs, they purchased the suit land when this 82 decimals of land was already acquired by the State for construction of Ambikapur-Bilaspur road, whereas it is the case of the defendants that it was never acquired nor they were paid compensation against acquisition and they were in possession of 82 decimals of land, as they are still in possession of 82 decimals of land. However, it is the case of the plaintiffs that after acquisition of 82 decimals of land, rest of the land was purchased by Hardevdas and by them by two registered sale deeds.
- 10.Ex.D-7 is the demarcation report conducted at the instance of the plaintiffs. Though the demarcation report was filed and exhibited as

Ex.D-7, but the revenue officer who made demarcation of the suit land ought to have been examined in view of the decision of the M.P. High Court in Laxman Singh (supra) in which it has been held that in order to prove the demarcation report, examination of the officer who has demarcated the land is necessary and rejected the plaint at the second appeal stage. It was observed as under: -

“12. The plaintiff alone has entered the witness box. In his deposition, he has not specified the specific portion encroached upon by the defendant. He has submitted a document Ex. P-1 which is a certified copy of demarcation of the lands at village Bamuliya-Uda sent by the Office of Revenue Inspector to the Naib-Tahsildar. Ex. P-2 is a certified copy of Panchanama. Original documents and records were not called from the Revenue Courts. The Revenue Officers, who measured the land were also examined. The plaintiff in his deposition has stated that he does not remember the survey number of suit land and has stated that it must be recorded in the map. In the plaint, sufficient specifications of the land encroached is not mentioned and no map is furnished.”

11. However, the revenue officer who conducted demarcation of the suit land was not examined. The trial Court rightly disbelieved the demarcation report (Ex.D-7) assigning valid reasons for not accepting the same as the demarcation report is against the interest of the plaintiffs and also held that after purchase of suit land by the plaintiffs, road was constructed on the land held by the defendants, whereas it is the case of the defendants that the land was never acquired, but the fact remains that road is there over Khasra No.69/6. Therefore, to give a fair opportunity of hearing to the plaintiffs examination of revenue officer who conducted Ex.D-7 – demarcation report was absolutely imperative which the first appellate Court failed to notice and relied upon the said demarcation report and thereby dismissed the suit of the plaintiffs,

whereas it ought to have directed to appoint revenue commissioner afresh or could have directed for examination of the revenue officer who conducted the demarcation.

12. For the foregoing reasons, the substantial questions of law are answered accordingly and the judgment & decree of the first appellate Court is set-aside and that of the trial Court is restored. The first appellate Court is directed to appoint Commissioner under Order 26 Rule 9 of the CPC and to examine as to whether the existing road which is a part of Khasra No.69/6 is a part of the land held by the plaintiffs or it is a part of the land held by the defendants and to decide the suit within three months from the date of receipt of a copy of this judgment. If the Commissioner report is objected, the parties will proceed in accordance with Order 26 Rule 10 of the CPC.

13. Parties are directed to appear before the first appellate Court on 23-3-2020. No further notice would be necessary to the parties.

14. The appeal is allowed to the extent indicated herein-above. No order as to cost(s).

15. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge