

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No. 138 of 2007**

- Ram Chandra Verma, S/o Shri Derha Verma, aged about 62 years, R/o Village – Naara, Tahsil and District – Raipur, Chhattisgarh

---- Appellant**Versus**

1. Jhumuk Lal Sahu, aged about 42 years,
2. Deendayal Sahu, aged about 37 years,
3. Deenu Ram Sahu, aged about 32 years,
4. Mukund Sahu, aged about 24 years,

All are the S/o Ghondulal, R/o Village – Zora, Post – Telibandha, Raipur,
District – Raipur, Chhattisgarh

---- Respondents

For Appellant	:	Shri Sameer Oraon, Advocate under the instructions of Shri B.P. Sharma, Advocate
For Respondent / State	:	Shri S.P. Sahu, Advocate on behalf of Shri C.R. Sahu, Advocate

S.B.: Hon'ble Shri Justice Manindra Mohan Shrivastava**Judgment On Board****02/07/2020**

This appeal is directed against impugned judgment and decree dated 17.01.2007 passed by 10th Additional District Judge, Raipur in Civil Appeal No.9-A/2006, by which defendant appeal against judgment and decree of trial Court has been dismissed affirming the judgment and decree of the trial Court in favour of plaintiff.

2. The respondent/plaintiff filed a suit seeking recovery of land situated in Khasra No.579 admeasuring 0.11 hectares, out of a total area of 1.37 hectares, on the pleadings that the land in dispute was purchased by plaintiff brothers vide sale deed dated 31.03.2001 from one Motilal. Further, pleading was that the defendant who is resident of the same village, taking undue advantage, illegally encroached upon 0.11 hectares of the land belonging to the plaintiff and started conducting agricultural activity. Upon demarcation made by the office of Tehsildar, the plaintiff came to know about encroachment and demanded removal of encroached land but the defendant did not remove encroachment. The plaintiff, therefore, gave them a notice dated 27.03.2003 but even thereafter, when the possession was not given to the plaintiff, he filed a suit.

3. The case of the defendant was that the defendant are in possession of the property since long. According to defendant, the land comprised in Khasra No.471/2008 have been changed in Khasra Nos.575, 576, 577 and 580 admeasuring 0.38 acres and since 1970-1971, they are in possession of the land. Further case of the defendant was that the land is a government land and in the past, proceedings of eviction of the defendant were also drawn and fine was paid by him. Defendant further case was that the defendant raised certain objections with regard to demarcation that the demarcation is not being done properly.

4. The learned trial Court framed as many as six issues including the most important issue, as to whether the defendant has encroached upon joint 0.11 hectares of plaintiff land situated in Khasra No.579. Both the parties were allowed to led oral and documentary evidence. The plaintiff's land, upon which, the demarcation report Ex.P/4 is made, was prepared by the Revenue Officer. The learned trial Court placed heavy reliance on plaintiff's documents to hold that the plaintiff has succeeded in proving that the defendant illegally encroached upon 0.11 hectares of land comprised in Khasra No.579.

5. Aggrieved by the aforesaid judgment and decree, the defendant filed a first appeal which too was dismissed giving rise to second appeal. This appeal was admitted on following two substantial question of law -

- “i) Whether the trial Court is justified in granting decree for possession on the basis of demarcation report (EX.P/4) without examination of revenue inspector, who made demarcation ?
- ii) Whether the First Appellate Court is justified in affirming the decree of the trial Court?”

6. Learned counsel appearing for appellant vehemently argued that the learned Courts below have committed serious and patent illegality in placing reliance upon the document in the form of demarcation report Ex.P/4. He would submit that the author of this document was not examined in the trial Court for proving the document. Even if the defendant did not dispute that a demarcation was carried out and a report was prepared, the defendant has seriously objected to correctness of the report by stating that the demarcation was not properly done. Therefore, the learned Court below ought not to have allowed the demarcation report Ex.P/4 to be admitted. In support of his contention, learned counsel for the appellant has placed reliance upon judgments of **R.V.E. Venkatachala Gounder Vs. Arulmigu Viswesaraswami & V.P. Temple (2003) 8 SCC 752, Suresh Kumar Verma Vs. Hemlata Verma 2000 (1) MPHT 384** and **Sudir Engineering Company Vs. Nitco Roadways Ltd. 1995 (34) DRJ 86.**

7. On the other hand, learned counsel for the respondent supports the judgment impugned of the Courts below by submitting that the demarcation report Ex.P/4 was led in the evidence by the plaintiff and at the time, this document was led by the plaintiff, the defendant did not raise any objection of the admissibility of the document.

