

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No.224 of 2007**

Madhav Ram Yadav S/o Laxman Rao Yadav R/o Village Kundel P.O.
 Magarload Tahsil Dhamtari **---- Appellant/Plaintiff**

Versus

1. Sharavan Kumar S/o Vyas Singh Rajput R/o Thakurpara Rajim, District Raipur Chhattisgarh
2. Umesh Singh S/o Vyas Singh Rajput (Deleted) As Per The Hon'ble Court Order Dated 12-12-2019 And 15-01-2020.
3. Deocharan S/o Rewaram Sahu R/o Shitla Para Ward No. 15 Navapara Rajim, Tahsil Abhanpur District Raipur Chhattisgarh
---Respondents/Defendants

For Appellant/Plaintiff	:	Mr. Upendra Bharat, Advocate
For Respondents	:	None appears

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order on Board**13/02/2020**

Heard.

1. This appeal is directed against impugned judgment and decree dated 28.02.2007 passed by the 7th Additional District Judge, Raipur in Civil Appeal No.7-A/2007 whereby the plaintiff's appeal against the judgment and decree of the Trial Court, dismissing the suit has been affirmed.
2. The appellant/plaintiff filed a suit seeking eviction and permanent injunction on the pleading *inter alia* that the plaintiff had purchased his plot from defendants Shravan Kumar and Umesh Singh vide registered sale deed dated 14.03.1995 (Ex.P/5). On the north of the plot, as per the recital of the sale deed, there exist 12 feet wide road. The plaintiff's case was that defendants No.1 & 2 had prepared plots and sold to number of persons including the plaintiff as also defendant No.3 and many other persons. The plaintiff's case was that in all the cases, the location of road was clearly stated.

However, later on, when the plaintiff found that defendant No.3 has encroached upon 12 feet road on the north of the plot of the plaintiff, the plaintiff was required to file a suit.

3. In the written statement of defendants No.1 & 2, the defendants admitted pleadings contained in paras 1 to 12 of the plaint and also admitted that defendant No.3 had raised illegal construction. The defendants No.1 & 2 the sellers, who had sold the property not only to the plaintiff but also the defendant No.3 did not dispute the plaintiff's pleading that while selling plot to the plaintiff, there existed 12 feet wide road on the north of the plot of the plaintiff. They also admitted that defendant No.3 had encroached upon that part.

4. However, defendant No.3 in his separate written statement, denied plaintiff's claim and stated that there is no open land as claimed by the plaintiff. He specifically denied that there existed any land on the north of the plot of the plaintiff, as claimed by the plaintiff. According to him, as pleaded by defendant No.3, he purchased land from one Suresh but denied that there existed any road between his plot and that of the plaintiff. According to him, in the sale deed dated 23.2.1994, disputed land has not been shown as road there was denial of existence of common road for the use of plaintiff, defendant No.1 and another purchaser Nandram Sinha.

5. On the basis of the pleadings of the parties, learned Trial Court framed specific issue as to whether the plaintiff was entitled to use 12 feet road by removing the gate installed by defendant and whether the plaintiff is entitled to decree of permanent injunction against the defendants restraining them from interfering with the plaintiff's use of 12 feet road. Learned Trial Court also framed issue as to whether disputed road is of common use of plaintiff and defendants.

6. Vide judgment dated 30.06.2006, learned Trial Court dismissed the suit holding that though in various sale deeds, 12 feet wide road is shown to exist, neither the plaintiff nor the defendants have opened any gate on the said road. Learned Trial Court also recorded a finding based on recitals of Ex.D/1, sale deed, that in that document, plot of plaintiff Madhav Ram is shown to exist on southern part and in other sale deed Ex.D/2, plot of Nandram is shown to exist

on south direction. Learned Trial Court also recorded a finding that on the basis of two sale deeds, it is proved that defendants No.1 & 2 sold land to defendants No.3/Deocharan which included 12 feet wide land situated on north of plaintiff's land and therefore, the plaintiff is not entitled to any relief.

7. On appeal being preferred, the appeal was also dismissed by the learned Lower Appellate Court.

8. This appeal was admitted on following substantial question of law :

“Whether the finding relating to non existence of 12 ft. way of the Courts below is perverse on the basis of sale deed Ex.P/9 ?”

9. Learned counsel appearing for the appellant would argue that the learned Courts below while recording a finding with regard to non existence of 12 ft. wide road as claimed by the plaintiff, have misread the contents of the sale deed Ex.D/1 & Ex.D/2 filed by defendants without taking into consideration the recitals of sale deed Ex.P/5 & Ex.P/9 which are sale deeds of the plaintiff and another neighbour Nand Ram Sinha, in which, 12 feet wide road on the north of the plaintiff's plot has been clearly shown to exist. The basis of finding of the Court below is non use of that 12 feet road by opening of any gate by the plaintiff which is highly perverse. According to learned counsel for the appellant, merely, because the plaintiff had not opened any window or gate on the north, it could not be inferred that there did not exist any road on that side. He would submit that in the present case, the plaintiff as well as defendant No.3 both purchased the land from defendants No.1 & 2. The defendants No.3 purchased two sets of land. One from defendants No.1 & 2 and the other from one Suresh. These two sale deeds have been marked as Ex.D/1 & Ex.D/2. It is also an admitted position that Suresh had first purchased the land from defendants No.1 & 2. That means plaintiff, defendant No.3 & Suresh, all purchased land from defendants No.1 & 2.

