

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.258 of 2009****Judgment Reserved on :15.10.2020****Judgment Delivered on: 04.12.2020**

Arun Kumar Dewangan, aged about 45 years, S/o Late Shri Nohariram Dewangan, R/o Danitola Ward Dhamtri, Tah. And District Dhamtari (CG)

----- Appellant/Plaintiff**Versus**

1. Nand Kumar Dewangan (died) through LR's

1(A) Smt.Radha Bai Dewangan, W/o Nand Kumar Dewangan, aged about 66 years, R/o-Behind New Bus Stand, Kanker, District-Kanker (CG)

1(B) Kuleshwar Dewangan S/o Nand Kumar Dewangan, aged about 37 years, R/o Behind New Bus Stand, Kanker, District – Kanker (CG)

2. Sukhdev Ram Dewangan, S/o Late Guhelram Dewangan, Resident of Danitola Ward Dhamtri, Tah. And District-Dhamtari (CG)

3. State of Chhattisgarh, Through: District Magistrate, Dhamtari, District Dhamtari (CG)

----- Respondents/Defendants

For Appellant/Plaintiff:

Mr.Rakesh Thakur, Advocate

For LR's of Respondent No.1 and Respondent No.2:

Mr.Sandeep Yadav, Advocate

For Respondent No.3: Mr.Ravi Bhagat, Dy.Govt.Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Judgment

1. The substantial questions of law involved, formulated and to be answered in this second appeal preferred by the appellant/plaintiff herein are as under:-

"1. Whether both the Courts below are justified in holding that the suit property did not fall in share of the plaintiff and the plaintiff is not owner of the suit property ?

2. Whether both the Courts below are justified in holding that the demarcation report Ex.P/3 and Ex.P/3 filed by the plaintiff is not in accordance with law, despite the fact the revisional authority has affirmed the order of demarcation and demarcation ?"

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

2. Father of the plaintiff and defendants No.1 & 2 were brothers. It is the case of the plaintiff that in partition between his father and defendants No.1 & 2, the suit property bearing Khasra No.2205/1D Sheet No.46, Plot No.5, area 1659 sq.ft. fell in share of his father, which came in his share on partition between his brothers, out of which, in some part of the suit land, defendants No.1 and 2 have encroached by making construction. The plaintiff applied for demarcation under Section 129 of the Chhattisgarh Land Revenue Code, 1959 (hereinafter called as 'the Code') before the Tahsildar, Dhamtari and ultimately, the Tahsildar directed for demarcation and it was actually done on 16.08.2004 (Exs.P-3 to

P-5) in presence of both the parties and the demarcation was confirmed by the Tahsildar, Dhamtari on 25.8.2004 vide Ex.P-2, in which it has been recorded that defendants No.1 and 2 have encroached upon the plaintiff's land i.e. 8.3x18 total 148 sq.ft. The order of demarcation passed by the Tahsildar was challenged before the Collector, Dhamtari at the instance of the defendants and the Collector, Dhamtari vide order dated 18.10.2005 (Ex.P-7) affirmed the order of the Tahsildar, which was further affirmed by the Board of Revenue on 9.2.2007 vide Ex.P-8. It is the case of the plaintiff that since defendants No.1 and 2 have encroached upon the plaintiff's land, he is entitled for declaration for title, permanent injunction and possession of the suit land shown in Schedule 'A', 'B', 'C' and 'D' of the plaint by demolishing the construction made upon the suit land.

3. Resisting the suit, defendants No.1 and 2 filed their written statement and denied the averments made in the plaint stating inter-alia that the suit property never fell in share of the plaintiff and the plaintiff has failed to prove encroachment of the defendants over the suit land and demarcation report is totally unauthorized and therefore, the

plaintiff is not entitled for declaration of title, permanent injunction and possession.

4. The trial Court upon appreciation of oral and documentary evidence available on record, by its judgment and decree dated 16.4.2008, dismissed the suit holding that the plaintiff has failed to prove that the suit land fell in his share and further failed to prove that the defendants have encroached upon the plaintiff's land. On appeal being preferred by the plaintiff, the first appellate Court affirmed the judgment and decree of the trial Court. Questioning the judgment and decree passed by the first appellate Court, this second appeal under Section 100 of the CPC has been filed by the appellant/plaintiff, in which substantial questions of law have been formulated by this Court, which have been set-out in opening paragraph of this judgment for sake of completeness.