8. Having heard learned counsel for the parties, in the opinion of this Court, the issue is no longer *res integra*. Present is a case where the appellant is objecting to

the demarcation report Ex.P/4 on the ground that it was not proved in accordance with law by examining its author. True it is, the concerned Revenue Inspector who had prepared the report was not examined, however, the defendant own case is that he was present at the time of demarcation and demarcation report was prepared on his presence and his objection was not raised at the time of demarcation. However, the objection was that the demarcation was not properly carried out and the said report was not properly prepared. It was the fault of the defendant that he did not challenge the admissibility of the documents at the time when it was tendered in evidence. It is not a case where the admission of the document is *per se* barred under the law like a registered sale deed, which is wholly inadmissible unless, it is duly registered as required under the laws of registration. Challenge to the admissibility of the document that its author was not examined, in essence, objection to the mode of proving. The submission of learned counsel for the appellant that unless the person who prepared the document is examined, documents could not be led in evidence, cannot be accepted. The position in this regard was examined by the Supreme Court in the case of R.V.E. Venkatachala Gounder Vs. Arulmigu Viswesaraswami & V.P Temple¹ wherein it was held as below :-

“19. Order 13 Rule 4 of the CPC provides for every document admitted in evidence in the suit being endorsed by or on behalf of the Court, which endorsement signed or initialled by the Judge amounts to admission of the document in evidence. An objection to the admissibility of the document should be raised before such endorsement is made and the Court is obliged to form its opinion on the question of admissibility and express the same on which opinion would depend the document being endorsed as admitted or not admitted in evidence. In the latter case, the document may be returned by the Court to the person from whose custody it was produced.

¹ 2003 8 SCC 752

20. *The learned counsel for the defendant-respondent has relied on **The Roman Catholic Mission Vs. The State of Madras & Anr.**² in support of his submission that a document not admissible in evidence, though brought on record, has to be excluded from consideration. We do not have any dispute with the proposition of law so laid down in the abovesaid case. However, the present one is a case which calls for the correct position of law being made precise. Ordinarily an objection to the admissibility of evidence should be taken when it is tendered and not subsequently. The objections as to admissibility of documents in evidence may be classified into two classes:- (i) an objection that the document which is sought to be proved is itself inadmissible in evidence; and (ii) where the objection does not dispute the admissibility of the document in evidence but is directed towards the mode of proof alleging the same to be irregular or insufficient. In the first case, merely because a document has been marked as "an exhibit", an objection as to its admissibility is not excluded and is available to be raised even at a later stage or even in appeal or revision. In the latter case, the objection should be taken before the evidence is tendered and once the document has been admitted in evidence and marked as an exhibit, the objection that it should not have been admitted in evidence or that the mode adopted for proving the document is irregular cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit. The later proposition is a rule of fair play. The crucial test is whether an objection, if taken at the appropriate point of time, would have enabled the party tendering the evidence to cure the defect and resort to such mode of proof as would be regular. The omission to object becomes fatal because by his failure the party entitled to object allows the party tendering the evidence to act on an assumption that the opposite party is not serious about the*

2 AIR 1966 SC 1457

mode of proof. On the other hand, a prompt objection does not prejudice the party tendering the evidence, for two reasons: firstly, it enables the Court to apply its mind and pronounce its decision on the question of admissibility then and there; and secondly, in the event of finding of the Court on the mode of proof sought to be adopted going against the party tendering the evidence, the opportunity of seeking indulgence of the Court for permitting a regular mode or method of proof and thereby removing the objection raised by the opposite party, is available to the party leading the evidence. Such practice and procedure is fair to both the parties. Out of the two types of objections, referred to hereinabove, in the later case, failure to raise a prompt and timely objection amounts to waiver of the necessity for insisting on formal proof of a document, the document itself which is sought to be proved being admissible in evidence. In the first case, acquiescence would be no bar to raising the objection in superior Court. ”

In view of the above, this Court is of the opinion that the learned Court below did not commit any illegality relying upon the demarcation report Ex.P/4 without examining the Revenue Officer.

9. The other issue is only consequential to the first substantial question of law, therefore, in the result, it has to be held that the Courts below were justified in granting the decree on the basis of demarcation report even though, the Revenue Inspector was not examined.

10. In the result, no case is made out for interference by this Court. This appeal fails and is accordingly dismissed. Parties to bear their respective costs. Let appellate decree be drawn accordingly.

Sd/-

**(Manindra Mohan Shrivastava)
Judge**