10. Defendants No.1 & 2 in their written statement have fully admitted the case of the plaintiff that at the time of selling of plot to plaintiff, there was existing, a 12 feet wide road available and existing on the spot. Learned Trial Court completely ignored to take into consideration these important and clinching piece of evidence. Further submission of learned counsel for the

appellant is that looking to the nature of dispute between the parties and that there were different recitals contained in sale deed, wherein, some of the sale deeds, road was shown to exist and other sale deed relied upon by the defendant, there was no road to show exist, present is a fit case where the learned Trial Court ought to have obtained spot inspection report by appointing commission under Order 26 Rule 9 CPC. He would submit that though, the plaintiff had moved such application, the application was perfunctorily rejected by learned trial Court vide its order dated 07.02.2002. He would submit that in order to elucidate the matter in issue, it would have been only fair to all the parties that the Court ought to have ordered spot inspection to be made on commission and then decide the case.

11. There is no representation made by other side.

12. The plaintiff's case that on the north of its plot, there existed 12 feet wide road, is based on the recitals of his sale deed Ex.P/5. A perusal of Ex.P/5 containing details of the property shows that on the north and south, 12 feet wide road has been stated to be existing. On the East, land of Nanda and on West, land of Purushottam, said to be existed. This sale deed dated 14.3.1995 was executed in favour of plaintiff by defendants Shrawan Kumar and Umesh Singh, who were original owner of the plot.

13. Photocopy of sale deed dated 23.02.1994, by which, one Nandaram purchased the plot from the same vendors i.e. Shrawan and Umesh also contains description that there exist a road on the north. The evidence of Madhav Ram Yadav (PW1) and Ramanlal (PW2), who is son of Nandaram Sinha is that the land of Nandaram is adjacent to the plot of the plaintiff. Thus from the sale deed Ex.P/5 & Ex.P/9 both, 12 feet wide road is shown to exist on the north.

14. As against this, the defendant No.3 relied upon sale deed Ex.D/1 dated 10.3.1997, by which, he purchased a plot from same vendors namely Shrawan and Umesh. In his sale deed, plot of Madhav Ram (plaintiff) is shown to exist on the south which also contains recital regarding existence of land of Suresh on the east and 12 feet wide Nistari land and land of one Kamta on west. In other sale deed Ex.D/2 relied upon and filed by defendant No.3 executed on 10.03.1997, defendant purchased another plot from Suresh. In

this also, land of Nandaram Sinha is shown to exist on south. However, in this sale deed, there is no mention of 12 feet wide road.

15. If four sale deeds are read conjointly, plot of Madav Ram and Nandaram is adjacent to each other and in the sale deeds Ex.P/5, Ex.P/9 showing purchase by Madavram and Nandaram respectively from common vendors namely: Shrawan and Umesh Singh, 12 feet wide road is shown to exist.

16. In sale deed Ex.D/1, by which, defendant No.3 Deocharan purchased land from the same vendors i.e. Shrawan and Umesh, 12 feet Nistari road is shown to exist but where it exists has not been clearly stated therein. It is clear that the aforesaid land of defendant No.3 Deocharan is on the northern side of plot of plaintiff Madhav Ram. Similarly, Ex.D/9 also shows that this plot is on the northern side of the plot of Nandaram but here there is no mention of any existing road.

17. The aforesaid dispute could be resolved only by allowing spot inspection to be carried out to find out the correct factual position on the spot. This Court finds that the learned Court below without making proper enquiry. This Court also finds that learned Court below, while recording finding against the plaintiff that there does not exist any 12 feet wide road, have completely omitted from consideration specific recitals contained in sale deed Ex.P/5 & Ex.P/9 as also Ex.D/1. In the sale deed, Ex.D/1 itself, there is shown to exist 12 feet wide road. However, its location is not clearly spelt out in sale deed Ex.D/1. The finding of the Court below, therefore, is clearly perverse and cannot be sustained in law. At the same time, this Court is of the view that it would be in the interest of justice that spot inspection is carried out on commission as provided under Order 26 Rule 9 CPC so that true factual position with regard to existence of road could be found out.

18. In the result, the appeal is allowed. The impugned judgment and decree is set aside. The matter is remitted to the trial Court. The Trial Court shall pass appropriate orders with regard to local investigation by way of commission as provided under Order 26 Rule 9 CPC and after obtaining commission report it shall proceed in accordance with law allowing the parties to lead additional evidence in view of local inspection report submitted as may be submitted by commissioner appointed by the Trial Court. Thereafter, the learned Trial Court

shall decide all the issues framed by it by taking into consideration evidence already led by the parties and the additional evidence as may be collected by it through local investigation and additional evidence that may be led by both the parties, in view of report and evidence, if any, of the Commission.

19. The appeal is accordingly allowed.

20. Let appellate decree be accordingly drawn.

Sd/-

(Manindra Mohan Shrivastava)
Judge