5. Mr. Rakesh Thakur, learned counsel for the appellant/plaintiff, would submit that both the Courts below erred in holding that the suit property did not fall in share of the plaintiff. The plaintiff in paras-16 to 18 of his cross-examination by the defendants has clearly deposed about the partition and stated that the suit property fell in

his share. In para-2, Bholaram Dewangan (DW-2), who is brother of the plaintiff, has clearly stated before the Court about the fact of partition and that the suit property fell in share of the plaintiff, as such, title of the plaintiff has clearly been admitted by the defendants and their witnesses. He would further submit that order of demarcation (Ex.P-3) was further challenged by defendant No.1 before the Collector and the Board of Revenue and both challenges have been turned down by the appellate authority and the revisional authority vide Exs.P-7 and P-8, as such, the order of demarcation made by the Tahsildar, Dhamtari under Section 129 of the Code has become final and demarcation has even become final as that was not challenged by the defendants under Article 227 of the Constitution of India before this Court, as such, by virtue of the provisions contained in Section 257(g) of the Code, the jurisdiction of the Civil Court is barred by Section 257(g) of the Code to interfere with the order of demarcation unless arbitrariness or illegality in the order directing demarcation is found, as such, the judgment and decree of both the Courts below deserve to be set aside and both the substantial questions of law be

answered in favour of the plaintiff and against the defendants and the appeal be allowed.

6. On the other hand, Mr. Sandeep Yadav, learned counsel for LR's of respondent No.1 and respondent No.2/defendants, would support the judgment and decree of both the Courts below and submit that both the Courts below have concurrently and rightly dismissed the suit by holding that the plaintiff has failed to prove his title over the suit land and further failed to prove that the suit land fell in his share on partition. He would also submit that both the Courts below have rightly held that demarcation is not in accordance with law, which is binding to this Court under limited jurisdiction under Section 100 of the CPC, as such, the appeal deserves to be dismissed with cost(s).

7. I have heard learned counsel appearing for the parties and considered their rival submissions made hereinabove thoughtfully and also went through the records with utmost circumspection.

Answer to substantial question of law No.1:-

8. The plaintiff filed a suit that the suit property particularly the suit land bearing Khasra No.2205/1D Sheet No.46, Plot No.5, area 1659 sq.ft. was allotted to his father and the defendants' father

and thereafter on partition between his brother, the suit property fell in his share and he become title-holder and in some part of the land defendants No.1 and 2 have encroached and made construction, for which he made an application to the Tahsildar for demarcation. Defendants No.1 and 2 in their written statement controverted the allegations of the plaintiff stating inter-alia that they have not illegally encroached upon the plaintiffs' land and that construction is existing for last several years and the demarcation is done secretly and it is illegal. The trial Court framed the issue with regard to the title and ownership of the plaintiff as issue No.1 and returned the finding that the plaintiff is not title-holder of the suit land, which the first appellate Court has also affirmed.

9. The plaintiff has filed copy of rin pustika vide Ex.P-6C in which he has been shown to be owner of Khasra No.2205/1D, area 1659 sq.ft. Not only this, the plaintiff has been examined as PW-1, in which he has stated that he is owner and title-holder of the suit land which he has received on partition between his brothers in December, 2000. In para-15 of his cross-examination on being asked on behalf of the defendants, he has clearly stated that the suit

house was allotted to his father on partition and thereafter to him. In para-18, he has clearly stated that partition was made on 8th December, 2000, as such, on the basis of rin pustika (Ex.P-6C) and on the basis of evidence particularly cross-examination he has clearly stated that the suit land was allotted to him on partition, which was made on 8th December, 2000 and as such, he is title-holder of the suit land and as such, there is uncontroverted evidence on record that he is owner and title-holder of the suit land and even in cross-examination it has been stated so by the plaintiff on being asked on behalf of the defendants, as such, finding recorded by two Courts below that he is not title-holder of the suit land of Khasra No.2205/1D, area 1659 sq.ft. is perverse finding based on no record. Furthermore, demarcation was made pursuant to the order of Tahsildar on 7.6.2004 in presence of both the defendants, but they did not object that the plaintiff is not owner and title-holder of Khasra No.2205/1D and therefore, demarcation should not be made. The defendants allowed the demarcation to be made and allowed the demarcation to be final and when the possession was not given of the encroached land and when the plaintiff filed a suit, they

raised altogether a new plea that the plaintiff is not title-holder of the suit land, as such, there is sufficient oral and documentary evidence on record to hold that the suit land is land which was received by the plaintiff on partition and he is title-holder of the suit land, as such, finding recorded by two Courts below on this issue is set-aside.

Answer to substantial question of law No.2:-

10. It is the case of the plaintiff that since the defendants have encroached upon some of part of the suit land, therefore, he made an application for demarcation before the revenue officer under Section 129 of the Code, which was ultimately demarcated on 7.6.2004 in presence of Nand Kumar and Sukhdev vide Ex.P-5 and report of the revenue inspector is Ex.P-3, in which the defendants were found to have encroached into 8.3"x18" total 148 sq.ft. of the land. The said demarcation report was accepted by the Tahsildar on 25.8.2004 vide Ex.P-2 holding that since no objection has been made by the adjoining land owners the report is accepted under Section 129 of the Code. Thereafter, defendant No.1-Nand Kumar preferred revision before the Collector challenging the order dated 25.8.2004 passed by the Tahsildar.

The Collector vide order dated 18.10.2005 (Ex.P-7) dismissed the revision finding no merit and defendant No.1-Nand Kumar again preferred revision before the Board of Revenue and the Board of Revenue vide order dated 9.2.2007 (Ex.P-8) affirmed the order of the Collector and dismissed the revision and thereby order of Tahsildar dated 25.8.2004 confirming the demarcation report has become final.

11. At this stage, it would be appropriate to notice

Section 257(g) of the Code which states as under:-

"257. Exclusive jurisdiction of revenue authorities.-Except as otherwise provided in this Code, or in any other enactment for the time being in force, no Civil Court shall entertain any suit instituted or application made to obtain a decision or order on any matter which the State Government, the Board, or any Revenue Officer is by this Code, empowered to determine, decide or dispose of, and in particular and without prejudice to the generality of this provision, no Civil Court shall exercise jurisdiction over any of the following matters:-

(a) to (f) xxx xxx xxx

(g) any question regarding the demarcation of boundaries or fixing of boundary marks under Chapter X;"

Section 257(g) of the Code states about exclusive jurisdiction over Revenue Authority stating that no Civil Court shall entertain any suit instituted or application made to obtain a decision or order on any matter which the State Government, the Board, or any Revenue Officer is by this Code, empowered to

determine, decide or dispose of and no Civil Court shall exercise jurisdiction over any question regarding the demarcation of boundaries or fixing of boundary marks under Chapter X.

12. The Madhya Pradesh High Court in the matter of **State of M.P. v. Shyam Kishore Agrawal**¹ has held that the Civil Court should not entertain the suit when the matter lay within the exclusive jurisdiction of the Revenue Courts and when the Revenue Courts have acted within their jurisdiction. If proceedings do not reveal any fraud, arbitrariness or perversity.

13. In the instant case, it is quite vivid that the defendants, who were party to demarcation as apparent from Ex.P-5 as they are signatory to the said demarcation report, did not challenge the demarcation report. Consequently, the demarcation report was confirmed by the Tahsildar by order dated 25.8.2004 and which has further been affirmed by the Collector vide Ex.P7 and the Board of Revenue vide Ex.P-8. Once the demarcation has become final, it is binding on the defendants. Jagdish Joshi, a revenue officer, who has conducted demarcation was also examined as (PW-4). He has been subjected to lengthy cross-examination, but nothing could be extracted to disbelieve the demarcation report, as such, it is

¹ 1975 J LJ 557

clear from demarcation report (Ex.P-3), which has been accepted by the Tahsildar that the defendants have encroached into the plaintiff's land i.e. 8.3"x18" total 148 sq.ft. by making construction, which is duly established on record as per demarcation report, as such, both the Courts below are absolutely unjustified in holding that the demarcation report is not in accordance with law. The demarcation report was conducted as per Section 129 of the Code, which was considered and accepted by the Tahsildar and order of Tahsildar has further been affirmed by the revisional authorities vide Exs.P-7 and P-8, as such, finding recorded by two Courts below that demarcation report is not in accordance with law is hereby set-aside and it is held that defendants No.1 and 2 have encroached upon the plaintiff's land i.e. 8.3"x18" total 148 sq.ft. by constructing small room for habitation of animals.

14. Accordingly, the judgment and decree of the trial Court as affirmed by the first appellate Court is hereby set-aside and the plaintiff's suit is decreed and it is directed that the defendants shall hand over the vacant possession of 8.3"x18" total 148 sq.ft. of the land as per map annexed with

plaint after demolishing superstructure standing therein within two months from the date of drawing of the decree. The substantial questions of law are answered in favour of the plaintiff and against the defendants. Map annexed with the plaint be made part of the decree.

15. The second appeal is allowed to the extent indicated hereinabove leaving the parties to bear their own cost(s).

16. A appellate decree be drawn-up accordingly.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-

HIGH COURT OF CHHATTISGARH AT BILASPUR

Second Appeal No.258 of 2009

Appellant

Arun Kumar Dewangan

Versus

Respondents

Nand Kumar Dewangan (died)
through LR's and others

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J U D G E
03/12/2020